

INSOLVENCY

INSIGHT

Supreme Court defines the contours of the inherent powers of NCLAT

SRA cannot object to any conditions stated in LOI once CoC had approved Resolution Plan

Interim moratorium under Section 96 of IBC on a Partner does not extend to the Assets of the Partnership Firm



Supreme Court defines the contours of the inherent powers of NCLAT

The Hon'ble Supreme Court in the case of GLAS Trust Company LLC v. BYJU Raveendran & Ors. Civil Appeal No. 9986 of 2024 has reaffirmed that while inherent powers under Rule 11 of the NCLAT Rules are must, they must operate in conjunction with the structured procedures set out in the IBC (section 12A of the IBC, as read with regulation 30A), particularly concerning the withdrawal of CIRP proceedings.

This is a case where BCCI initiated CIRP against Think and Learn Pvt Ltd., for an operational debt. Thereafter the initiation of the CIRP but before the CoC could be formed a settlement was reached between the CD, one of its former director and BCCI, and therefore BCCI filed for withdrawal of CIRP before NCLAT. This withdrawal was unsuccessfully objected to by another of the Financial Creditor, i.e. GLAS Trust Company LLC the Appellant before NCLAT.

In the appeal the Supreme Court noted that IBC must not be used as a tool for coercion and debt recovery by individual creditors. The interests of the corporate debtor must be detached from those of its promoters/those who are in management. Once the petition instituted by a creditor is admitted, the proceedings before the NCLT become a 'collective proceeding' or a proceeding in rem. Thus, the body which oversees the resolution process, i.e. CoC must be consulted before allowing the claim to be settled.

Accordingly, it was held that, in such cases, the party can approach the NCLT directly, and the NCLT may exercise its inherent powers under Rule 11 to allow or disallow the application for settlement/withdrawal. However, given the in rem nature of the proceedings, such an application must be decided only after hearing all the parties concerned and considering the relevant factors in the case.

SRA cannot object to any conditions stated in LOI once CoC had approved Resolution Plan

The Hon'ble NCLAT, New Delhi in the case of Sanjay Dave v. Andhra Bank Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 1128 of 2024 has held that a SRA cannot object to the conditions in the Lol after approval of RP as withdrawal or modification of resolution plan after approval by the CoC is not permissible in law

This is a case where the SRA never objected at any stage up to the 28th CoC meeting to make the resolution plan subject to the prospective orders to be passed by the Adjudicating Authority. Instead the SRA requested the CoC to issue him a Lol. However, after the Lol was circulated to the SRA for his perusal and acceptance on 24.05.2021 by email, it is at this stage that the SRA through his Advocate on 29.05.2021 raised preliminary objections to the Lol being conditional for being subjected to the prospective orders of the Adjudicating Authority.

The Hon'ble NCLAT agreeing with the Adjudicating Authority wherein after noting the sequence of events the Adjudicating Authority observed that the SRA did not appear to be willing to go ahead with the approved resolution plan rejected the preliminary objection of the SRA. The Adjudicating Authority has relied on the correct interpretation of the judgment of Hon'ble Supreme Court in Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. and Anr. was held that resolution applicant cannot be permitted to withdraw or modify the resolution plan after approval by the CoC.

Interim moratorium under Section 96 of IBC on a Partner does not extend to the Assets of the Partnership Firm

The Hon'ble NCLAT, New Delhi in the case of Ramesh Kumar Chugh v. Assets Care & Construction Enterprises Ltd. Company Appeal (AT) (Insolvency) No. 1726 of 2024 has held that the moratorium imposed under Section 96 of IBC, 2016, would strictly apply to the security interest created by the Partner in his personal capacity and will not extend to the cover the subject property being the property of the partnership firm against which Section 95 has not been invoked.

This is a case where a Company Petition under Section 95 of the IBC was filed by Operational Creditor - White Line Enterprises against Mr. Ramesh Kumar Chugh - Appellant who stood as a Personal Guarantor for repayment of the debt owed by M/s. Sahil Home Loomtex Pvt. Ltd. Mr. Ramesh Kumar Chugh was also a guarantor for a loan availed by his firm which loan was transferred by the creditors to the respondent herein. The respondent initiated a sale of three properties of the partnership firm to satisfy is dues.

The Hon'ble NCLAT while accepting the appeal held that interim moratorium under Section 96(1) (b)(ii) creates a prohibition on the other creditors of the debtor from initiating any legal action in respect of the debt for which Section 95 has been initiated.

Further, the NCLAT concurred with the case of Dilip B. Jiwrajka v. Union of India that distinguished the provisions of moratorium contained in Section 14 and Section 96 of the IBC and held that moratorium in respect of Section 96 is intended to operate in respect of a debt as opposed to a debtor and that the purpose of interim moratorium under Section 96 is to restrain the initiation or continuation of legal action or proceedings against the debt.

The assets held in the name of the partnership firm is not the personal property of the Appellant and cannot be subjected to the provisions of interim moratorium merely because a Section 95 application has been filed against a partner of the firm in respect of a personal guarantee given for a party other than the partnership firm.



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