

# INSOLVENCY

## INSIGHT

The clean slate principle extends only to liabilities before the insolvency commencement date and will not extend to the date of actual sale of the Corporate Debtor (CD) as a going concern.

Sale Agreement does not constitute a financial debt u/s 5(8) of IBC.



**The clean slate principle extends only to liabilities before the insolvency commencement date and will not extend to the date of actual sale of the Corporate Debtor (CD) as a going concern.**

The Hon'ble NCLAT, Delhi in the case of Shantech International Pvt Ltd v. Devendra Singh Liquidator of Venus Rolling Company Appeal (AT) (Insolvency) No.1520 of 2024 has held that IBBI (Liquidation Process) Regulations, 2016 does not contemplate extension of the clean slate principle to the date of actual sale of the CD.

This is a case where the successful auction purchaser appealed an order from the Adjudicating Authority that denied the reliefs and concessions from the date of sale. The Hon'ble NCLAT observing that Regulations 12 and 16 of IBBI (Liquidation Process) Regulations, 2016 contemplate filing of a claim as on the liquidation commencement date held that here can be no question of extinguishment of claim up to the date of sale of e-auction of the Corporate Debtor as 'going concern'.

When the claim itself is as on the liquidation commencement date in the liquidation process, the argument that extinguishment of claims and liabilities should be granted till the date of sale by e-auction is not in accord with the statutory scheme as delineated by IBBI (Liquidation Process) Regulations, 2016.

**Sale Agreement does not constitute a financial debt u/s 5(8) of IBC.**

The Hon'ble NCLAT, Delhi in the case of Sandeep Mittal v. M/s ASREC (India) Ltd. & Ors. Company Appeal (AT) (Insolvency) No. 37 & 573 of 2024 has held that a sale consideration in the sale agreement does not constitute a "financial debt".

This is a case where the Corporate Debtor (CD) had offered to purchase the assets of GPPL from the consortium of banks having a charge over the assets of GPPL. Later the CD was declared a sick industry. The consortium of banks assigned its debt to ASREC, which filed a Section 7 application before the NCLT, New Delhi, claiming an amount of Rs. 92,35,21,674/- as of 30.06.2022. CD contended that the debt was not a financial debt but a sale consideration due to the vendor. NCLT after adjudging the sale consideration as financial debt admitted ASERC's application which was challenged by the CD before NCLAT, Delhi.

The core issue was whether the transaction qualified as a "financial debt" enabling Respondent No. 1 to file an insolvency application against the corporate debtor. The tribunal referenced Section 5(8) of the IBC, which defines "financial debt" as any debt incurred for the time value of money, encompassing various financial instruments like loans and bonds. Ultimately, the tribunal ruled that the sale agreement in question did not meet the criteria for "financial debt" as the interpretation of the term "financial debt" is confined only to transactions involving money, thereby excluding transactions involving only the disbursement of property from this definition.



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