

# Restructuring & Insolvency

Monthly Newsletter

January 2023

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# STATUTORY UPDATES

## Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2022

- The Insolvency and Bankruptcy Board of India (IBBI) vide notification dated December 12, 2022 issued certain guidelines pertaining to the appointment of Insolvency Professionals as Interim Resolution Professionals (IRP), Resolution Professionals (RP) and Liquidators by the Adjudicating Authority in cases where the Operational Creditor has not proposed an IRP while filing an Application under Section 9 of IBC or where an Application under Section 94 or 95 is filed by the Debtor or the Creditor and not through RP or when the RP needs to be replaced.
- The said guidelines, which will be effective from January 01, 2023, have been issued in supersession of the earlier guidelines (Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2022) issued on June 8, 2022. Salient aspects of these guidelines are:
- In order to minimize the time period involved in appointment of the Insolvency Professionals, the IBBI by way of these guidelines has suggested that a rotational panel of Insolvency Professionals (IP/IPs) be made and be shared with the Adjudicating Authority. The panel shall be made on the following basis:
  - The Panel will have Zone-wise list of IPs based on the registered office (address as registered with the Board) of the IP.
  - The Panel will have validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first Panel under these Guidelines will be valid for appointments during January-June 2023, and the next Panel will be valid for appointments during July-December 2023, and so on.
- An IP will be eligible to be in the Panel of IPs if:
  - There is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him.
  - He has not been convicted at any time in the last three years by a court of competent jurisdiction.
  - He expresses his interest to be included in the Panel for the relevant period.
  - He undertakes to discharge the responsibility as IRP, Liquidator, RP or BT, as he may be appointed by the Adjudicating Authority.
  - He holds an Authorization for Assignment (AFA), which is valid till the validity of Panel. For example, the IP included in the Panel for appointments during January-June 30, 2023 should have AFA valid up to June 30, 2023.

- An IP will be included in the Panel against the Zone where his registered office (his address as registered with the Board) is located.
- The Board shall invite expression of interest from IPs in Form A by sending an e-mail to them at their email addresses registered with the Board. The expression of interest must be received by the Board in Form A by the specified date.
- The IPs after being determined to be eligible are scored on the basis of the volume of the assignments handled by such an IP and accordingly such IP is included in the panel. Where two or more IPs get the same score, they will be placed in the Panel in the order of date of their registration with the Board. The IP registered earlier will be placed above the IP registered later
- Upon being included in the Panel, such IP will have the following obligations:
  - To not withdraw his interest to act as IRP, Liquidator, RP or BT, as the case may be.
  - To not decline to act as IRPs, Liquidator, RP or BT, as the case may be, if appointed by the AA.
  - To not surrender his registration to the Board or membership or AFA to his IPA during the validity of the Panel.
- Lastly, it must be explicitly understood that:
  - The Adjudicating Authority may require the IBBI to recommend an IP from or outside the Panel and in such cases, the IBBI shall accordingly recommend an IP.
  - An IP in the Panel can be appointed as IRP, Liquidator, RP at the sole discretion of the Adjudicating Authority.
  - The submission of expression of interest is an unconditional consent by the IP to act as an IRP, Liquidator, RP of any process relating to a corporate or individual Debtor, as the case may be.
  - An IP who declines to act as IRP, Liquidator, RP or BT, as the case may be, on being appointed by the Adjudicating Authority, shall not be included in the Panel for the next five years, without prejudice to any other action that may be taken by the Board.



# RECENT JUDGMENTS

## Krishna Hi-Tech Infrastructure Pvt Ltd v. Bengal Shelter Housing Development Ltd

National Company Law Appellate Tribunal Principal Bench, New Delhi | Judgment dated December 06, 2022 | Company Appeal (AT) (Insolvency) No. 1375 of 2020

### Background facts

- An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) filed by Krishna Hi-Tech Infrastructure Pvt Ltd (**Operational Creditor**) against Bengal Shelter Housing Development Ltd (**Corporate Debtor**), was rejected by the NCLT, Kolkata Bench vide order dated September 12, 2022 (**Impugned Order**) observing that there is a pre-existing dispute between the parties.
- The Operational Creditor/Appellant was awarded work on contract by the Corporate Debtor/Respondent and payments were also made from time to time. As per the terms of contract, all payments were to be made within 15 days of raising of bills. However, when the Corporate Debtor started delaying in making payments as per the contract, the Operational Creditor sent a notice under Section 8 of IBC on July 13, 2019 claiming a debt of INR 1.39 crore.
- As a result of failure on the part of the Corporate Debtor to make payment even after receiving the demand notice, the Operational Creditor filed an Application under Section 9 of IBC seeking initiation of CIRP of the Corporate Debtor. NCLT while deciding the Application observed that there are email communications between the parties wherein the Corporate Debtor has raised disputes such as deficiency in the work, slow progress in the work, defective materials, that too prior to issuance of demand notice. NCLT rejected the Application under Section 9 on the ground of existence of pre-existing disputes between the parties.
- Aggrieved by the Impugned Order, the Operational Creditor challenged the same before the National Company Law Appellate Tribunal (**NCLAT**) on the ground that the Corporate Debtor have not made payment on the due dates since it was provided in the contract that within 15 days all bills shall be paid. Further, the Corporate Debtor is responsible for slow progress of work and not the Operational Creditor who is the contractor. Hence, the emails which were sent by the Corporate Debtor cannot be said to be reason for rejecting the Application on the ground that there is pre-existing dispute.

### Issue at hand?

- Whether Section 9 Application under IBC can be rejected when there is a pre-existing dispute?

### Decision of the Tribunal

- The NCLAT dismissed the Appeal preferred by the Appellant and observed that the email communications raising disputes such as deficiency in the work, slow progress in the work, defective materials were sent much prior to issuance of demand notice under Section 8 of IBC.

### HSA **Viewpoint**

The NCLAT has observed that the disputes regarding quality of work were raised by the Corporate Debtor prior to issuance of Section 8 demand notice, hence the same cannot be said to be a moonshine or sham defence. It is a settled position of law that a Section 9 Application under the Code can be rejected when there is pre-existing dispute. However, a Corporate Debtor cannot take such defence which prima facie looks illusory or sham or practically moonshine.

The dispute between the parties were not supposed to be decided, examined, and adjudicated in IBC proceeding.

- The NCLAT concluded by reiterating that the question to be looked in Section 9 Application is as to whether the objection raised by the Corporate Debtor opposing claim of the Operational Creditor is not a moonshine defence. In this present case, the disputes regarding quality of work were raised much prior to sending of demand notice which establishes that the issues raised in the emails are not moonshine defence.

## Mathuraprasad C Pandey & Ors v. Parthiv Parikh & Anr Nandish Patel v. Parthiv Parikh

National Company Law Appellate Tribunal Principal Bench, New Delhi | Judgment dated December 14, 2022 |  
Company Appeal (AT)(Ins) No. 201/2021 and Company Appeal (AT)(Ins) No. 266/2021

### Background facts

- **Company Appeal (AT)(Ins) No. 201/2021**
  - An Appeal was preferred by the Successful Resolution Applicant who were promoters of the Corporate Debtor aggrieved by the order dated January 28, 2021 (**Impugned Order**) passed in I.A. No. 846 of 2020 in C.P. (IB) No. 404 of 2019 wherein the NCLT while approving a Resolution Plan modified the Resolution Plan to the extent that *‘if any member of Resolution applicants has entered into or stood as guarantor in the individual capacity, in that event, he shall not be covered with any immunity given under the Resolution Plan.’*
  - The Appellant contended that the NCLT does not have any jurisdiction to modify or alter any of the conditions of the Resolution Plan which was finally approved by more than 97% of majority of CoC in its commercial wisdom.
- **Company Appeal (AT)(Ins) No. 266/2021**
  - An Appeal was preferred by an ex-employee of the Corporate Debtor who was an Operational Creditor and had filed the petition for initiation of CIRP, assailing the Impugned Order primarily on the ground that the Resolution Plan submitted by Mathura Prasad Pandey & Ors was fit to be rejected since Mathura Prasad had suppressed the material fact and misrepresented that the Corporate Debtor was an MSME.

### Issues at hand?

- Whether the NCLT has jurisdiction to modify or alter any of the conditions of the Resolution Plan which has been approved by the CoC?
- Whether the promoters of a Corporate Debtor are eligible to submit a Resolution Plan if on the date of filing of the Resolution Plan, the Corporate Debtor was an MSME?

### Decision of the Tribunal

- **Company Appeal (AT)(Ins) No. 201/2021**
  - NCLAT after analyzing and examining the submissions of both the parties have held that if a Resolution Plan is submitted before the NCLT for approval which is in compliance with Section 31 (1) of IBC as well as in consonance with the provisions of Section 30 of the IBC, such Resolution Plan has to be approved by the NCLT.
  - Mandate of the Code is either to approve the Resolution Plan or to reject the same which has been approved by the CoC in its commercial wisdom. However, there is no provision for making alteration or modification in the Resolution Plan.
  - In view of the aforesaid, the NCLAT held that the NCLT had exceeded its jurisdiction in modifying and altering the conditions of the approved Resolution Plan.
- **Company Appeal (AT)(Ins) No. 266/2021**
  - NCLAT observed that the Corporate Debtor was an MSME on the date of submission of Resolution Plan. Further, the NCLAT stated that the amendment to the MSMED Act had come into force w.e.f. July 02, 2020 and only thereafter the Promoters had submitted their Resolution Plan and also revised Resolution Plan.
  - Hence, on the date of filing of the Resolution Plan, the Corporate Debtor was an MSME and as such the Resolution Plan was not required to be questioned on the ground that the Corporate Debtor was not an MSME.
- In view of the above, the NCLAT allowed Company Appeal (AT) (Ins) No.201/2021 and dismissed Company Appeal (AT)(Ins) No. 266/2021.

#### HSA Viewpoint

In consonance with various other judgments in which commercial wisdom of the CoC has been held to be paramount in nature, the NCLAT held that the NCLT will exceed its jurisdiction if any kind of modification or alteration is made in the Resolution Plan in the absence of any statutory provision in the Code or in the Rules or Regulations which empowers the NCLT to make modifications in a Resolution Plan which has been approved by the CoC in its commercial wisdom.

## Siti Networks Ltd v. Assets Care and Reconstruction Enterprises Ltd & Anr

National Company Law Appellate Tribunal | Judgment dated December 13, 2022 | Company. Appeal. (AT) (Ins.)  
No. 1449 of 2022

### Background facts

- An Appeal was filed against the Impugned Order dated November 01, 2022 passed by the NCLT, Mumbai Bench allowing Assets Care and Reconstruction Enterprise Ltd for substitution of its name in place of Housing Development Finance Corporation Ltd in a proceeding under Section 7 of the Code, on the basis of assignment of debt by virtue of a Registered Assignment Deed dated June 29, 2022.
- NCLT took the view that there is no express prohibition in the Code preventing the assignee to come on record and continue the pending proceedings.
- By relying upon a decision of a Coordinate Bench of NCLT dated August 26, 2019, the Appellant contended that the assignee could not have been permitted to continue the proceeding under Section 7 of the Code, although it is open for the assignee to file a fresh Application under Section 7 of the Code which was permissible on the strength of assignment.

### Issue at hand?

- Whether IBC prohibits an assignee from continuing pending proceeding under Section 7 of the Code?

### Decision of the Court

- NCLAT after relying on Sub-section (4) of Section 5 of the SARFAESI Act, 2002 which contemplate continuation of all proceedings after acquisition of financial assets by assignee, observed that the NCLT has rightly held that there is no prohibition in the IBC or any of the Regulations thereunder from continuation of proceedings by an assignee of a debt.
- Further, reliance was placed on provisions of Order XXII Rule 10 of Code of Civil Procedure which contemplates continuance of proceeding on the basis of devolution of rights with the leave of the Court which is applied generally in civil proceeding and suit.
- In view of the above-submissions, NCLAT dismissed the Appeal observing that no error has been committed by the NCLT in allowing the assignee to continue the proceeding.

#### HSA **Viewpoint**

Both NCLT and the NCLAT have correctly laid down the law permitting assignees of financial debts to continue to prosecute petitions for initiation of the Corporate Insolvency Resolution Process.

## Tata Steel BSL Ltd v. Venus Recruiter Pvt Ltd & Ors Union of India v. Venus Recruiter Pvt Ltd & Ors

High Court of Delhi | Judgment dated January 13, 2023 | Neutral Citation Number: 2023/DHC/000257

### Background facts

- A Letters Patent Appeal, being LPA No. 37 & 43 of 2021, was filed by Tata Steel BSL Ltd and the Union of India (**Appellants**), impugning the Judgment and Order dated November 26, 2020 (**Impugned Order**) rendered in **Venus Recruiters Pvt Ltd v. Union of India & Ors**<sup>1</sup>, wherein the Single Judge inter-alia held that an Application filed under Section 43 of the IBC for Avoidance of preferential transactions cannot survive beyond the conclusion of Corporate Insolvency Resolution Process.
- On July 26, 2017, NCLT passed an order admitting Bhushan Steel Ltd to CIRP. Mr. Vijay Kumar Iyer was appointed as the Interim Resolution Professional and later confirmed as the Resolution Professional.
- Thereafter, on March 03, 2018, the CoC approved the resolution plan proposed by Tata Steel Ltd Pursuant to approval of the resolution plan by the CoC, the Resolution Professional on March 03, 2018, filed the resolution plan proposed by Tata Steel before the NCLT for its approval in terms of Section 31 of the IBC.
- Pursuant to filing of the Application seeking approval of the resolution plan, the Forensic Auditor, Deloitte, submitted a Forensic Audit Report of the Corporate Debtor to the Resolution Professional on April 03, 2018 which disclosed that several suspect transactions entered by the Corporate Debtor.
- On April 09, 2018, the RP filed an Avoidance Application before the NCLT, being C.A.No.284(PB)/2018 under Section 25(2)(j), Sections 43 to 51 and Section 66 of the IBC wherein various transactions were enumerated as 'suspect transactions' with related parties.

<sup>1</sup> W.P.(C) No. 8705 of 2019

- On May 15, 2018, the NCLT passed an order thereby approving the Resolution Plan of Tata Steel BSL Ltd. On May 18, 2018, the Resolution Plan was implemented in finality and the new management was shifted to Tata Steel BSL Ltd.
- NCLT observed that CA-284(PB)/2018, i.e., the Avoidance Application, has been filed by Resolution Professional on April 09, 2018 prior to the approval of the Resolution Plan and proceeded to issue notice upon the Respondent companies made party to the said Application.
- Parallely, on August 10, 2018, the NCLAT upheld the Order dated May 15, 2018 passed by the NCLT approving the Resolution Plan of Tata Steel BSL Ltd.
- Aggrieved by the Order of the NCLT issuing notice in the Avoidance Application, the Respondent filed W.P.(C) 8705 of 2019 before the Single Judge seeking issuance of a writ declaring the proceedings borne out of the Avoidance Application, pending before the NCLT, as void and *non-est* since CIRP had concluded and the successful Resolution Applicant, Tata Steel Ltd had assumed control of Bhushan Steel Ltd in terms of the IBC.
- The Single Judge vide order dated November 26, 2020 inter-alia held that an Application filed under Section 43 of the IBC for Avoidance of preferential transactions cannot survive beyond the conclusion of corporate insolvency resolution process.
- Aggrieved by the order dated November 26, 2020 passed by the Single Judge, the Appellants have preferred the Letters Patent Appeals impugning the said Order.

### Issues at hand?

- Whether an alternate efficacious remedy existed before the NCLAT?
- Whether Avoidance Applications survive CIRP in cases where Resolution Plans are unable to account for such Applications?
- If Avoidance Applications survive CIRP in such cases, who pursues them? Whether RP is rendered functus officio upon conclusion of CIRP?

### Decision of the Court

- Placing reliance on Section 60(5)(c) of the IBC, the High Court observed that the phrase ‘arising out of’ or ‘in relation to’ as situated under the said provision is of wide import and it is only appropriate that Avoidance Applications are heard and adjudicated by the Adjudicating Authority, i.e., the NCLT or the NCLAT, as the case maybe, notwithstanding that the CIRP has concluded and the resolution applicant has stepped into the shoes of the promoter of the erstwhile Corporate Debtor.
- Further, the Court held that CIRP and adjudication of an Avoidance Application are by nature separate proceedings and adjudication of an Avoidance Application is independent of the resolution of the Corporate Debtor and can survive CIRP.
- RP will not be functus officio with respect to adjudication of Avoidance Applications. RP can continue to pursue such Applications. The method and manner of the RP’s remuneration ought to be decided by the Adjudicating Authority.
- Lastly, the Court concluded by holding that the amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. The benefit arising out of the adjudication of the Avoidance Application is not for the Corporate Debtor since it does not continue as a Debtor and has gone through the process of resolution. This amount should be made available to the Creditors who are primarily financial institutions and have taken a haircut in agreeing to accept a lesser amount than what was due and payable to them.

### HSA Viewpoint

The High Court after placing reliance on and analyzing various provisions of law, judicial precedents, ILC Report and IBBI Discussion papers has held that CIRP and adjudication of Avoidance transactions are independent proceedings and RP can continue to pursue such Applications even after resolution of the Corporate Debtor. While it is a step in the right direction, however, the judgment may require partial reconsideration as the Court has held that the amount recovered from such Avoidance Applications should be made available to the Secured Financial Creditors and has not taken into consideration the order of priorities for distribution of recovered amount as provided in Section 53(1) of the IBC.

## Kalinga Allied Industries India Pvt Ltd v. CoC (Bindals Sponge Industries Ltd)

National Company Law Appellate Tribunal | Judgment dated September 19, 2022 | Company Appeal (AT) (Insolvency) No. 689 of 2021

### Background facts

- An Application was filed before the NCLT for approval of Resolution Plan of Kalinga Allied Industries India Pvt Ltd, which was approved by the CoC on November 11, 2019.
- Previously, an Appeal titled ***Kalinga Allied Industries India Pvt Ltd v. Hindustan Coils Ltd & Ors***<sup>2</sup> was also preferred by Kalinga Allied Industries India Pvt Ltd against an order dated February 27, 2020 wherein the NCLT had allowed an Application filed by Hindustan Coils Ltd directing the proposed Resolution Plan of Hindustan Coils Ltd to be placed before the CoC for consideration. NCLAT while allowing the Appeal observed that the NCLT cannot entertain an application of a person who has not participated in the CIRP even when such a person is ready to pay more amount in comparison to the Successful Resolution Applicant (SRA).

<sup>2</sup> Comp. App. (AT) (Ins.) No. 518/2020

- During the pendency of the Application seeking approval of the Resolution Plan, the CoC moved an Application seeking a direction to the Resolution Professional to call for a meeting of the CoC for consideration of the Resolution Plan of Hindustan Coils Ltd, M/s. Kalinga Enterprises Pvt Ltd and New Lakshmi Steel & Power Pvt Ltd or any other entity and further sought for additional 30 days to consider and approve the most suitable Plan. The said Application was allowed by the NCLT vide order dated July 26, 2021 (**Impugned Order**).
- Aggrieved by the order dated July 26, 2021, Kalinga Allied Industries India Pvt Ltd, the Successful Resolution Applicant, filed an Appeal before the NCLAT.

### Issues at hand?

- Whether the CoC after having approved the Resolution Plan can seek direction to consider the new Resolution Plan of a third party who was not a part of the CIRP Proceedings?
- Whether the submitted Resolution Plan is binding between the CoC and the SRA?

### Decision of the Tribunal

- Placing reliance on the judgment of *Kalinga Allied Industries India Pvt Ltd v. Hindustan Coils Ltd & Ors* (supra), NCLAT observed that the said judgment was never challenged by the CoC, hence it has attained finality.
- Further, placing reliance on the ratio of the Supreme Court of India in *Ebix Singapore Pvt Ltd v. Committee of Creditors of Educomp Solutions Ltd & Anr*<sup>3</sup>; NCLAT held that that strict timelines have to be adhered to and that the NCLT lacks the authority to allow the withdrawal or modification of the Resolution Plan by an SRA, as this would defeat the very objective of the Code. Hence, in this present case, if the CoC is allowed to withdraw an already approved Resolution Plan, then it would lead to restarting the CIRP as fresh valuation would be required to be done.
- Lastly, NCLAT held that once a Resolution Plan is submitted for approval before the NCLT, it is binding between the CoC and the SRA, unless there is any material irregularity or is against the provisions of Section 30(2) of the Code.

HSA

### **Viewpoint**

The judgment of the NCLAT reemphasizes the adage that time is the essence of the Code. In this case, the NCLAT has passed a reasoned order by reiterating that the maximization of value of assets ought to be within the specified timelines and if it is not a timebound process, the entire scope and objective of the Code would fail merely because there is another higher offer made by a prospective Resolution Applicant.

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<sup>3</sup> 2021 SCC OnLine SC 707





## RECENT DEALS

### Resolution of Sical Logistics Ltd

- The NCLT, Chennai Bench, vide an order dated December 08, 2022 approved the Resolution Plan submitted by M/s Pristine Malwa Logistics Park Pvt Ltd, the Successful Resolution Applicant, in the CIRP of Sical Logistics Ltd, the Corporate Debtor.
- Vide order dated March 10, 2021, the NCLT, Chennai Bench admitted the Company Petition filed by M/s. MOL TOYOFUJI Automotive Logistics (India) Pvt Ltd (Formerly known as Ennore Automotive Logistics Pvt Ltd) under Section 9 of the Code and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. S. Lakshmisubramanian as the Interim Resolution Professional.
- In the 1st meeting of the CoC held on April 07, 2021, Mr. Sripatham Venkatasubramaniam Ramkumar was appointed as the Resolution Professional which was approved by the NCLT vide order dated June 02 2021.
- After issuance of Form G in terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the CIRP Regulations, 2016, four Prospective Resolution Applicant submitted the Resolution Plans out of which three Resolution Plans were found to be compliant with the provisions of the Code and Regulations thereunder. After due discussion and deliberation, the Resolution Plan received from the Successful Resolution Applicant was approved with 77.5 % voting share by the CoC.
- The Successful Resolution Applicant is backed by Pristine Logistics and Infraprojects Ltd, the Parent Company, which is India's leading company engaged in the business of providing end to end multi cargo logistics solutions pivoted around rail terminals.
- On approval of the Resolution Plan by the CoC, the Resolution Professional had issued LOI on March 18, 2022 which was accepted by the Successful Resolution Applicant on March 19, 2022. Further, as per the terms of RFRP, furnished a performance bank guarantee of INR 48.08 crores in favor of Bank of Baroda (lead member of CoC) on March 24, 2022.
- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for a total payment of INR 521.82 crore to all the stakeholders as per the waterfall mechanism under Section 53 of the Code. Further, while passing the order thereby approving the Resolution Plan, the NCLT has taken note of the statement made by the Successful Resolution Applicant that it has sufficient funds and capability to implement the Resolution Plan and the Successful Resolution Applicant does not intend to raise any debt or equity for funding the Resolution Plan.
- Under the Resolution Plan, certain reliefs, concessions, and approvals has been sought in relation to tax liabilities, which has been granted by the NCLT in terms of the provisions of the Code and law laid down in Ghanshyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Ltd; 2021 SCC Online SC 313.

- Lastly, by virtue of the approval of this Resolution Plan by the NCLT, the Resolution Applicant shall take over the Corporate Debtor on a fresh slate as enunciated by the Supreme Court in *Committee of Creditors of Essar Steel Ltd v. Satish Kumar Gupta and Ors*<sup>4</sup> and further ratified and crystallized by the Apex Court in *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd*<sup>5</sup> wherein the Supreme Court held that a successful resolution applicant cannot suddenly be faced with ‘undecided’ claims after the Resolution Plan has been admitted.

## Withdrawal of CIRP - Tulsiani Developers and Constructions Pvt Ltd

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- An Application under Section 7 of the IBC by Rajiv Garg, a Financial Creditor against Tulsiani Developers and Constructions Pvt Ltd was admitted by the NCLT, Principal Bench vide order dated October 07, 2022 and appointed Mr. Rabindra Kumar Mintri as the Interim Resolution Professional.
- Pursuant to initiation of CIRP of the Corporate Debtor, an Appeal was preferred by the Suspended Directors of the Corporate Debtor before the NCLAT challenging the CIRP order on the pretext that the Respondent is not a Financial Creditor by relying upon the judgment of the NCLAT in *Nidhi Rekhan v. Samyak Projects Pvt Ltd*<sup>6</sup> decided on January 31, 2022. The NCLAT vide order dated November 02, 2022 directed the Interim Resolution Professional not to constitute CoC.
- Subsequently, on November 07, 2022 a settlement deed was entered between the Financial Creditor and the Suspended Directors of the Corporate Debtor.
- In view of the settlement entered between the Financial Creditor and the Suspended Directors, an Application bearing I.A. No. 5490 of 2022 under Section 12A of the Code read with Regulation 30A of the CIRP Regulations, 2016 along with Form FA and settlement deed was filed by the Interim Resolution Professional seeking to withdraw the Section 7 Application commenced against the Corporate Debtor in terms of the CIRP admission order dated October 07, 2022.
- Vide order dated December 19, 2022, NCLT allowed I.A. No. 5490 of 2022 thereby permitting withdrawal of CIRP of the Corporate Debtor and consequently discharged the Interim Resolution Professional from its duties.

## Resolution of Rchem Industries Pvt Ltd

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- The NCLT, Chandigarh Bench, vide an order dated December 22, 2022 approved the Resolution Plan submitted by M/s ARCL Organics Ltd, the Successful Resolution Applicant, in the CIRP of Rchem Industries Pvt Ltd, the Corporate Debtor.
- Vide order dated October 06, 2021, the NCLT, Chandigarh Bench admitted the Company Petition filed by Operational Creditor – Bidar Chemo Trades under Section 9 of the IBC and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. Harish Malhotra as the Interim Resolution Professional.
- Pursuant thereto, the Interim Resolution Professional constituted the Committee of Creditors in accordance with Section 21(2) of the Code, which comprised one Financial Creditor i.e., Capital Small Finance Bank Ltd holding 100% voting share. In the 1st meeting of the CoC held on November 06, 2021, appointment of Mr. Harish Malhotra as the Resolution Professional was confirmed by the CoC.
- After issuance of Form G in terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the CIRP Regulations, 2016, the Resolution Professional received seven EOIs from the interested parties, out of which, three were found to be eligible Prospective Resolution Applicants.
- After issuance of a final list of eligible Prospective Resolution Applicants on January 25, 2022, two Prospective Resolution Applicants submitted their Resolution Plans namely (a) Mr. Abhay Kumar Gupta; (b) ARCL Organics Ltd. The Prospective Resolution Applicants were asked to improve their respective plans after a detailed discussion and negotiations in the 4th meeting of the CoC on February 19, 2022.
- After due discussion and detailed deliberation on the revised Resolution Plans submitted by the Prospective Resolution Applicants, the Resolution Plan submitted by ARCL Organics Ltd was approved by the CoC with 100% voting rights casted in favor of it.

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<sup>4</sup> Civil Appeal No. 8766-67 of 2019

<sup>5</sup> Civil Appeal No. 8129 of 2019

<sup>6</sup> CA (AT) (Ins.) No. 1035/2020

- On approval of the Resolution Plan by the CoC, the Resolution Professional had issued LOI on February 28, 2022. Further, as per the terms of RFRP, the successful Resolution Applicant paid a performance security amount of INR 30,12,500 in favor of Capital Small Finance Bank Ltd on March 17, 2022.
- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for a total payment of INR 3,01,25,000 to the stakeholders which shall be paid within a period of 90 days from the date of approval of the Resolution Plan by the NCLT.
- While approving the Resolution Plan, the NCLT has stated that certain reliefs and waivers sought under the Resolution Plan pertains to the domain of various departments/governmental authorities and NCLT does not have power to sanction such reliefs and waivers. Hence, Resolution Applicant has been directed to obtain the necessary approval required under any law for the time being in force within one year from the date of the Resolution Plan approval order or within such period as provided for in such law, whichever is later.
- Lastly, NCLT observed that amount due from the Corporate Debtor under the CGST Act, the Central Government/ State Government has no security interest created by operation of law in view of the fact that Section 82 of the CGST Act, 2017 saves the provisions of the IBC. However, in case any Government/Government Authority dues are found to be having security interest created by operation of law, the amount payable to the secured Creditors under the Resolution Plan will be distributed as per the provisions of Section 53 (1)(b)(ii) of the IBC as held by the Supreme Court of India in **State Tax Officer (1) v. Rainbow Papers Ltd**<sup>7</sup>.

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<sup>7</sup> Civil Appeal No.1661 of 2020



# COMPANIES ADMITTED TO INSOLVENCY IN DECEMBER 2022

## Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Nirmiti Stamping Pvt Ltd	Mumbai	Non-Banking Financial Institution financing small and medium enterprises
2	BP Bansal Agritech Pvt Ltd	Indore	Agriculture and Allied Activities i.e., growing of crops, market gardening and horticulture
3	Nyles Sales & Infraprojects Pvt Ltd	Mumbai	Coal & Coal related operations in India
4	Bhadragiri Power Pvt Ltd	Bengaluru	Production, collection, and distribution of electricity
5	Glorious Agro Exim Pvt Ltd	Kolkata	Agricultural and animal husbandry service activities, except veterinary activities.
6	Hardrock Attachments Pvt Ltd	Kolkata	Manufacturing machines and equipment (wheel and backhoe Loaders, excavators, linkages, arms, and booms equipment)
7	Olympic Sportswear & Equipments Pvt Ltd	Bengaluru	Manufacturing of sports equipment
8	Surya Irrigation Pvt Ltd	Jaipur	Community, personal & Social Services business
9	Tarapur Textiles Park Ltd	Mumbai	Real estate activities with own or leased property
10	A A Estates Pvt Ltd	Mumbai	Real estate development company
11	Overseas Infrastructure Alliance (India) Pvt Ltd	Mumbai	Providing financial services such as financial mediation
12	DRD Gems LLP	Mumbai	Wholesaler specialized in bulk sales of exclusive-colored stones, semi-precious stones, precious stones, birth stones, ruby stones
13	Chemstar Organics (India) Ltd	Mumbai	Manufacturing of plastic products, metals & chemicals, and products thereof
14	Shree Rajeshwaranand Paper Mills Ltd	Ahmedabad	Manufacturing of newsprint and paper related products
15	Baid Industries Pvt Ltd	Ahmedabad	Spinning, weaving, and manufacturing of textiles
16	Sindhanur Gangavathi Tollway Pvt Ltd	Hyderabad	SPV established for the development of an existing two-lane Sindhanur-Gangavathi-Ginigere Section (length of 83 km), of State Highway No. 23, in the state of Karnataka, on DBFOT toll basis
17	Sidhi Vinayak Vehicles Pvt Ltd	Chandigarh	Wholesale on a fee or contract basis
18	Goenka Diamond and Jewels Ltd	Jaipur	Cutting and polishing of diamonds and manufacturing retailing of diamond jewelry
19	Bil Energy Systems Ltd	Mumbai	Manufacturing fabricated metal products along with metal works services
20	Aastha Buildhome Developers Pvt Ltd	Jaipur	Construction business
21	Gurukrupa Apperals Pvt Ltd	Ahmedabad	Dressing and dyeing of fur along with the manufacturing of articles of fur
22	Vrone Energy Pvt Ltd	Chennai	Building completion and finishing of the construction process
23	National Auto Wheels Pvt Ltd	Mumbai	Sale of motor vehicle parts and accessories including both wholesale and retail

24	<b>Yogiraj Spinning Ltd</b>	Ahmedabad	The company is a Non-govt company, incorporated on 09 Nov, 2010 and it is involved in the spinning, weaving, and finishing of textiles.
25	<b>Shree Bankey Behari Exports Ltd</b>	New Delhi	Trading company of food products such as wheat flour, soya flour, rice flour
26	<b>Kharewali Steel Pvt Ltd</b>	Mumbai	Manufacturing of steel products (hot rolled products, round and square bars, angles, and channels)
27	<b>Ozone Urbana Infra Developers Pvt Ltd</b>	Bengaluru	Real estate development company offering residential condominiums, row houses, villas, serviced apartments, hotels, resorts, spas, business parks, economic zones, and integrated townships to retail malls
28	<b>Him Mec Tec Pvt Ltd</b>	Chandigarh	Manufacturing of metals, chemicals, and products thereof
29	<b>Noble Steels Pvt Ltd</b>	Chandigarh	Steel furnace, casting and rolling mill plant
30	<b>Sai Akshar Graphics Pvt Ltd</b>	Chandigarh	Software publishing, consultancy, and supply
31	<b>Utopian Sugars Ltd</b>	Mumbai	Manufacturing of food products
32	<b>Planet41 Mobi- Venture Ltd</b>	Mumbai	Providing mobile telephone content and value-added services
33	<b>Yashwant Sugar and Power Pvt Ltd</b>	Mumbai	Manufacturing of food products
34	<b>Punjab Tubes Ltd</b>	Chandigarh	Manufacturing of iron and steel products
35	<b>MT Educare Ltd</b>	Mumbai	Education support and coaching services for students
36	<b>VHM Industries Ltd</b>	Mumbai	Manufacturing of textiles
37	<b>Technokolla (India) Pvt Ltd</b>	Mumbai	Trading
38	<b>SAV Wires Pvt Ltd</b>	Kolkata	Manufacturing of iron and steel products
39	<b>M/s. Utopian Sugars Ltd</b>	Mumbai	Manufacturing of food products
40	<b>Oasis Ceramic Pvt Ltd</b>	Mumbai	Manufacturing of non-metallic mineral products
41	<b>Clinch Silicones Pvt Ltd</b>	Ahmedabad	Manufacturing of chemicals
	<b>Sarthak Logistics Pvt Ltd</b>	Chandigarh	Transport, storage, and communications
42	<b>SRS Knowledge and Technology Pvt Ltd</b>	Chandigarh	Legal, accounting, book-keeping, auditing activities, tax consultancy, market research, public opinion polling and business and management consultancy
43	<b>Satec Envir Engineering (India) Pvt Ltd</b>	Mumbai	Engineering products and services, pre-engineered structures and solar infrastructure, turnkey solutions, prefabricated buildings, and auto components
44	<b>KSK Energy Company Pvt Ltd</b>	Hyderabad	Power project development company focusing on developing, operating, and maintaining thermal, solar, and hydro power projects
45	<b>Aabha Industries Ltd</b>	Chandigarh	Manufacturing of textiles
46	<b>EBC Bearings India Ltd</b>	Hyderabad	Manufacturing of ball and roller bearings
47	<b>Tanishka Automotives Pvt Ltd</b>	Chandigarh	Retail and sale of automotive fuel
48	<b>Pitabara Business Promotions</b>	New Delhi	Traders, wholesalers and distributors of flexible packaging materials and other allied products
49	<b>Marvel Realtors and Developers Ltd</b>	Mumbai	Providing residential construction services
50	<b>Ramgarh Tradelinks Pvt Ltd</b>	Delhi	Traders, wholesalers and distributors of flexible packaging materials and other allied products
51	<b>Neemsar Vyapar Pvt Ltd</b>	Delhi	Traders, wholesalers and distributors of flexible packaging materials and other allied products
52	<b>Simtel Trading Corporation Pvt Ltd</b>	Kochi	Retailing in consumer discretionary products
53	<b>BP Bansal Agritech Pvt Ltd</b>	Indore	Agriculture and allied activities (growing of crops, market gardening and horticulture)
54	<b>Omkar Speciality Chemical Ltd</b>	Mumbai	Selling speciality chemicals and intermediates for chemical and allied industries
55	<b>Shri Sant Lal and Sons Exports Pvt Ltd</b>	Chandigarh	Manufacturing of knitted and crocheted fabrics and articles
56	<b>Gurukrupa Apperals Pvt Ltd</b>	Ahmedabad	Dressing and dyeing of fur along with the manufacturing of articles of fur

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