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INSOLVENCY
INSIGHT

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NCLAT held Extension of Payment Timelines for Resolution Plan Implementation does not modify it.

In the case of Ashok Dattatray Atre and Ors. vs. State Bank of India and Ors., the NCLAT dealt with extending payment timelines under an approved Resolution Plan. The appellants, successful resolution applicants and promoters of the corporate debtor, sought an extension for payment tranches under the approved plan. The NCLT Mumbai Bench-I had initially rejected their request and ordered liquidation due to non-payment of the fourth tranche. The appellants challenged this decision in the NCLAT.

The NCLAT found that the NCLT erred in viewing that extending timelines constituted a modification of the Resolution Plan, requiring CoC approval. The Tribunal clarified that extending payment timelines does not modify the Resolution Plan and can be granted by the NCLT. The court highlighted the appellants' willingness and efforts to implement the plan, including proposing the sale of the Shirwal Factory to cover payments. The NCLAT set aside the NCLT's order of liquidation and directed SBI to issue a Letter of Intent for the sale of the Shirwal Factory, ensuring payment obligations under the Resolution Plan are met. This decision emphasizes the NCLAT's supportive role in the successful implementation of resolution plans.

Guarantor's Liability and Jurisdiction of Adjudicating Authority

In the case of Tulip Hotel Pvt. Ltd. vs. JC Flowers Asset Reconstructions Pvt. Ltd. and Anr. before the NCLAT New Delhi, the tribunal examined multiple legal issues concerning the liabilities of a guarantor and the jurisdiction of the Adjudicating Authority (NCLT) to determine the genuineness of deeds of guarantee in the context of insolvency proceedings. The appellant, Tulip Hotel Pvt. Ltd., contended that the Deeds of Guarantee were forged and that the Adjudicating Authority did not possess the jurisdiction to investigate such claims. Furthermore, they argued that the guarantees could not cover past transactions.

The tribunal held that under Section 127 of the Indian Contract Act, 1872, the consideration for a guarantee could include past transactions, dismissing the appellant's claim that the Deeds of Guarantee were invalid due to being executed post disbursement of the loan. The NCLAT further ruled that the adjudicating authority does not have the jurisdiction to investigate the authenticity of documents involving allegations of fraud or forgery, as such matters fall within the purview of civil courts. Consequently, the Adjudicating Authority acted within its scope by admitting the application for initiation of CIRP against the Corporate Debtor based on the guarantee agreements. This decision reinforces the doctrine that a guarantor's liability is co-extensive with that of the principal debtor, as established in Section 128 of the Contract Act.

NCLT Lacks Jurisdiction to Set Aside Arbitral Award During CIRP

The NCLT Kolkata Bench in the case of Subodh Kumar Agarwal, RP of Hindustan Controls and Equipment Pvt. Ltd. vs. Steel Authority of India addressed whether it has jurisdiction to set aside an Arbitral Award passed during the CIRP and under the moratorium imposed by Section 14 of the IBC. The Tribunal ruled that it does not have the authority to nullify an Arbitral Award, even if athe award was passed during the CIRP and under the moratorium.

The NCLT emphasized that setting aside an Arbitral Award falls under the purview of arbitration law, not the IBC. The Tribunal referred to the Supreme Court's ruling in Gujarat Urja Vikas Nigam Ltd. v. Mr. Amit Gupta, which clarified that the NCLT's jurisdiction is confined to insolvency-related issues. The decision reinforces the distinction between insolvency proceedings and arbitration, maintaining that the NCLT cannot intervene in arbitral awards merely because they coincide with the moratorium period under the IBC.

Supreme Court Confirms: Security Deposits in Sales Deals are Financial Debts under IBC

In the case of Global Credit Capital Ltd. and Anr. vs. Sach Marketing Pvt. Ltd. and Anr., the Supreme Court upheld a decision by the NCLAT that classifies security deposits in sales promotion agreements as financial debts under the Insolvency and Bankruptcy Code (IBC), 2016. The Court explained that for a debt to be considered financial, it must involve money disbursed against the consideration for the time value of money. The security deposits in this case included an interest component of 21% per annum, which satisfied this requirement. Additionally, the corporate debtor's financial records treated these deposits as long-term liabilities, further indicating their nature as borrowings.

The Court also clarified the difference between financial and operational debts. It noted that operational debts must be related to the provision of goods or services, which was not the case here. While the Rs. 4,000 monthly payment to the Sales Promoter was related to services, the security deposit was not. Therefore, it was classified as a financial debt. This ruling highlights the importance of assessing the true nature of transactions over their mere documentation when determining debt classifications under the IBC.

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