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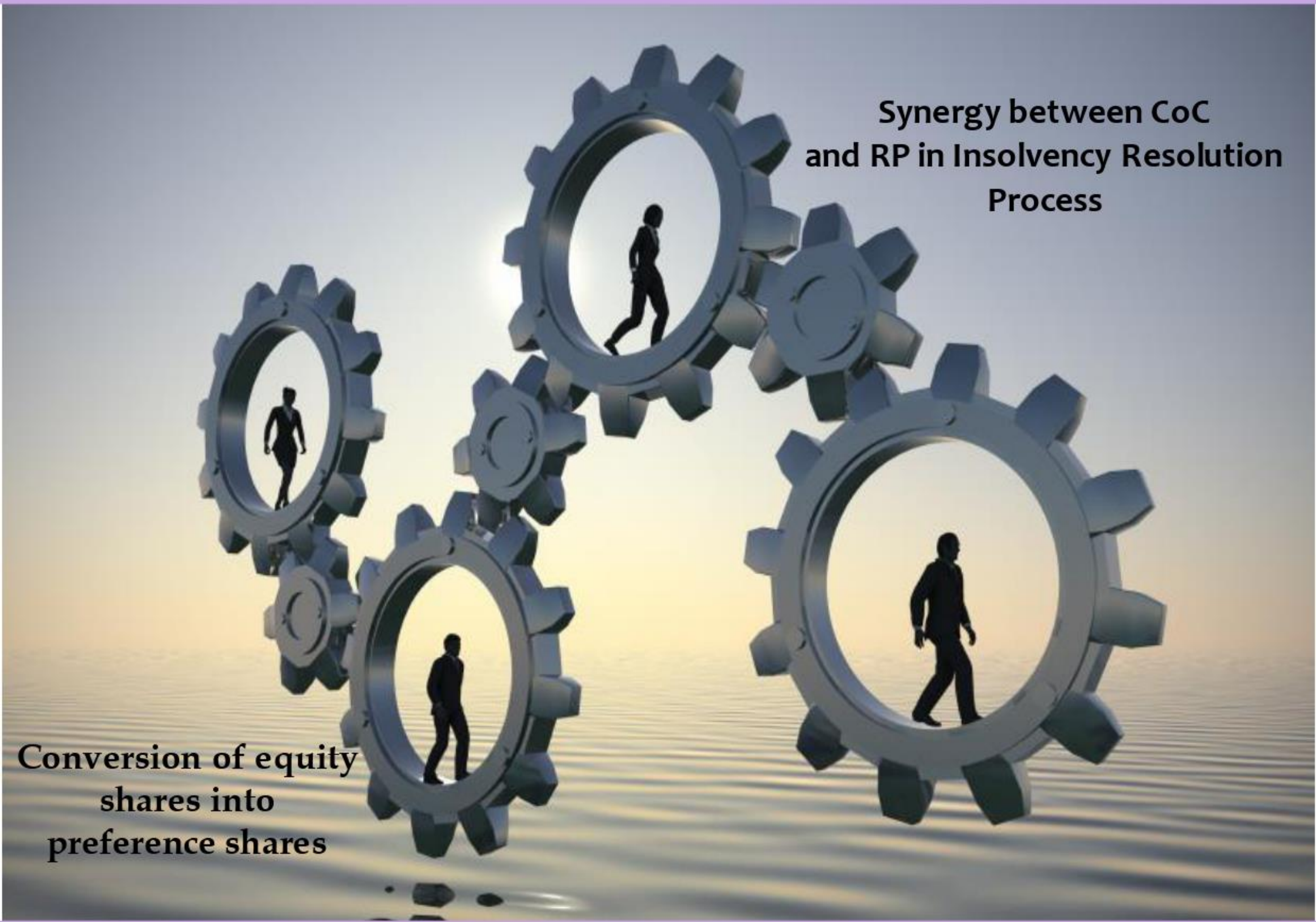

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கலங்காது கண்ட வினைக்கண் துளங்காது
தூக்கங் கடிந்து செயல்.

Thirukural: 668

An act that has been firmly resolved must be firmly carried out without delay.

From the Editor's Desk

Dear Readers of CGRF SandBox

Amidst the festive spirits and cheers, we have great pleasure in bringing out CGRF SandBox October 2021 issue with rich contents for the esteemed readers.

India is well poised to hit a "Vax Century" – a coveted milestone of vaccinating 100 crore people against Covid-19 which by itself is a monumental achievement. The challenges of inoculating its vast population against all odds have been well managed. Though the suspected "third wave" has been convincingly silenced, one needs to be circumspect before we declare "it's business as usual" yet.

The news of Tata Group regaining control over Air India after more than five decades of management (or mismanagement rather) by the Government have been well-received by the market. Growing concerns due to spiralling oil prices have revived the impetus for electric mobility. Thumping success for booking of Electric scooters augurs well for sustainable reduction in carbon foot print in the country.

What is required is "Skilling up and Scaling up"

Be it banking or manufacturing, there has been a perceived opinion that India has not been able to build large-sized entities unlike what China has been able to achieve. Well, on this front, the efforts like introduction of Production Linked Incentives (PLI) of the Government seem to be sowing the seeds. The encouraging news is that several "Unicorns" have emerged from Indian Start-ups in the last twelve months in Fintech and E-commerce space. The stiff competition is proving to be a boon for the consumers. The Covid-19 era has rattled the skilled manpower segment as well, as companies have been able to shed flab and tone up their management with better skilled manpower.

RBI directions on Loan Transfers

On 24th Sept. 2021, RBI issued Master Direction on transfer of loan exposures. We are glad to present a brief paper on the features of the above-referred direction. While the general response is positive, it remains to be seen as to how the recently established NARCL and IDRCL would resolve bad loans issues when the smaller sized ARCs will also be doing their bit to acquire and turn around bad loans.

Court orders

We have covered some interesting decisions by Hon'ble NCLAT – like the RP cannot adjudicate on orders of GST Appellate Authority and the margin money for a bank guarantee forms a stratum of trust which cannot be extinguished by a resolution plan under IBC, etc. We are sure, SandBox readers will find them interesting.

(Image source: website)

With the Festival of Lights – Diwali – approaching faster, it is time to celebrate and feel proud of our customs and traditions. As light dispels darkness and a dash of colours brings a brilliant spectrum, knowledge lights up awareness and facilitates efficient decision-making. On this note, we once again commit ourselves to share current updates and new thinking on matters of concern to our readers, month after month. Get vaccinated at the earliest, follow the safe practices and say goodbye to Covid-19 and welcome to good times.

Happy Diwali!!!

Yours truly
S. Rajendran

A synopsis of Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 dated 24th Sept. 2021

B.Mekala
Insolvency Professional

We wish to bring to the readers of CGRF a brief synopsis of the recent directions notified by RBI in respect of sale /transfer of loan exposures to other lenders /ARC's etc. It may be noted that the contents given herein below are not exhaustive and the readers are requested to refer to the RBI notification dated 24th September 2021 for a comprehensive reading.

The RBI's directions are captured in six chapters as broadly shown below.

Chapter I --Scope and Definitions
Chapter II --General conditions applicable for all loan transfers
Chapter III --Transfer of loans which are not in default
Chapter IV --Transfer of stressed loans
Chapter V --Disclosure and Reporting
Chapter VI --Repeal of circulars

Chapter I

Applicability –To all loan transfers undertaken by the below lenders

a. Scheduled Commercial Banks
b. Regional Rural Banks—Permitted as transferor under chapter IV
c. Primary (Urban) Co-op Banks -- Permitted as transferor under chapter IV
d. All India Financial Institutions
e. Small Finance Banks
f. NBFCs and HFCs

These directions are applicable to all loan transfers undertaken by the lender including sale of loans through novation or assignment and loan participation. All lenders were permitted to acquire loans from the transferor specified above unless specifically permitted. Legal ownership of the loan shall be mandatorily transferred to the extent of economic interest except in case of loan participation.

Chapter II

General Condition applicable for all loan transfers

A. General Requirements

1. There must be a comprehensive Board approved Policy which can specify the minimum quantity and quality standards / due diligence / IT system/storage/data and risk management/periodic board review. But the policy must ensure independence of functioning apart from the personnel involved.
2. Transfer of loan means transfer of economic interest without change in the terms and condition of the contract. In case of modification in terms and conditions it should adhere to the RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated 7th June 2019.
3. In case of loan participation (A transaction through which the transferor transfers all or part of its economic interest in a loan exposure to the transferee without the actual transfer of the loan contract), the Legal ownership stays with the transferor. The roles and responsibilities of the Transferor and transferee shall be precisely stated in the contract.
4. There should not be credit enhancements and liquidity facilities in case of loan transfers.
5. A loan once transferred cannot be reacquired by the transferor, except in case of resolution plan under IBC, 2016, or under RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated 7th June 2019.
6. The risks and rewards of the loans that are transferred will depend on the extent of economic interest transferred. In case of retained economic interest the loan transfer agreement should specify the principal and interest to be shared by the transferor and the transferee.
7. The transfer should not affect the rights of obligors and the consent must be obtained from the obligors accordingly.
8. The rescheduling, restructuring, or reorganising of the terms of agreements shall be according to under RBI (Prudential Framework for Resolution of Stressed Assets) or under IBC.
9. In case of acquisition of exposure by overseas branches by Indian banks, the requirements prescribed shall be adhered without detraction of Foreign Exchange Management Act, 1999. In jurisdiction which do not come under MHP criteria, overseas branches of Indian banks may acquire such exposures, save for those originated in India.

10. KYC Directions shall be adhered in all cases of transfer of exposure.

Requirements from the Transferor

1. The transferor shall reacquire or fund the repayment or provide additional loan only in case of breach of warranty or representations made at the time of transfer.
2. The agreement shall provide for the invocation of security interest which is held by the transferor as a trustee in case of need.
3. The transferor had to intimate RBI all the instances about transfer and any damages paid arising out of warranty or representation

Requirements from the Transferee

1. The transferee should have unrestricted right to transfer or dispose of the loan which got transferred. The transferee shall have no right of recourse from the transferor any expenses or losses linked with the transfer. In case of retained interest both the transferor and the transferee shall obtain consent from one and another with ease.
2. It is the duty of the transferee to make sure that the transferor had adhered to the Minimum Holding Period criteria in respect of transfers.
3. Transferee shall maintain capital charge equal to the actual exposure acquired in case of transfers that do not come under these directions. In such cases the transferor shall recognise the loan in its entirety and shall show the consideration received as an advance.

B. Transferor as Servicing Facility Provider (SFP)

1. The transferee may engage the transferor as SFP to administer or service the acquired exposures
2. If a lender or transferor performs the role of SFP, it should make sure that the following conditions are satisfied.
   a) The nature, purpose, extent of the facility and the standard of performance should be specified clearly in written agreement.
   b) The facility is provided on an arm's length basis on market terms and conditions
   c) The payment of fee arising out of the SFP shall not amount to deferral or waiver and it should not amount to credit enhancement or liquidity facility
   d) The duration of the facility is limited to
      i. The underlying loans are completely discharged
      ii. All claims connected with the transferee's economic interest are paid out.
      iii. The lenders obligations as SFP are terminate
   e) There should not be any recourse to the lender other than the contractual obligations.
   f) The transferee shall have the right to choose person for SFP other than transferor.
   g) The lender is under no obligation to remit fund unless it is generated from the underlying loan.
   h) The lender shall hold in trust the cash flow from the underlying loan.

If the above conditions are not satisfied, the lender shall maintain capital on the loans transferred as if it is held by the transferor directly on its books.

(Image source:website)

Chapter III

Transfer of Loans which are not in default

A. General Requirements

The provisions of this chapter do not apply to the following:

a. Transfer of loan account at the request or instance of borrower
b. Inter Bank Participation –Circular DBOD.No.BP.BC.57/62-88
c. Sale of entire portfolio on account of exiting the line of business
d. Sale of stressed loans
e. Any other transactions exempted by RBI

The transactions referred above shall be governed by the respective regulatory frameworks. However, the provisions of Chapter II shall continue except the respective regulatory frameworks provided otherwise.

1) The transferor can transfer a single loan or part of such loan or portfolio through assignment or novation or loan participation contract.

2) In case of loan transfers which result in change of lenders, both the transferor and transferee should make sure that the agreement provides for such enabling provisions.
3) Transferor's retention of economic interest should be supported by legal document which shall make sure that includes---A legal validity of amount of economic interest /transferor not retaining any risks or reward associated with such transfer. The arrangement does not interfere with transferee(s) rights and reward associated with the loans, except the collaborative contractual agreement between them in case of enforcement of securities. The arrangement does not result in the transferor becoming an agent, trustee or fiduciary of the transferee except providing servicing facilities provided by the transferor and collaborative contractual agreement.
4) The criteria is the same for the credit underwriting applied by the transferor to exposures transferred and those retained on their books. Similar process for approving, amending renewing and monitoring shall be applied by the transferor for all loans originated by it.
5) The transfer shall be only on cash basis and consideration shall be received within the time of transfer of loans. And it must be done at arm's length basis and must be transparent.
6) The due diligence must be conducted by the transferee itself and cannot be outsourced and as per policies as done at the time of origination of any loan.
7) In case of loans acquired as a portfolio, if the due diligence cannot be conducted at individual level, then the transferee can conduct for not less than 1/3rd of the portfolio by value and number of loans in the portfolio, the due diligence can be performed at the portfolio level for the remaining loans, in such case the transferor has to retain 10% of economic interest in the transferred loans.
8) Lenders need to monitor on an ongoing basis in a timely manner conducting periodic stress test and sensitivity analyses and take appropriate action. This may include change in ceiling applicable and modification to exposure ceiling. Transferee(s) should have clear policies and procedures, and procedures should be such that which is required for the loans directly originated by them. The information gathered from the servicing facility agent for this purpose should be certified by the authorized official of the servicing facility agent.
9) Credit Monitoring procedures may include verification of information submitted by servicing facility agent. The servicing facility agreement should provide for such verification by the auditors as well as the lenders. All relevant information and audit report should be made available by the supervisors from RBI.

(Image source:website)

B. Minimum Holding Period (MHP)

The transferor can transfer loans only after a minimum holding period, which is counted from the date of registration of the underlying security interest:

a) 3 months – tenor up to 2 years
b) 6 months – tenor more than 2 years
c) Where the security does not exist or cannot be registered-- MHP –From the first repayment of the loan
d) Transfer for project loans—MHP--Date of commencement of Commercial operations
e) Loans acquired from other entities –MHP—6 months from the date of the loan appearing in the books of the transferor
f) MHP is not applicable in case of syndication arrangement.

C. Capital Adequacy and other prudential norms

1. Any profit or loss realised from the transfer of loan shall be accounted for that period in the books of the transferor during which the transfer got effected. However, in case of unrealised profit shall be deducted from CET 1 capital or net owned funds for meeting regulatory capital adequacy requirements till the maturity of such loans.
2. Transfer of pool of loans:- The transferor and transferee shall maintain borrower wise accounts, thus the exposure of both would be to the individual obligors in a pool of loans.
3. The Capital adequacy treatment for loans acquired will be as per the instructions applicable to loans directly originated by the lenders. This will depend on the retention of economic interest.
4. The transferee may go for third party rating in addition to their own due diligence. This must be done ex post due diligence of the transferee.

5. The transferee and transferor shall apply the extant income/asset classification/provisioning and exposure norms to the extent of retention of economic interest.
6. The transferee should have a mechanism to enable application of prudential norms on individual obligor. They may rely on the details obtained from SFP/ concurrent auditors/internal auditors/and statutory auditors of the transferee and all relevant information and audit report should be made available by the supervisors from RBI.
7. For permitted transferees, the acquired loans will be carried at acquisition cost unless it is more than the outstanding principal. The premium paid shall be reimbursed based on straight line method or effective interest rate method. However, the unamortised premium need not be deducted from the capital.
8. In cases where the transferor makes representations or warranties concerning loans transferred, the transferor need not hold capital against such representations or warranties if the following conditions are satisfied.

The representations or warranties are

a) Provided by way of a formal written agreement
b) Capable of being verified by the transferor at the time of transfer
c) Not open ended and does not relate to the future creditworthiness of the loans
d) Requiring the transferor to replace loans transferred must be
    i. Undertaken within 30 days of the loan transfer
    ii. Conducted on the same terms and conditions as the original transfer

Provided upon such replacement the transferor shall apply the asset classification and provisioning norms as if the reacquired exposures had not been transferred in the first place.

e) A transferor who is required to pay damages for breach of representation or warranty can do, provided the agreement to pay damages fulfils the below conditions

i. The onus of proof of breach remains with the alleging party
ii. The party alleging serves a written notice of claim and the basis of claim on the transferor.
iii. Damages must be such that losses are directly related to the breach

Chapter IV

Transfer of stressed loans

A. General Requirements

1. This is applicable to transfer of stressed loans including transfer to ARCs. The transfer of stressed loan must be done through assignment or novation but not loan participation. The Board approved policies of every lender shall cover the following aspects. 1. Norms and procedures 2. Valuation methodology—realisable value of stressed loan and security interest 3. Delegation of power to functionaries. 4. Objective for acquiring stressed assets. 5. Risk premium to be applied.
2. The process of identification of stressed loan beyond a specified value, shall follow a top-down approach—The head office or corporate office shall identify stressed loans. These loans shall be periodically reviewed by the Board and Board committee.
3. The policy with regard to valuation of loan exposure -- 1. Type of valuation used 2. The discount rate 3.in case of credit exposure of the transferor is more than Rs.100 crores or more the transferor shall obtain two external valuation report.
4. Lender shall transfer stressed loans only to permitted transferees and ARC's and in terms of board approved policy and can make use of e-auction.
5. When Negotiated on a bilateral basis, and the loan exposure is more than Rs. 100 crores they must use Swiss Challenge method. Otherwise it can be on the price discovery and value maximisation approach as per board approved policy and also include Swiss Challenge method. In case of resolution plan under the RBI prudential norms framework, the minimum markup shall be decided by the signatories of Inter -Creditor Agreement representing 75% by value of total outstanding credit facilities and 60% of lenders by number. Irrespective of the threshold Swiss Challenge method would be mandatory.
6. Subsequent to the transfer of stressed loans, the transferor do not assume any operational, legal or any other type of risks relating transferred loans, additional funding and commitments to the borrower. Fresh exposure may be taken on the borrower after a cooling period which shall not

be less than 12 months from the date of such transfer.

7. Notwithstanding the above if the transfer of stressed loans are undertaken as resolution plan under the RBI Prudential Framework for Resolution of Stressed Assets 2019, (lenders specified in Clause 3) such transfer is permitted to any class of entities including a corporate entity that are permitted to take loan under provisions and regulations issued by financial sector regulator.
8. If the transferees are neither ARC's nor permitted transferee, the below conditions shall apply
   i. The transferee entity should be incorporated in India or registered with SEBI, IRDAI, PFRDA and International Financial Services Centres Authority)
   ii. The transferee should not be classified as NPA
   iii. The transferee should not fund the loan acquisition through loans from lender specified in Clause 3
   iv. The lenders specified in Clause 3 should not grant credit facility to the borrower of such transferred loans, at least 3 years from the transfer.
   v. The lenders specified in Clause 3 should not grant credit facility to the transferee of such transferred loans, at least 3 years from the transfer. The borrower shall mean legal entity which is a part of resolution plan but not limited to SPV. This clause permits the lenders to transfer the stressed loans under a resolution plan to such entities which are already permitted to take on loan exposure.
9. The transferor must provide adequate time for due diligence to the prospective acquirer.
10. The loan transfer agreement shall specify the requirement of signature of ICA in terms of RBI (Prudential Framework for Resolution of Stressed Assets) 2019.
11. The transferor shall ensure that no transfer of stressed loan is made at a contingent price and in case of shortfall the transferor shall bear the shortfall.
12. The transferor shall transfer the stressed loans to transferee be only on cash basis. Only on receipt of entire consideration the loan can be taken out of books of transferor. If the transfer to transferee other than ARC at a price below NBV (Net Book Value), the lender shall debit the short fall to profit & loss account for that particular year. If the transfer is at a price higher than the NBV, the lender shall reverse the excess provision.
13. The lenders are permitted to treat a pool of stressed loans acquired as single loan in their books provided it consists of homogeneous personal loans based on common risk drivers, similar risk factors and profiles. For all other cases it will be treated as separate assets for assets classification, capital computation income recognition etc.
14. It is the duty of the transferee to report to credit information companies, if the transferee is a credit institution.
15. If the transferee, except ARCs, have no exposure to the borrower, the loans transferred can be classified as standard.
16. If the transferee, except ARCs, have exposure to the borrower, the asset classification shall be the same as loan acquired. This will be the same even if the transferee being the successful resolution applicant under IBC.
17. The lender acquiring stressed loans shall make provision on such loans. If the NPV (Net Present Value) while acquiring the loan is less than the consideration paid at the time of acquiring, provision shall be maintained for the difference. The discount factor shall be actual interest plus premium which is subject to 3%. The NBFCs shall make provisions as required under Indian Accounting Standards
18. The lenders shall hold the acquired stressed loans in their books for at least 6 months before transfer. Lenders are prohibited from acquiring a loan which has been transferred in the previous 6 months.
19. This is not applicable in case of ARC or resolution plan under RBI (Prudential Framework for Resolution of Stressed Assets).

B. Additional requirements for transfer of NPA's

1. The staff accountability aspects must be taken care by the transferor as per the instructions of the NPA's transferred to other lenders
2. In case of NPAs acquired from other lenders, the cash flow received by the transferee should be first discharged towards the outstanding in the books of the transferee till the acquisition cost is recovered. In case of excess cash flow, it can be recognised as profit.
3. The lenders shall assign 100% risk weight to the NPAs acquired from other lenders, till it is classified as standard upon acquisition. If the

loans are classified as NPA risk weights as applicable to NPA shall apply.

C. Transfer of loans to Asset Reconstruction Companies (ARC)

1) Stressed loans which are in default for more than 60 days or loans classified as NPAs are permitted to be transferred to ARCs. **This will include loan exposures classified as fraud. The responsibilities of the transferor with respect to monitoring/ reporting/ filing of complaints etc. will also get transferred to transferee. But the transferor must take care of the staff accountability aspects.**
2) In case of specific stressed loan, transferor shall enter into agreement with ARC to share any surplus realised by ARC.
3) When a stressed loan is transferred to ARC at a price below NBV, the lender shall debit the shortfall to profit & loss account for that particular year. Banks are permitted to use such shortfall to use countercyclical or floating provisions.
4) When a stressed loan is transferred to ARC at a price higher than the NBV, the lender shall reverse the excess provision on transfer to the profit & loss account in the year the amounts are received. This can be done only when the sum of cash received by way of initial consideration /redemption/transfer of security receipts (SR)/pass through certificates (PTC)/other security issued by ARC higher than the NBV at the time of transfer.
5) Investments by lenders in SRs/PTCs/other securities issued by ARC shall be valued periodically by reckoning NAV (Net Asset Value) based on recovery rating. When the transferor invest in SRs/PTCs issued by ARCs, the transferor shall carry the investments in their books on a going basis till its transfer or realisation, at lower of redemption value of SRs based on NAV and NBV.
6) Provided further that when the investment by a transferor in SRs backed by the stressed loans by it, is more than 10% of all SRs backed by its transferred loans and issued under that securitisation, the value of such SRs, is the face value of SR reduced by the provision rate as applicable.
7) SRs /PTCs which are not redeemed (5 or 8 years as the case may be) shall be treated as loss in the books of the lender and fully provided for.
8) In case of investment by the lenders in debentures/bonds/SRs/PTCs issued by ARC, the valuation, classification, and other norms applicable to investment in non-SLR shall apply. If any of the instruments issued by ARC is limited to the actual realisation of financial assets assigned to the instruments concerned, the lender shall reckon NAV obtained from ARC.
9) A lender may take over standard accounts from ARCs with appropriate due diligence, where ARCs have successfully implemented a resolution plan, after the period equivalent to the monitoring period as defined in RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019. The lender cannot take over the loan which they themselves have transferred to ARCs.
10) If the ARC's act as an agent for recovery in exchange for a fee, such loans will continue in the book of the transferor and shall continue making provisions for the loan.

D. Price /Discovery through Swiss Challenge Method (SCM)

1. The lender shall have an approved policy on adoption of Swiss Challenge Method. The policy should specify the conditions under which they can go for SCM, the extent of haircut required by the lender, minimum markup over the base-bid which shall not be less than 5% and more than 15%.

   $$\text{Mark up} = \frac{\text{Diff. between challenger bid \& base bid} \times 100}{\text{Base bid}}$$

2. In case of resolution plan under the RBI prudential norms framework, the minimum markup shall be decided by the signatories of Inter -Creditor Agreement representing 75% by value of total outstanding credit facilities and 60% of lenders by number.
3. The lenders shall maintain authenticated list of stressed loans which may be disclosed to prospective bidder after taking confidentiality agreement.
4. The broad aspects of SCM:
   a) Base-Bid---An offer given by the prospective transferee expressing his interest while acquiring a specific stressed loan
   b) The lenders shall publicly invite bidders by disclosing the essential elements of base-bid and minimum mark up

c) If the price quoted by the new bidder is not higher than the minimum mark up, the base-bid becomes the winning bid.
d) In case the bidder quotes a higher bid, the prospective transferee is asked to match the higher bid. The highest among the bid amount will become the winning bid.

5. I. The lender shall transfer the loan to the winning bidder.
   II. if the lender decides not to transfer the stressed loan to the winning bidder, then the lender is required to make provision of the higher of the following:
   a) The discount on the book value quoted in the challenge bid – AND
   b) The provision required as per the asset classification and provision norms.

Chapter V

Disclosure and Reporting

The lenders should make appropriate disclosures in their financial statements under notes on accounts, stating the amount of loan not in default / stressed loans transferred and acquired etc. on a quarterly basis from December 31, 2021.

a) The disclosures should cover weighted average maturity, weighted average holding period, retention of beneficial interest, coverage of tangible security and rating wise distribution of rated loans. It should specify the instances where the transferor will replace loans transferred or pay damages at the instance of warranty or representation. It should provide breakup of loans transferred/ acquired through assignment.
b) In case of stressed loans transferred or acquired RBI has given a format. The disclosure shall provide quantum of excess provision reversed, distribution of the SR's held by them along with the recovery rating.
c) Transferors shall report each loan transfer transaction to trade reporting platform notified by RBI.

Chapter VI

Repeal of Circulars

Under this chapter RBI has given list of circulars, directions, guidelines, and parts of Master Directions that stand repealed.

Conversion of Equity Shares into Preference Shares

G.S.Sudhir, B.com, ACA
Chartered Accountant

Baramati Agro Limited (Transferee Company) along with the **Protrans Supply Chain Management Private Limited (Transferor Company-1)** and **Ag – Vet Genetics Private Limited (Transferor Company-2)** sought the sanction of National Company Law Tribunal, Mumbai Bench to the "Scheme of Amalgamation" and "Arrangement" as a part of scheme under Section 230 of the Companies Act, 2013.

Highlights of the Scheme

1. As a first part, the scheme provides for merger of Transferor Companies with the Transferee Company pursuant to Sections 230 to 232 and other relevant provisions of the Companies Act, 2013 and other applicable provisions.
2. In second part, the scheme provides for conversion of 'Series A' equity shares of Transferee Company into 9% Non-Cumulative Optionally Convertible Redeemable Preference Shares (NCOCRPS) of those Equity Shareholders as on record date fixed by the Company who are holding 250 or a smaller number of equity shares. The rationale for the same as mentioned in the scheme is to give better liquidity and returns to small shareholders and in fact it is being done at the request of some small shareholders.

The authorized, subscribed and paid-up share capital of the Transferee Company as on March 31, 2018, was as under:

Particulars	Rs.
Authorized Capital:	
3,83,43,000 ordinary equity shares (Series A) of Rs.10/-each	38,34,30,000
1,26,57,000 ‘Series B’ equity shares of Rs. 10/-each	12,65,70,000
70,00,000 preference shares of Rs. 10/-each	7,00,00,000
Subscribed and Paid-up Share Capital:	
3,60,59,649 ordinary equity shares (Series A) of Rs.10/-each fully paid up	36,05,96,490
1,26,56,254 ‘Series B’ equity shares of Rs. 10/-each fully paid up	12,65,62,540
53,98,385 6% Non -cumulative Redeemable Preference Shares of Rs.10/- each	5,39,83,850
Total 5,41,14,288 Shares of Rs. 10/-each	54,11,42,880

52,48,614 shares representing 14.55% (held by shareholders holding shares less than 250 each) would be converted into 9% fully paid-up Non-Cumulative Optionally Convertible Redeemable Shares (NCOCRPS) of the face value of Rs.10/- each.

Terms and conditions of 9% Non-Cumulative Optionally Convertible Redeemable Preference Shares will be as follows –

Particulars	Details
Face Value	Rs. 10
Tenure	10 years
Redemption	Early Redemption is possible at the option of the Company only. Company may redeem shares as it may think fit in one or more instalments at a price which would be at least equal to the face value of the shares or at premium at the option of the Company
Conversion	The conversion of the shares will be at the option of the company and may be suitably decided by the company. The terms may be decided and modified as per the necessity. The each NCOCRPS of Rs.10/-each shall be converted into 1(one) Equity Shares (Series A) of Rs.10/-each at the option of the Company

Analysis

On filing of the scheme of merger with all the Regulatory Authorities, Regional Director (RD) raised objections against the conversion of equity shares to preference shares and also pointed that the scheme was placed before members holding only 48.45% of the shares in value.

Objections raised:

- **Equity and Preference shares are different:** Conversion of equity shares into preference shares is not permissible as its value, terms, rights are different and cannot be termed as same kinds of shares. Pursuant to circular issued by the MCA, conversion of equity shares into preference shares and vice versa was rejected by ROC, Delhi and hence such conversion may be considered undesirable.

(Image source: website)

Reply given by the transferee company are as follows:

- **Shares remains shares only:** Both equity share capital and preference share capital appear in the balance sheet under “Share Capital” and as per provisions of Section 43 of the Companies Act 2013 there can be only two classes of shares viz. Equity and Preference and combination of two depict the total share capital. Conversion of equity into preference shares or vice versa will not have any impact on the paid-up capital of the Company, only nomenclatures will get changed.

- **Every procedure under the Act is permissible unless prohibited by the law:** Transferee Company referred the decision passed by the Apex Court in Special Leave Petition in **Rajendra Prasad Gupta V/s Prakash Chandra Mishra & Ors.** where the court held that Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed.

- Under section 230 of the Companies Act, 2013, scheme of compromise or arrangement is referred and "**Inclusive**" definition of word Arrangement is given under the said section.

Transferee Company emphasized that conversion of one type of shares into another is not barred by any provision of the law and such conversion only amounts to reorganization of share capital of the Company which is permissible under section 61 of the Companies Act, 2013. Further, scheme of compromise or arrangement may involve any type of reconstruction of share capital of the Company.

a) Hon'ble High Court in *Vasant Investment Corporation Limited CA No. 178 of 1978* where it was held by the court that every alteration of the memorandum of association required under a scheme of compromise or arrangement cannot be looked upon as an ultra vires act. Under section 391 of the Companies Act, 1956 (Now Section 230 of the Companies Act, 2013) the court has very wide power of reconstituting the Company. **Purpose of the scheme of reconstruction is to make suitable alterations in the structure of the Company to enable it to make function**. Scheme can be sanctioned by the courts even if it is ultra vires to the provisions of the Charter Documents of the Company.

b) The Division Bench of Punjab & Haryana High Court in the matter of *Q.H Talbros Ltd*. inter-alia observed that the term "arrangement" used in section 391 of the Companies Act, 1956 is of wide amplitude. Scheme of Arrangement required considerations of various enactments and adherence to various legal provisions not only under the Companies Act but also under other enactments. Various components from laws can constitute one composite scheme/arrangement under the section 391. **The legislature, therefore, advisedly did not restrict scope of the term "arrangement" by defining it. A view to the contrary would place an unwarranted fetter upon the activities of a company and restrict the choice of its members, creditors, debenture holders and other stakeholders**.

After taking into consideration the replies given by the transferee company the RD was not convinced and for which the transferee company also filed an affidavit in rejoinder.

Observations made by NCLT

Considering the wider impact of allowing conversion of equity shares to preference shares NCLT asked for the comments from Ministry of Corporate Affairs (MCA) and RD on the proposed conversion and provided Transferee Company a chance to submit written submission.

NCLT in its order has mentioned that the clarifications and undertaking given by the Transferee Company are accepted.

It will be interesting to know whether conversion of equity shares into preference will be considered as capital reduction under section 66 of Companies Act, 2013?

Section 66 of the Companies Act, 2013 dealing with reduction of capital of the Company allows the company to reduce the share capital "in any manner", hence there may be reduction of share capital even without payment of any money to the shareholders

Referring to the judgement of NCLAT in Brillio Technologies, it was held that the manner of reduction of capital provided in Sections 66(1)(a) and 66(1)(b) of the Act is a mere illustration and is not the only manner in which a company may reduce its share capital. Reduction of capital can also be done through section 230 of the Companies Act, 2013. If the capital reduction is done through section 230, companies are not required to follow the procedure given under section 66.

In this scheme of arrangement, even though the equity shares are getting converted into preference share capital, paid-up capital amount is remaining the same; hence the same cannot be considered as a reduction of capital.

Conclusion

The ruling brings clarity that such re-classification does not tantamount to reduction of equity share capital per se. It allows more leeway in flexible capital re-organisation in case of private companies, specifically, vis-a-vis minority shareholders. Such an arrangement could also be used as a tool for minority squeeze out.

Finally, before concluding, a point to be noted is that even though the preference shares are optionally convertible, in fact option for conversion is with the company and right to change the terms of redemption is also with the company. As a result, it appears to be a win-win situation for the company but disadvantageous to the shareholders.

References:

a) NCLT order dt 22.09.2021
b) Scheme of arrangement u/s 230 of Companies Act 2013

Data Format for Furnishing of Credit Information to Credit Information Companies

Reserve Bank of India vide its Circular dated 14th October 2021 has provided Data Format for Furnishing of Credit Information to Credit Information Companies. According to its Circular, the reporting would be mandatory in respect of new loan accounts to be opened after July 1, 2022.

Further, a phased approach shall be followed for reporting of legacy data as detailed below:

- The accounts opened during the period (July 1, 2021 to June 30, 2022) have to be updated by January 1, 2023.
- The accounts opened in past three years (July 1, 2018 to June 30, 2021) have to be updated by July 1, 2023.

A timeline for reporting of the remainder legacy data would be reviewed by the Technical Working Group and the CIs would be advised in due course.

Synergy between Committee of Creditors and Resolution Professional

S. Venkataraman
Chief General Manager (Retd.) SBI
Insolvency Professional

Role of a Banker and Borrower:

All of us know that Financial creditors, especially Bankers -when they don the cap of lenders - play a very important role in the development of entrepreneurship, industrial developments and growth of many businesses, by providing necessary financial support as per the laid down policies of their respective Banks. We also know that Bankers not only provide financial support, but also hand hold their borrowers by providing valuable support and guidance, utilising their vast professional expertise. These kinds of support are more visible during the critical times of operations of the borrowing entities and the pro-active role is, generally, played by the field level staff/officials who are well known as field officers, credit officers, relationship manager, frontline/line manager etc., who are in constant touch with the borrowers. The kind of handholding and nurturing role played by them has always been well acknowledged and recognised by many successful entrepreneurs, industrialists, businesses, across the country, however big or small they are. With such borrowers, because of the regular personal contacts of the bankers, a healthy bondage is created which ultimately helped the businesses to prosper. Even today, if one talks to the CEOs / top echelon of many of such entities, they will definitely recall that kind of relationship they had built with such officials/banks, which had to a large extent contributed to their success.

When we talk about the borrower-banker relationship, apart from the personal relationship maintained by the staff/officials, depending upon the nature of activity borrowers are also to submit to the Banks, periodical statements or reports which are known as stock statements, quarterly / half yearly financial follow-up reports, cash flow statements, profit and loss statements, balance sheet etc. These periodical reports serves as an important tool, for the lender, to access and monitor the entities and facilitate them to take effective follow-up and corrective actions, as a proactive measure to stem the root, if any, ab initio. If the borrowing arrangement is a consortium arrangement, then periodical consortium meeting minutes are also available which will throw lots of information on the operations of the entity. Further periodical factory/business visit reports, which incorporates the details of operations, are also available with banks.

These types of banker/borrower relationship is proving very effective even today, despite the advent of technology. Such association creates a repository of information about the entities which can be tapped at any point in time. In fact, these pools of information are being used by bankers for furtherance of their or their associates' businesses with such borrowers/entities, which we are all well aware of.

However, unfortunately, a few of these entities due to multiple factors, either internal or external, run into difficulties and are being classified as stressed assets gradually. They even turn into non-performing assets, if multiple revival attempts fail, ultimately leading to a strained relationship with the Bankers, who then resort to various recovery mechanisms, including initiation of recovery processes under IBC. These Bankers along with other financial creditors, then don the cap as members of Committee of Creditors (CoC), under IBC, in their ultimate effort to revive the corporate debtor (CD) or recover their dues from the CD. When, the CD is admitted under the CIRP process, the powers of the Board of directors of the entity gets suspended and the Interim Resolution Professional/ Resolution Professional enters the fray to run the CD as per IBC.

Role and Responsibilities of Committee of Creditors (CoC)

After the latest amendments to the IB Code, in the month of April 2021, the code provides for two scenarios of the control for a CD. Under CIRP, creditor-in-control mechanism is operative thereby changing the debtor-creditor dynamics. Whereas under Pre-pack Insolvency Resolution Process (PPIRP), debtor-in-control mechanism is operative (for MSMEs falling under the category of Corporate or LLP) where the CD continues his control, however monitored by RP/CoC.

Our focus under this discussion paper is on IBC process under CIRP. The Section 21 of the Code specifies the composition of the CoC – all financial creditors (**"FC"**), (with the exception of the corporate debtor's connected parties), make up the CoC. The voting shares are assigned to the FCs based on the amount of debt owed to them. The CoC is formed with operational creditors (**"OC"**) when the corporate debtor has no financial debt or when all FCs are related parties. Once the CoC is formed, from the first meeting onwards its responsibility kicks in. With the Insolvency Professional (IP) performing the role as per the Code and, as per the timelines specified, both (IP and CoC) steer the insolvency process, for arriving at a resolution plan. Once the plan is approved by CoC with 66% voting, RP approaches the Adjudicating Authority for approval of the resolution plan for its implementation.

The Code and the regulations bestow various powers on the CoC which includes recommending the Interim Resolution Professional (IRP) as the Resolution Professional (RP), supervising their functioning and conduct, and in case, if the conduct of the RP is not to its satisfaction, even replace the RP. Therefore, for arriving at a suitable resolution plan, the RP coupled with the professional expertise / acumen of the CoC play, vital and complementary roles.

Even though, it is the RP who is responsible for the management of the day-to-day operations of the CD, it is the CoC which is bestowed with the power and responsibility to decide on all matters which are critical to the functioning of the CD. The Code also specifically lists acts which can be undertaken by the RP only with the prior approval of the CoC - such as creation of security interest over the CD's assets, change in ownership, capital structure or management of the corporate person, unearthing related party transactions, raising interim finance etc., The most important function of the CoC is, however, to determine the viability of the CD's business, examine the feasibility of future operations, the cost and expenses involved based on which, to resolve to either proceed with the resolution process or opt to liquidate the CD, where it is convinced that the resolution process is likely to fail. Further, an application for withdrawal of the insolvency application after it has been admitted can be made only by the applicant, with the approval of 90% voting by CoC where it is constituted. Once the CoC approves a resolution plan with 66% voting, the RP is bound to place the plan before the Adjudicating Authority (AA) for its approval.

The Code, doesn't provide any ground to challenge the "commercial wisdom" of either the individual FC or the CoCs collective decision before the adjudicating authority. Though the Adjudicating Authority cannot interfere on the merits of the commercial decision taken by the CoC, limited judicial review is possible to see that the CoC has taken into account, the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. Consequently, the need for judicial intervention from the NCLT and NCLAT is kept to the barest minimum.

Despite of all these, the pertinent question is, how smooth is the IBC process and also how easy it is to accomplish a resolution. We all know that, under IBC, as per our experiences, so far, the answer is mixed. Many a time the CIRP process gets entangled with multiple legal battles, which not only delays the resolution process but also erode the value of the CD, defeating one of the major objectives of the code viz., maximisation of the value and see the CD function as a going concern.

Relationship between IRP/RP and CoC

Adjudicating Authority normally approves, subject to various compliances, the name of IRP suggested by the applicant FC. Once CoC is formed, it either approves the IRP's continuation as RP or chooses to replace him. Generally, the choice of IRP/RP is that of FC and hence, it is presumed, that the FC have examined the competence and capabilities of the IRP/RP.

(Image source:website)

Hence, a holistic co-ordination between the RP and CoC is vital for a successful resolution. From the initial stages onwards, if CoC engages itself fully with the RP and share all relevant information and data in its possession, as described earlier, it would definitely bear the desired fruit in the resolution process as the RP is now acting as a bridge between FC, CD, OC, AA etc. As the RP has to run the CD as a going concern, during CIRP, the wealth of information/data available with the CoC (due to their dealings with CD in the past as stated earlier) would definitely provide all ammunitions, which would enable the RP to fire from all cylinders, ab initio, to protect the interest of all stakeholders.

Whereas, it is apparent, that in practice such a kind of relationship or bonding (between RP/CoC) is either missing or not being nurtured. The coherence within CoC members, many a time, is not seen, as the interest of its members are diverse. Further, the members of the CoC are not senior enough for spontaneous interventions in discussions, empowered enough to take quick decisions, thereby contributing to the delay in resolution. There are many other reasons for the callousness of the CoC. Therefore, for a long time, it has been felt that the lenders, who decide the fate of a CD under IBC, should be guided by a code of conduct.

Code of Conduct for CoC

A parliamentary panel headed by member of parliament Shri. Jayant Sinha has also stressed on the need for a set of do's and don'ts for the CoC, which has resulted in the publication of a consultation paper by the Insolvency and Bankruptcy Board of India (IBBI) to bring about a code of conduct for CoC. The consultation paper talks about things like nominating representative with sufficient authorisation to participate in meetings and make decisions during the process, adhering to the deadlines as prescribed by the law and disclosing the existence of any pecuniary or personal relationship with any stakeholders entitled to distribution. It also stresses on keeping the information received during the process confidential and keeping the cost of the resolution process at a reasonable level. There are many other worthwhile suggestions as well in the paper. It is expected that the MCA will soon come out with clear frame work on the functioning of CoC after eliciting the views of important stakeholders viz., RBI, IBA etc. It is hoped that once formalised, banks and other FCs would bring about suitable policy changes in their system to ensure that their representatives in CoCs would not be found wanting, when it comes to taking timely decisions, so that the objective of the Code is well accomplished which would ultimately result in a win - win situation for all stakeholders to their satisfaction.

Legal Maxim

"VIGILANTIBUS ET NON DORMIENTIBUS JURA SUBVENIUNT" – Law will help only those who are vigilant

The legal maxim states that law helps those who are vigilant with their rights and not the one who sleeps. It means that those who are careless with their rights cannot be assisted by the law. It also denotes that person who decides to maintain his / her silence during the statutory period, after the statutory period they cannot claim enforcement of the rights.

Can there be discrimination in distribution among secured creditors in liquidation

CGRF Bureau

Liquidation

Neither the Insolvency and Bankruptcy Code, 2016 (IBC) nor the Companies Act, 2013 defines the term "Liquidation". In the general sense, Liquidation is the process wherein the assets of the company are sold, and the company's debts are repaid, to the extent possible out of the realised funds. Thus, Liquidation results in winding up of operations and ultimately leads to the dissolution of the Company.

As per Section 2(94A) of the Companies Act, 2013, "winding up" means winding up under this Act or Liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.

The principal object of the IBC is revival of the Corporate Debtor and to make it a going concern and every attempt should be made to revive it with liquidation being the last resort. This has also been reiterated by the top court time and again.

Distribution of Assets in Liquidation

On failure of the CIRP to resolve the financial stress of the corporate debtor, IBC envisages liquidation of the corporate debtor, albeit, as a last resort. The proceeds from the sale of the liquidation assets shall be distributed in the order of preference (waterfall mechanism) as provided in Section 53 (1) of the IBC. The preference in distribution of the proceeds as indicated in the said section of IBC overrides the provisions of all other statutes for the time being in force.

Unlike the previous laws which gave priority to Government debts and dues in the liquidation process, IBC has given top priority to the secured creditors (who had relinquished their security interest to the liquidation estate) in the distribution process. Of course, the dues to workmen also have been accorded equal priority with the secured creditors, over Government dues and unsecured financial debts.

It is to be noted that the secured creditor in the liquidation process under IBC has the option to –

(1) Realise it security interest outside the liquidation estate and account to the liquidator in case of surplus. In case the assets are not adequate, the unpaid debts of such secured creditor may be claimed as per the order of preference as provided in Section 53 of IBC; or

(2) Relinquish its security interest to the liquidation estate and receive the proceeds from the sale of assets in priority as provided in Section 53 of IBC.

In Liquidation, the IBC creates a distinction between secured creditors and unsecured creditors but does not create any inter-se priority and consideration of value of the security interest among the secured creditors, unlike the CIRP. Therefore, in general, the first charge holders and second charge holders are conferred the same preference in liquidation once the secured creditors relinquish their rights and their claims are largely settled proportionately.

It is interesting to note that there still lies some confusion as to whether the secured creditors who have relinquished their security interest should recover to the extent of the underlying value of the security interest relinquished by them, or to the extent of the entire debt of such secured creditor under the waterfall mechanism. This view is supported by the fact that various courts and the law makers have interpreted the issue inversely.

Highlighted below are some of the facts:

(1) The Rights of first charge holders come to the forefront in the case of ***J.M. Financial Asset Reconstruction Co Ltd. vs. Finquest Financial Solutions Pvt Ltd [CA(AT)(Ins.) 593 of 2019]***. Hon'ble NCLAT in this case held that the right to realize security under Section 52 of IBC is restricted to a secured creditor that has an 'exclusive charge' or 'sole first charge'. Further, NCLAT has also held that after enforcement of rights under Section 52 of IBC by one of the 'secured creditors', no other 'secured creditor' can enforce its rights subsequently for realization of the amount from the same secured asset as the excess amount after recovering the debt of the first charge holder would be required to be deposited in the liquidator's account. The rights of other secured creditors are denied in case a first charge holder exists, and thus the secured creditors despite having security are treated no different than an unsecured creditor. Also, this throws up a challenging question on the treatment of other secured creditors in the waterfall mechanism.

(2) While the above ruling takes away the rights of secured creditors to some extent, Hon'ble NCLAT in ***Srikanth Dwarkanath, Liquidator of Surana Power Limited vs Bharat Heavy Electricals Ltd [CA(AT)(Ins.) 1510 of 2019]*** has seemingly taken

a balanced stand in the issue of *pari-passu* charge that a secured creditor may proceed to realise its security interest for an asset over which it does not have an exclusive charge only with the consent of secured creditors holding at least 60% in value of the secured debt.

(3) The Insolvency Law Committee ("ILC ") in its report dated February 2020, while discussing the issue of ***"Realisation or Relinquishment of Security Interest by a secured creditor"*** stated as hereunder:

"7.2. Under the Code, secured creditors that have relinquished their security interest to the liquidation estate stand second highest in priority under the liquidation waterfall, and recover their dues at par with workmen, that is, under Section 53(1)(b) of the Code. This priority is given to "debts owed to a secured creditor in the event such secured creditor has relinquished security". Since this does not specify whether such debts owed are limited only to the value of the secured portion of the creditors' debt, it was brought to the Committee that stakeholders had some confusion as to whether secured creditors who have relinquished their security interest should recover to the extent of the underlying value of the security interest relinquished by them, or to the extent of the entire debt of such secured creditor under Section 53(1)(b)(ii).

(Image source: website)

7.3. The Committee noted that the Code aims to promote a collective liquidation process, and towards this end, it encourages secured creditors to relinquish their security interest, by providing them second-highest priority in the recovery of their dues, as under Section 53(1)(b). Thus, they are not treated as ordinary unsecured creditors under the Code, as they would have been under the Companies Act, 1956. It was noted that, to some extent, this provision intends to replicate the benefits of security even where it has been relinquished, in order to promote overall value maximisation. However, even if secured creditors realise their security interest, they would only recover to the extent of their security interest, and would claim any excess dues remaining unpaid under Section 53(1)(e) of the liquidation waterfall. Thus, the Committee was of the view that this provision could not have been intended to provide secured creditors who relinquish their security interest, priority of repayment over their entire debt regardless of the extent of their security interest, as it would tantamount to respecting a right that has never existed. Further, if the "debts owed to a secured creditor" is not restricted to the extent of the security, there would be broad scope for misuse of the priority granted under Section 52(1)(b), as even creditors who are not secured to the full extent of their debt would rely on the mere fact of holding any form of security, to recover the entire amount of their unpaid dues in priority to all other stakeholders (emphasis added).

7.4. On the basis of the above discussion, the Committee agreed that the priority for recovery to secured creditors under Section 53(1)(b)(ii) should be applicable only to the extent of the value of the security interest that is relinquished by the secured creditor (emphasis added).

(4) In ***Technology Development Board vs Mr.Anil Goel [CA (AT) (Ins.) 731 of 2020],*** Hon'ble NCLAT discussed the validity of inter-se priorities between the creditors vis-à-vis the waterfall mechanism under Section 53 of IBC and held that *"the view taken by the Adjudicating Authority on the basis of the judgement of Hon'ble Apex Court in "ICICI Bank Vs Sidco Leathers Ltd." (which is pre-IBC), ignoring the mandate of Section 53 of IBC which has an overriding effect and came to be enacted subsequent to the aforesaid judgment rendered by Hon'ble Apex Court, explicitly excluding operation of all Central and State legislations having provisions contrary to Section 53 of IBC, is erroneous and cannot be supported."* NCLAT also held that while secured creditors had the option between relinquishing their right in favour of the liquidation estate and realizing their security interests independently, once they choose to relinquish interest, the repayment would take place strictly as per Section 53 of IBC, which does not recognize any distinction between different classes of 'secured creditors'.

Conundrum for Liquidators in distribution of assets

As could be noticed from Section 53(1)(b)(ii) of IBC, the debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52 shall rank equally with the workmen's dues for the period of 24 months preceding the liquidation commencement date. A plain reading of Section 53 denotes that the proceeds from the sale of the liquidation assets shall be distributed in the order of priority as specified therein. The provisions of Section 53 do not express any inter-se priorities between creditors ie., preference among first charge holder or second charge holder vis-à-vis other secured creditors having sub-servient charge.

Further, the secured creditors' dues have to be paid on priority from the liquidation proceeds, in equal proportion within the same class of secured creditors. The equal proportion refers to the ratio of payment to be in proportion to the admitted claims of the secured creditors. It is relevant to note that while making this distribution, the provisions of Section 53(2) of IBC state that "*any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator*".

This provision emphasises the over-riding nature of IBC law in as much as that any contractual arrangement against the said provision shall be disregarded by the liquidator. However, there cannot be any differentiation in distribution amongst the secured creditors if even one creditor held a prior charge or exclusive charge on a security interest which has already been relinquished. All such secured creditors are pooled into one class viz., secured creditors and the amount available in the waterfall shall be paid on priority to the secured creditors in proportion to the admitted debts.

This view is also strengthened by the provisions of Section 53(1)(b) where the secured creditors who have relinquished their security interest will be paid in priority and there is no residual place in the waterfall mechanism for them (except Sec.53(1)(f) – any remaining debts and dues) unlike the one available for a secured creditor who realises the security interest but falls short in recovery and stand in the waterfall mechanism under Section 53(1)(e)(ii).

This begs the question whether the secured creditor who relinquishes his security interest stands to lose the possibility of recovering more from the security interest as the liquidator will place all the secured creditors on the same platform and distribute the sale proceeds equitably to all the secured creditors who have relinquished their security interest.

The answer may be "Yes", but the important thing to note is that "relinquishment" is a choice before him and he is not obligated to relinquish his security interest, if he has a chance of realising better by remaining outside the liquidation estate. In fact, it is for this very reason, the IBC has bestowed upon the secured creditors the preference, choice, option or discretion either to relinquish the security interest in favour of the liquidator or to realise the security interest by himself.

When contractual arrangements between the corporate debtor and secured financial creditors provide for preferential payments over other creditors, respecting such arrangements is facilitated by Section 52 of IBC, as it allows a secured creditor to exercise his option of realising the security interest without relinquishing it to the liquidation estate of the corporate debtor. The very essence of the provisions under Section 52 is to give the secured creditor an edge over every other creditor or even second charge holders of the same asset in the asset realisation process and appropriate the amount in preference to the other creditors.

(Image source: website)

It is our view that the secured creditors once relinquish their security interest, all rights associated with such security interest are also relinquished and the liquidator is entitled to realise the security value and distribute it as per Section 53 of IBC. Relinquishment cannot be partial or subject to some conditions. Hence, there is no logical reasoning to say that the priority or preferential charge will continue when the liquidation proceeds are distributed. This view is completely contrary to the widely regarded view that Inter creditor agreements, if not disregarded for the liquidation waterfall in Section 53 of the IBC, may result in secured creditors, especially those holding a first charge to prefer liquidation over resolution as they will be assured of prior charge in the liquidation process without taking upon the responsibility of realising the assets by themselves. It is for this reason, Section 52 has been provided in the IBC giving an exclusive right to secured creditors to exercise their option to realise the security interest on their own. Secured creditors cannot have multi-fold advantage to the detriment of the other secured creditors in the same class.

This view of equitable distribution among secured creditors disregarding the prior charge is the disincentive for secured creditors with exclusive or first charge pushing the company to liquidation as the objective of IBC is to get resolution rather than liquidation of the corporate debtor.

The Hon'ble Supreme Court in ***Kotak Mahindra Bank Ltd vs Technology Development Board [Civil Appeal Diary No.11060/2021]*** **has** stayed the operation of the order passed by Hon'ble NCLAT in ***Technology Development Board vs Anil Goel*** (supra). It remains to be seen how the Apex Court would like to look at this issue in this appeal. However, it may be noted that the NCLAT decision has not been set aside.

Till the top court gives a clarity in this issue, the conundrum for liquidators in distributing the proceeds from the sale of the liquidation assets will continue.

Legal Maxim

"EX NIHILO NIHIL FIT" – Nothing comes from Nothing

This phrase literally means if someone is entering into an agreement which is not valid, then he cannot take benefit out of such agreement. If someone is entering into an agreement by mentioning various provisions and clauses for future need, the provisions and clauses must be enforceable, accurate and reliable, only then one can gain benefit from such agreement. Therefore, one cannot make something out of nothing.

Enforceability of rights of the secured creditors during the insolvency process

T.Deenadhayalan
Legal team

Introduction

The Process under the Insolvency and Bankruptcy Code, 2016 (the Code) viz., Corporate Insolvency Resolution Process (CIRP) or Liquidation will be the last resort to the stakeholders who has lent money, provided financial services, provided technical services, worked for the corporate debtor as workman and employees., etc., to recover their dues from the corporate debtor.

The Corporate Debtors are created by law and thereby has certain established procedures in various laws are to be followed by the creditors while entering into agreements, contracts or giving financial assistance etc., and hence the creditors involving in the business of lending moneys must follow the procedure established by law for creating proper encumbrance and charges at the proper time and place.

Since the CIRP is for revival of the Corporate Debtor, the enforceability of the rights of the Creditors is suspended by the Moratorium declared under section 14 of the Code.

Sec.14. Moratorium. –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Whereas the Code and IBBI (Liquidation Process) Regulations, 2016 provide for certain procedures to be followed by the creditors/stakeholders during the liquidation process:

i. Sec 52 of the Code specifically deals with the secured creditors, wherein the secured creditors are given option to deal with their security interest created on the assets of the Corporate Debtor in such a way that, the secured creditors may relinquish their security interest or realize their security interest in the manner specified under the Code.

Sec.52. Secured creditor in liquidation proceedings. –

(1) *A secured creditor in the liquidation proceedings may-*

a) *relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or*

b) *realise its security interest in the manner specified in this section.*

(2) *Where the secured creditor realises security interest under clause (b) of sub- section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised*

ii. Regulation 12(2) of IBBI (Liquidation Process) Regulations, 2016 requires the stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date on or before thirty days from the liquidation commencement date.

Reg.12. Public announcement by liquidator.

(1) *The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.*

(2) *The public announcement shall-*

(a) *call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and*

(b) *provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.]*

iii. Regulation 16 of IBBI (Liquidation Process) Regulations, 2016 also demands any person, who claims to be a stakeholder, should submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.

Reg.16. Submission of claim.

(1) *A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.*

(2) *A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.*

iv. Regulation 18 of IBBI (Liquidation Process) Regulations, 2016 specifically demands the financial creditors to submit proof of claim to the liquidator in electronic means in Form D of Schedule II.

Reg.18. Claims by financial creditors.

(1) *A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.*

v. Regulation 21A of IBBI (Liquidation Process) Regulations, 2016 demands the secured creditor that he should inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II. Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

Reg.21A. Presumption of security interest.

(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:
__Provided__ that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

Therefore, if a secured creditor fails to communicate its decision within the stipulated time, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

The Code specifically bars the jurisdiction of other Courts to issue injunction and adjudication of the pending suits/proceedings against the Corporate Debtor, and also overrides other laws which are inconsistent with the Code. For a quick reference, the relevant provisions of the Code are reproduced as under:

Sec.63. Civil court not to have jurisdiction. –

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.

Sec.231. Bar of jurisdiction. –

No civil court shall have jurisdiction in respect of any matter *in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.*

Sec.238. Provisions of this Code to override other laws. –

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Thus, the process under the Code will be the last resort for the creditors to enforce their rights against the Corporate Debtor, the creditors should act as per the law laid down under the Code for the enforceability of the rights.

The only option available for the creditors under the Code to file their grievances against the Corporate Debtor is before the jurisdictional NCLT under section 60 of the Code. The provisions are as under:

Sec.60. Adjudicating Authority for corporate persons. –
(1)…………….
……………

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;
(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

Conclusion

Thus, once a company is admitted into the CIRP/Liquidation, all the creditors including the secured creditors should follow the due process under the Code to enforce their rights against the Corporate Debtor. In the event of non-compliance or disregarding the Code, the enforceable rights for claim against the Corporate Debtor will get extinguished at the end of the process.

Court Orders

CGRF Legal Team

(Image source:website)

Rajendra Narottamdas Sheth & Anr
vs
Chandra Prakash Jain & Anr.
(Civil Appeal No. 4222 of 2020)
(Supreme Court)

An application was made under Section 7 of the I&B Code, 2016 against the corporate debtor i.e., R.K. Infratel Ltd. by the financial creditor for non-payment of loan by the corporate debtor. The loan account was declared as non-performing asset (NPA) on 01.10.2014 and thereafter proceedings under SARFAESI Act, 1993 was initiated before the DRT, Ahmedabad, which is pending where the corporate debtor has filed its counter claim. In the proceedings before the NCLT under Section 7 of the I&B Code, 2016, the same was submitted by the corporate debtor and objection on the grounds of limitation was raised. However, the application was admitted holding that it is not barred by limitation and the letter dated 07.04.2016 confirming debit balance and subsequent credit entries made till May 2018 were taken note of by the NCLT.

On appeal before the NCLAT, the corporate debtor argued that the payments made to the Bank after its account was declared as NPA would not extend the period of limitation. It was further argued that the power of attorney in favour of the individual who has signed the application under Section 7 of the Code without any specific authorisation to initiate proceedings under the Code was not maintainable. NCLAT while dismissing the appeal, observed that the Corporate Debtor could not demonstrate any error in the order of the Adjudicating Authority.

The Hon'ble Supreme Court in present appeal had two issues for consideration, one being the maintainability of the application under Section 7 of the Code filed by a power of attorney holder and the second relating to the question of limitation.

The Judgement of NCLAT in *Palogix Infrastructure Private Limited v. ICICI Bank Limited 2017 SCC Online NCLAT 266*, held that an authorised person, distinct from a power of attorney holder, can file an application under Section 7 and that a power of attorney holder is not competent to file an application on behalf of a financial creditor. The NCLAT in Palogix Infrastructure has further held that if the officer was authorised to sanction loans had filed application under Section 7 of the Code it cannot be rejected on the ground that no specific authorisation has been issued by the financial creditor in favour of such officer. In such cases, the corporate debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate corporate insolvency resolution process, in spite of default in repayment.

The Apex Court in *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited & Anr. (2020) 15 SCC 1*, held that Section 18 of the Limitation Act and the principles thereof were not applicable to CIRP proceedings under the facts and circumstances of that case.

In *Dena Bank v. C. Shivkumar Reddy & Anr., 2021 SCC Online SC 543* the Apex Court dealt with the issue of pleadings and the documents required to be filed at the time of making of an application under Section 7 of the Code. It observed that the financial creditor can only fill in the particulars as mentioned in Form 1 and there was no scope for elaborate pleadings as a plaint in a suit.

The Court took note of Section 238A of the Code, which makes the provisions of the Limitation Act applicable to the proceedings before the Adjudicating Authority. It relied on ***Noharlal Verma v. District Cooperative Central Bank Limited, Jagdalpur,*** *(2008) 14 SCC 445*, to hold that the Adjudicating Authority is duty-bound to scrutinise the application filed under Section 7 of the Code, even in the absence of any plea with respect to limitation, to come to a conclusion on whether the application is barred by limitation.

The Court while deciding the issues on hand held thus, "it is no more res integra that Section 18 of the Limitation Act is applicable to applications filed under Section 7 of the Code. In case the application under Section 7 is filed beyond the period of three years from the date of default and the financial creditor furnishes the required information relating to the acknowledgement of debt, in writing by the corporate debtor, before the Adjudicating Authority, with such acknowledgement having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period."

The burden of prima facie proving occurrence of the default and filing the application under Section 7 of the Code within the period of limitation, is entirely on the financial creditor, the Court held while dismissing the present appeal.

(Image source: website)

Monitoring Agency of Anush Finlease & Construction Pvt Ltd
vs
State Bank of India
CA (AT) (Insolvency) No.902 of 2020
NCLAT New Delhi Order dated 4th Oct 2021

Margin money is construed as substratum of a trust created to pay to the beneficiary to whom the bank guarantee is given and cannot be treated as an asset of the Corporate Debtor.

CIRP in respect of Corporate Debtor vis., Anush Finlease & Construction Pvt Ltd was admitted by NCLT, Principal Bench New Delhi vide order dated 30.05.2019. Resolution Plan submitted by Kendriya Bhandar (Central Government Employees Consumer Cooperation Society Limited) was approved by the CoC on 20.03.2020 and thereafter the same was approved by NCLT on 01.04.2020.

Corporate Debtor prior to commencement of the CIRP had obtained 40 Export Promotion Capital Goods (EPCG Authorisation) from Directorate General of Foreign Trade (DGFT) for duty saved amount and Export Obligation for import of capital goods. Against these authorisations, at the instance of the Corporate Debtor, State Bank of India (SBI) issued 23 Bank Guarantees on 100% margin money which was maintained as Fixed Deposit Receipts (FDRs) with SBI.

During implementation of the NCLT approved resolution plan, Chairman of Monitoring Committee filed an application seeking directions against SBI and DGFT for release of these FDRs maintained with SBI given as margin money against the bank guarantees, stating that the FDRs being the asset of the Corporate Debtor. He informed that the Resolution Plan envisages cancellation of all pledges/ lien/any other encumbrances upon the Fixed Deposits, therefore, the said bank guarantees for issuance of which the fixed deposits have been provided, ceased to be legally enforceable as the very liabilities for securing which they were issued ceased to be in force.

He also submitted that DGFT has not made any claim, therefore it must be construed that DGFT has no claim against the Corporate Debtor. As there is no claim by DGFT against the Corporate Debtor, for the same being shown as written off in the Resolution Plan, the very purpose of providing FDRs is not required to be achieved. Hence, they shall be returned to the Corporate Debtor. In support of his contention, he relied upon the following ratio held in the case of ***"Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar and others"*** in Supreme Court –

> *"A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor."*

Against this, SBI as well as DGFT submitted that Bank Guarantee is an independent contract between the beneficiary and the Bank, though these are shown as FDRs, for they are given as margin money towards the bank guarantee issued by SBI in favour of the beneficiary, it is not refundable to the Corporate Debtor unless the Bank is discharged. They further submitted that it is the settled law that bank guarantee is independent and distinct contract between the bank and the beneficiary, and it is not dependent on the actions of the Corporate Debtor at whose instance the bank guarantee is given.

NCLT after hearing the submissions made by the parties noted these FDRs are given towards margin money against the bank guarantees given to the beneficiary, not as FDRs to be realized by the Corporate Debtor as and when it wishes. NCLT stated that as per RBI guidelines and as per the ratio decided in various judgements, margin money is construed as substratum of a Trust created to pay to the beneficiary to whom Bank Guarantee is given. Once any asset goes into trust by documentation for the benefit of beneficiary, the original owner will not have any right over the said asset unless is it is free from the trust. Further, it also noted that SBI has not been discharged from the guarantees given to the beneficiary.

NCLT pointed out that the ratio held in the judgment "***Reserve Bank of India vs. Bank of Credit and Commerce (1993 78 Comp Cas 207 Bom)"*** clearly indicates that margin money acquires the character of trust when it is given against the Bank Guarantee issued to the beneficiary.

NCLT further observed that IBC deals with Creditor and Debtor relationship, but not with the other transactions not culminated into Creditor and Debtor jural relationship. As DGFT has already been covered by bank guarantee, in the event of default, DGFT will realise its dues through bank guarantee. Merely having some Clauses in the Resolution Plan will not alter the legal rights of the beneficiary, which are not affected by the Insolvency and Bankruptcy Code (IBC). NCLT dismissed the application as misconceived.

Aggrieved by the decision of the NCLT, the Chairman of Monitoring Committee filed an appeal with Hon'ble NCLAT.

Lr. Counsel for the Applicant submitted that NCLT has failed to consider that the liability which the Bank Guarantees in question aim to cover has been extinguished by virtue of law. Further, the Customs Department failed to file its claim before the Resolution Professional, hence the liability of the Corporate Debtor to the Customs Department has been extinguished.

Lr. Counsel for the Respondent submitted that in terms of Section 36(4) of the IBC, assets owned by a third party which are in possession of the Corporate Debtor including assets held in trust for any third party do not fall within the ambit of liquidation estate, clearly indicating that assets held in trust are not assets of Corporate Debtor. Further purported extinguishment of bank guarantee by way of a resolution plan will be in contravention of Section 30(2)(e) of IBC and the provisions of the Indian Contract Act, 1872.

Hon'ble NCLAT after hearing the submission made by the parties and other findings observed that in terms of the Section 36(4) of the IBC, it is a clear indication that assets held under trust cannot be considered as the asset of the Corporate Debtor. NCLT has also considered all these facts in correct prospective and hence dismissed the appeal.

Bijoy Prabhakaran Pulipra, RP of PVS Memorial Hospital Pvt. Ltd.
Vs.
State Tax Officer (Works Contract) SGST Department, Kerala State
Company Appeal (AT) (CH)(Insolvency) No. 42 of 2021
NCLAT Chennai Order dated 07th Oct. 2021

RP's act of revising the GST assessment order is beyond his jurisdiction. The IRP/RP was not having the adjudicatory power given by the GST Act

The Respondent had submitted the claim for Rs. 28.41 cr in 'Form B' under Regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 20.02.2020.

During CIRP, the RP had revised the admitted claim amount of the Respondent to Rs. 1,06,09,299 /- after due verification of the GST claim with the books of accounts of the Corporate Debtor and the electronic register maintained by the Respondents. Accordingly, a detailed information on the revision of the admitted claim was sent to the Respondent on 10.08.2020.

Being aggrieved by the action of the RP, the Respondent had filed a Miscellaneous Application before the AA to allow the entire claim to be admitted by the RP.

The AA vide its Order dated 04.11.2020, directed the RP to file an Appeal before the Joint Commissioner of State Sales Tax Department for re-assessment of GST amount payable based on the audited financial statements and the notification issued by Government of India dated 28.06.2017.

After receiving proper and validated information from the promoters of the CD, the CoC directed the RP to explore other possibilities to re-verify the claim amount.

Subsequently, with the permission of the CoC, the RP filed a Miscellaneous Application before the AA seeking the following clarifications in respect to the filing of Appeal before the Joint Commissioner:

a. Whether the RP has the authority under Regulation 13 and 14 of the CIRP Regulations to file an appeal before the Joint Commissioner, GST, as part of the verification and determination of a claim submitted by the GST department in Form B?
b. Whether the judgment, decree, or Order, if any, passed by the Appellate Authority under CGST Act pursuant to the Appeal, against the Corporate Debtor shall be binding on Corporate Debtor when the Moratorium declared by the Hon'ble National Company Law Tribunal Bench by virtue of Section 14 of the IBC is in effect?
c. Whether the requirement of the pre-deposit of Rs. 3,79,62,304/- mandated under Section 107 of the GST Act, shall be prejudicial to the interest of the CIRP as the said section is inconsistent with Regulation 13 and 14 of the CIRP Regulations due to the overriding effect of IBC over GST Act, 2017.

(Image source: website)

The AA had disposed of the said Miscellaneous Application with the following observations:

a. That the RP has to file an appeal before the Joint Commissioner for revisiting the claim amount of the Respondent herein.
b. That the Order of the Appellate Authority under CGST Act is binding on the RP as Moratorium will not stand in the way of RP to file an appeal before the Tax Department.
c. That the pre-deposit of Rs. 3,79,64,304/- mandated under Section 107 of the GST Act for preferring the Appeal, need not be considered at present.

The above decision of the AA was challenged by the RP before the Hon'ble NCLAT.

Decisions and Findings of NCLAT

1. Since all the assessment orders were passed before the declaration of Moratorium, it has attained finality in the absence of any challenge against the assessment orders before the Appellate Authority as provided under the Statutes.

2. GST amount being tax levied as per the assessment order under GST Act, 2017, it cannot be edited or reduced by the RP himself. Even if the RP was aggrieved by the said assessment order, he should file an Appeal under Section 107 of the CGST / SGST Act, 2017 read with relevant rules therein.

3. Any revision of assessment orders cannot be made under the pretext of Section 238 of IBC. Section 238 of IBC cannot be read as conferring any appellate or adjudicatory jurisdiction in respect of issues arising under other statutes.

4. IRP / RP may, under Regulation 10, call clarifications from a creditor for substantiating the whole or part of its claim. Furthermore, under Regulation 12, the IRP / RP is entitled to update the creditor's claim based on the satisfaction of the claim. Regulation 13 mandates to verify every claim as on the CIRP date within 7 days from the last date of the receipt of the claims.

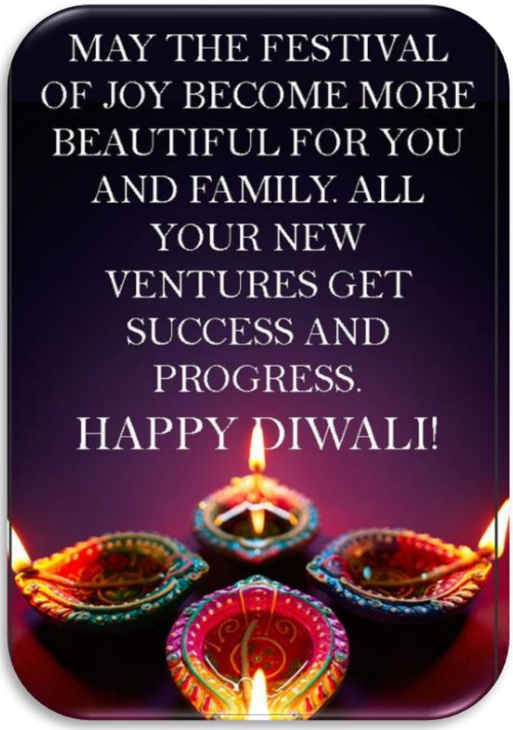
5. Under Regulation 14, IRP/RP is entitled to determine the amount of claim in a case where the amount claimed by the creditor is not precise due to any contingency or other reasons. In such circumstances, IRP/RP is authorised to make the best estimate of the amount of the claim based on the information available with him.

6. However, under regulation 14(2), IRP/RP is empowered to revise the amounts of claim admitted, including the estimates of the claims made under sub-regulation (1) when he comes across additional information warranting such revision.

7. The IRP/RP has revised the admitted claim of the Respondent based on the circumstances stated above. The above exercise of revision of the GST assessment order was beyond the jurisdiction of the IRP/RP. It is pertinent to mention that the IRP/RP was not having the adjudicatory power given by the GST Act. Regulation 14 of the CIRP Regulations only authorises the IRP/RP to exercise power where the claim is not precise due to any contingency or other reasons.

Based on the above discussions, it was held that the AA has rightly directed the RP to file an Appeal before the appropriate forum. The RP considering the CoC as an authority in law, had exercised the powers of GST authorities. Therefore, the said act of the RP is without jurisdiction and not sustainable in law. It was reiterated that CoC, under the exercise of commercial wisdom, cannot exercise judicial power.

In light of the above, Hon'ble NCLAT held that RP has committed an error by exercising the powers of GST Authorities under the pretext of Regulation 14 of the Code, which is not sustainable. Accordingly, the Appeal was dismissed.



Find the words !!

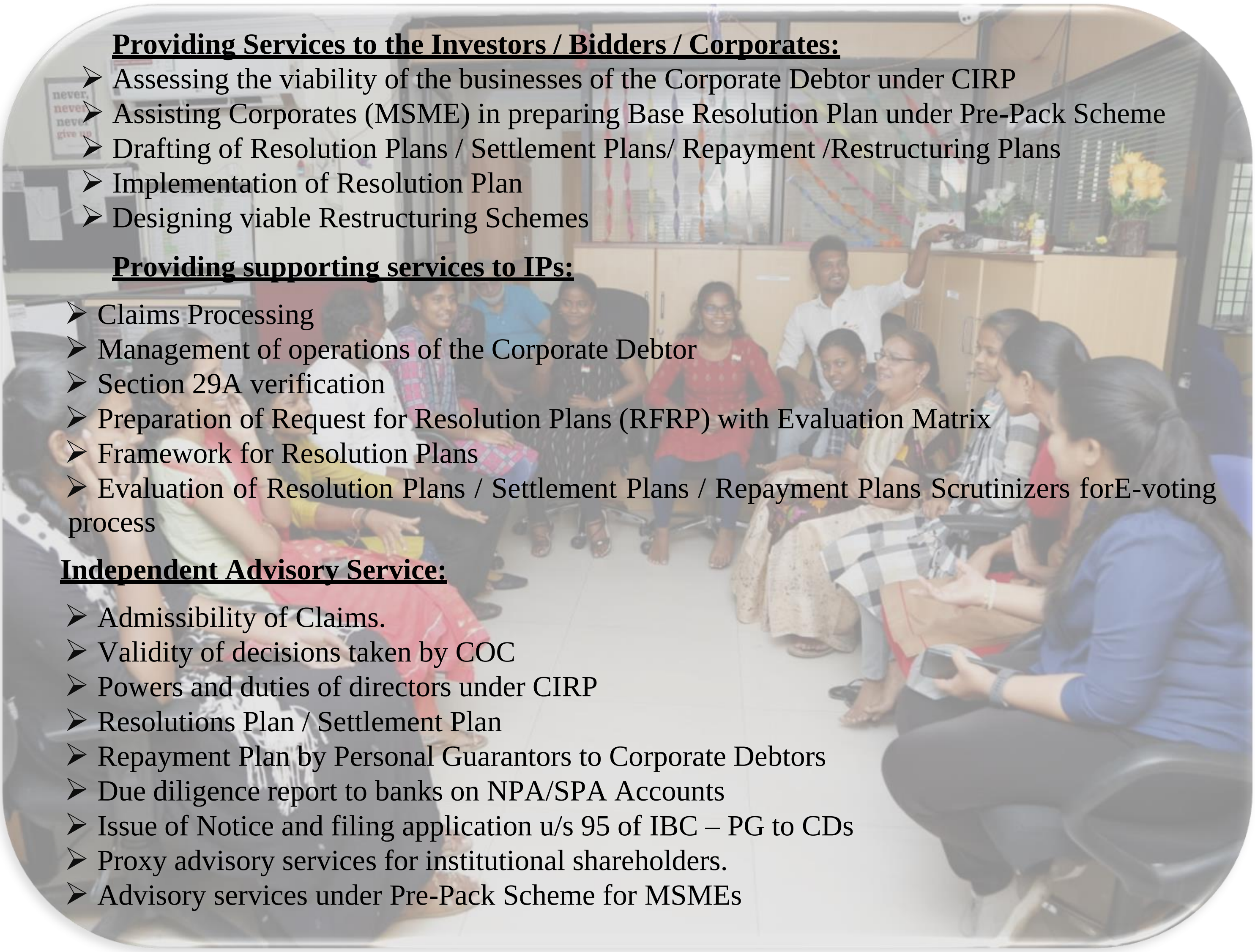
CLUES	WORDS
1. Encumbrance created on the assets of a borrower	
2. Contract to pay the dues as per the agreement with the lenders in the event of default by the borrower	
3. IBC allows withdrawal of an application under Sec 7/9/10 on submission of this application and approval by the Adjudicating Authority	
4. RP initiates this process (Expression of Interest) to invite interested parties to submit their interest for giving a resolution plan for the corporate debtor	
5. One time settlement generally proposed by a corporate debtor to avoid IBC proceedings against them.	

RGE	RAN	TEE	GUA
12A	HDR	WIT	
EOI	CHA	OTS	AWAL

Answers

1. Charge 2. guarantee 3. 12A withdrawal 4. EOI 5. OTS

OUR SERVICES



Providing Services to the Investors / Bidders / Corporates:

- Assessing the viability of the businesses of the Corporate Debtor under CIRP
- Assisting Corporates (MSME) in preparing Base Resolution Plan under Pre-Pack Scheme
- Drafting of Resolution Plans / Settlement Plans/ Repayment /Restructuring Plans
- Implementation of Resolution Plan
- Designing viable Restructuring Schemes

Providing supporting services to IPs:

- Claims Processing
- Management of operations of the Corporate Debtor
- Section 29A verification
- Preparation of Request for Resolution Plans (RFRP) with Evaluation Matrix
- Framework for Resolution Plans
- Evaluation of Resolution Plans / Settlement Plans / Repayment Plans Scrutinizers forE-voting process

Independent Advisory Service:

- Admissibility of Claims.
- Validity of decisions taken by COC
- Powers and duties of directors under CIRP
- Resolutions Plan / Settlement Plan
- Repayment Plan by Personal Guarantors to Corporate Debtors
- Due diligence report to banks on NPA/SPA Accounts
- Issue of Notice and filing application u/s 95 of IBC – PG to CDs
- Proxy advisory services for institutional shareholders.
- Advisory services under Pre-Pack Scheme for MSMEs

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