

June 2024

INSOLVENCY

INSIGHT

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NCLT Orders Termination of PPIRP for Kethos Tiles Pvt. Ltd.

In a significant development, the NCLT Ahmedabad Bench terminated the Pre-Packaged Insolvency Resolution Process (PPIRP) for Kethos Tiles Pvt. Ltd. The case, titled Vikash Gautamchand Jain v. RP of Kethos Tiles Pvt. Ltd., reiterates the significance of adhering to the statutory timelines under the IBC, 2016, and brings to light the accountability of Resolution Professionals (RPs).

Kethos Tiles Pvt. Section 54C IBC (Read) Ltd. on enhancing the PPIRP, filed for admission and was formally admitted under Chapter - IX of the Code namely Section 54C of IBC on January 4th, 2024. On 2nd May 2024 (the last date of the 120-day period), the CoC passed a resolution with a majority vote of 91.75% asking for an extension of another 60 days. Therefore, ROTP applied for an extension.

In this case, the NCLT observed that as per Section 54D of the Bankruptcy Code, the PPIRP time frame was capped at 120 days. According to the tribunal, the RP erroneously based its plea on section 12 of the IBC which refers to CIRP that does not apply to PPIRP. However, the tribunal observed that none of these resolutions were approved in the specified time and thereby RP is under obligation to file for termination of PPIRP u/s 54D(3) read with 33C (5) if no resolution plan is approved. The PPIRP was terminated, with the RP's application for an extension being ruled inadmissible. The IT upheld the NCLT's finding that the RP had misled the tribunal and did not carry out his duties as required, and directed its order to be forwarded to the IBBI as well as to the Indian Institute of Insolvency Professionals of ICAI for action.

High Court of Meghalaya Clarifies the Extinguishment of Pre-Approval Electricity Dues Under IBC

In Reliance Infratel Ltd. v. State of Meghalaya, the High Court has held that electricity dues (dues before implementation of a resolution plan) will stand extinguished if not proved before the NCLT post approval of the resolution plan under IBC 2016.

Reliance Infratel has more than 43,000 mobile towers across India as of date including 157 such towers in Meghalaya and was admitted to insolvency on 7th May 2019. The takeover was after NCLT & Supreme Court Approval on 22 December 2022. However, the Meghalaya Power Distribution Corporation was still trying to recover pre-approval dues. The court pointed out that under Section 31(1) of the IBC, the resolution plan as approved is binding on all stakeholders, including statutory authorities.

Additionally, Section 238 of the IBC overrides other laws, rendering Section 56 of the Electricity Act, 2003, inapplicable. Citing the Supreme Court's clean slate principle from the case of Ghanshyam Mishra vs. Edelweiss Asset Reconstruction Co. Ltd, the court ruled that the resolution applicant should not face old liabilities post-takeover. The decision reinforces the binding nature of resolution plans and provides clarity on statutory dues under the IBC, ensuring smoother insolvency resolutions.

NCLAT Upholds Liquidator's Right to Post-Facto Approval in Suit Initiation

In *Slimline Realty Pvt. Ltd. v. Mr. Jigar Bhatt*, Liquidator of RMOL Engineering and Offshore Ltd., the NCLAT addressed the post-facto approval for initiating suits under Section 33(5) of the IBC. RMOL, admitted to CIRP on 21st August 2019 and liquidated on 6th December 2021, had its only assets in Non-Convertible Unsecured Bonds.

Applications under Section 7 of the IBC have been filed by the liquidator upon rejection by the Stakeholders Consultation Committee. The NCLT granted ex post facto approval on 7th February 2024. The NCLAT laid down that ex post facto approval can validate proceedings initiated in the absence of prior authorization, to protect the liquidation estate, according to the imperative of sub-section 5 of Section 33. This ensures that technicalities do not hinder the liquidation process, provided the estate's protection is achieved.



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