Between the lines...

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Key Highlights

I. NCLT Mumbai allows late stage withdrawal of insolvency application; imposes cost on the applicant

In the matter of ***SBM Paper Mills Limited*** *(decided on December 20, 2018)*, the National Company Law Tribunal, Mumbai (**"NCLT"**) allowed the withdrawal of a corporate insolvency resolution process (**"CIRP"**) application even after the resolution plan was accepted by the committee of creditors (**"CoC"**).

Facts

SBM Paper Mills Limited (**"Corporate Debtor"**) filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (**"IBC"**) to initiate the CIRP for itself. The application was admitted, a moratorium was declared and the insolvency resolution professional (**"RP"**) was appointed. A CoC was formed with only one financial creditor being Allahabad Bank. When the expression of interests were invited, M/s. Khandesh Roller Floor Mills Limited (**"Resolution Applicant"**) was the only entity that was qualified and submitted a resolution plan. This resolution plan was approved by the CoC. While RP submitted the said resolution plan for approval by the NCLT, the director of the Corporate Debtor (**"Director"**) was carrying a parallel negotiation with Allahabad Bank. The Director made an offer of a one-time settlement to Allahabad Bank which was better than the proposal made under the resolution plan. Simultaneous to this, the Resolution Applicant expressed its desire to withdraw its resolution plan. Therefore, two applications were made to the NCLT (1) for withdrawal of CIRP application; and (2) for withdrawal of resolution plan by the Resolution Applicant.

Issues

Three issues were formed by the NCLT for determination:

1. Whether an applicant who had filed the CIRP application is entitled to withdraw its own application under Section 12A of the IBC?

2. Whether a Resolution Applicant who had submitted a Resolution Plan approved with majority vote by CoC can be allowed to withdraw the same which is under consideration for approval before the NCLT?

3. Whether Director of the Corporate Debtor, which is under insolvency can offer one-time settlement to the financial creditor, if qualified under Section 29A of the IBC?

Arguments

The Director argued that the withdrawal of the application should be permitted by the NCLT as the Director had made a better proposal to the CoC than the resolution plan under consideration. Further, since the sole resolution applicant has expressed its desire to withdraw the resolution plan, the remedy in case of no resolution plan before the CoC is to go for liquidation. On the other hand, if the Director is allowed to withdraw the insolvency application being filed by him as an authorised person of the Corporate Debtor, all the stakeholders shall get benefit and the financial creditors shall get no haircut. It was also argued that the procedure for withdrawal laid down under Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"IBBI Regulations"**) *(which requires the withdrawal application to be made to the IRP or RP before the issue of invitation for expression of interest)* shall not be applicable in this case as it came to force on July 3, 2018 and the insolvency application was admitted on October 17, 2017, well before the IBBI Regulations commenced. It was further argued that under Section 10(1) of the IBC, where a corporate debtor has committed a default, a "corporate applicant" thereof may file an application for initiating CIRP. It was therefore, pleaded that the corporate applicant who has submitted application under Section 10 of the IBC should be authorized to file withdrawal application under Section 12A of IBC, which prescribes that the adjudicating authority can allow a withdrawal application on an application made by the "applicant". The definition of "corporate applicant" under Section 5(5) of the IBC, means an individual who is in-charge of managing the operations and resources of the corporate debtor or a person who has the control and supervision over the financial affairs of the corporate debtor. The Director, although a member of the suspended board of directors of the Corporate Debtor, was the same person who had submitted the CIRP application. He had the control and supervision over the financial affairs of the Corporate Debtor at the time of submission of the CIRP application. Therefore, he should be permitted to make the withdrawal application.

The RP argued that as the insolvency resolution period had expired, the RP did not have any control over the insolvency proceedings. The job of the RP was now over because a resolution plan has already been submitted before the NCLT for adjudication u/s 31(1) of the IBC. The financial creditors did not object to the withdrawal of CIRP application.

Observations of the NCLT

The NCLT drew its attention to the wordings of Section 12A under IBC which provides a condition that "on an Application made by the Applicant" withdrawal can be allowed, if approved by 90% voting share of the CoC. Agreeing with the argument of the Director, the NCLT held that since it is an admitted position that the Director is the person who was on the board and had control and supervision over the financial affairs of the Corporate Debtor, was duly authorized to act on its behalf and was the one who made the CIRP application, he should be permitted to make a withdrawal. Answering the issue that whether the Director would be disqualified under Section 29A of the IBC, the NCLT clarified that neither the Director nor the Corporate Debtor ever qualified as "wilful defaulter" as per RBI guidelines. The Director was not even disqualified as a director under Companies Act, 2013. Further, Section 29A of IBC does not apply in relation to a "connected person" holding the company and also in the management for control of the business of the Corporate Debtor. Therefore, the Director was not disallowed from making a withdrawal application.

With regard to issue that whether withdrawal can be permitted since it is made after the issue of invitation for expression of interest (**"EOI"**), the NCLT answered in the positive. It agreed with the reasoning of the Director that Regulation 30A of IBBI Regulations came into force after the CIRP application was admitted, hence the condition concerning the EOI provided thereunder would not apply. The NCLT also added that as Section 12A of the IBC gives the primary right of withdrawal and since that does not provide a condition of pre-EOI withdrawal, the present withdrawal application was maintainable.

The NCLT also stated that clearly the one time settlement offer of the Director is more economically advantageous than the offer under the resolution plan. Further, in light of the Resolution Applicant making an application to withdraw the resolution plan, the Corporate Debtor shall have to undergo liquidation as there were no other resolution applicants. It was observed that the parties before the NCLT, especially Allahabad Bank was not ready for liquidation due to the lower liquidation value of the assets. Keeping all this in mind, the NCLT permitted the consideration of one time settlement and allowed the withdrawal of CIRP application.

The NCLT held that attempts by the Corporate Debtor to make a CIRP application and later on after consuming precious time of the NCLT, RP and CoC, withdrawal of CIRP application should be discouraged. In light of the same, NCLT imposed cost of litigation on the Corporate Debtor of INR 5,00,000. Addressing the issue of withdrawal of resolution plan, the NCLT held that since withdrawal of CIRP application is admitted, the issue does not stand. However, the NCLT stated that the Resolution Applicant made a withdrawal application without assigning convincing

reasons which amounted to thwarting the CIRP. Such an attempt by the Resolution Applicant, especially when the resolution plan has been submitted to NCLT for approval, prejudices other resolution applicants who are also deprived of business opportunities of controlling the business of the Corporate Debtor being thrown out of race from the bidding of Resolution Plan. Therefore, to deter such instances, the NCLT directed that INR 25,00,000 (out of a total of INR 50,00,000 given by the Resolution Applicant as earnest money) should be retained and utilized towards CIRP cost and other related expenses.

Decision of the NCLT

The NCLT allowed the withdrawal of the application of CIRP made by the Director and held that in such a case the issue of withdrawal of resolution plan would become infructuous. However, it imposed costs on both, the Corporate Debtor and the Resolution Applicant, to discourage late stage withdrawals of CIRP applications and resolution plans.

VA View

Even though the NCLT did not discuss the Supreme Court decision in ***Brilliant Alloys Private Limited v. Mr. S. Rajagopal & Others*** *(dated December 14, 2018),* in spirit, it applied the principle enunciated in the said Supreme Court judgement that the application for CIRP can be withdrawn even after the issuance of invitation for expression of interest. As Section 12A of the IBC does not place any time based constraints to withdraw CIRP applications, the limitation to make an application for withdrawal of CIRP before invitation of expression of interest in Regulation 30A of the IBBI Regulations shall not take precedence over the IBC. Curiously, while deliberating on whether a Director can offer one time settlement and withdraw the CIRP application, the NCLT made a broad-brush observation by applying Section 29A of the IBC. Since the said provision deals with eligibility criteria for resolution applicants, it is unclear as to why its examination was warranted as the issue at hand concerned withdrawal of CIRP application. Lastly, imposition of costs on the Corporate Debtor and the Resolution Applicant in the instant case serves as a deterrence to bar other insolvency participants from wasting the courts' time and efforts by making CIRP applications and resolution plans and forsaking them at an advanced stage.

II. Supreme Court: Consideration of maintainability of execution case and enforceability of foreign award to be done simultaneously and not in piecemeal

The Supreme Court of India in the case of ***LMJ International Limited v. Sleepwell Industries Company Limited with Sri Munisuvrata Agri International Limited v. Sleepwell Industries Company Limited*** *(dated February 20, 2019)* held that the maintainability of an execution case of foreign award could not be considered without simultaneously considering the issue of enforceability of the foreign award. Essentially a piecemeal consideration of the two would be untenable under the scope of Section 48 of the Arbitration and Conciliation Act, 1996 (**"Arbitration Act"**) which defines conditions for enforcement of foreign awards.

Facts

Separate contracts for the sale of Non-Basmati Parboiled Rice were entered into by Sleepwell Industries Company Limited (**"Respondent" or "Buyer"**) with Sri Munisuvrata Agri International Limited (*formerly known as* LMJ International Limited) (**"Petitioner"**) respectively. In both cases the quality of rice supplied was inferior than the agreed upon terms by the Buyer and therefore the release of payment was withheld. The contracts contemplated arbitration under the Grain and Feed Trade Association Arbitration Rules (**"Arbitration 125"**) in case of disputes with proceedings to be conducted in London.

The Respondent moved the arbitral tribunal as per the Arbitration 125 for arbitral awards in both the cases and the arbitral tribunal proceeded *ex parte* against the Petitioner who, despite being given due notice and opportunity to represent their claims refused to participate in the arbitration proceedings. The arbitral tribunal passed the awards in favour of the Respondent. The Respondent then moved to the Calcutta High Court for enforcement of the foreign arbitral awards. The learned single judge of the Calcutta High Court after noting the oral objections of the Petitioner, passed a common order in favour of the Respondent. The Petitioner raised special leave petitions in the Supreme Court against the order of the learned single judge of the Calcutta High Court citing objections raising issues regarding the maintainability of the execution award, which were dismissed by the Supreme Court.

Later on, when the matter proceeded before the single judge of the Calcutta High Court in the execution petition, the Calcutta High Court noted that the subject foreign awards were deemed to be decrees and hence enforceable, whilst rejecting the objections of the Petitioner in both the cases. The Petitioner appealed this decision and the matter came before a division bench of the Calcutta High Court. The division bench disposed of the matter and the order were allowed to attain the finality. The Petitioner then filed the applications to raise objections regarding enforceability of the foreign awards in terms of Section 48 of the Arbitration Act before the learned single judge of the Calcutta High Court. The learned single judge despite noting that the fresh petitions were not maintainable given they had already been adjudicated upon and thereby precluded by the rule of *res judicata* (the doctrine of claim preclusion), went on to evaluate the petitions on merit and ruled against the Petitioner once again. Pursuant to the above, the Petitioner approached the Supreme Court with special leave petitions appealing the decision of the learned single judge of the Calcutta High Court and the following issue came up for determination:

Issue

Whether it was open to the Petitioner to raise grounds regarding enforceability of the foreign awards despite the judgment by the single judge of Calcutta High Court and the subsequent rejection of special leave petition upholding the judgment?

Arguments

The Petitioner argued the following points under the scheme of Section 48 of the Arbitration Act:

1. That the objections before the single judge of the Calcutta High Court were limited to the questions of maintainability of the execution case on grounds as were urged at the relevant time and not in reference to the enforceability of the subject foreign awards as such.

2. That the subject foreign awards were vitiated by fraud and violated the terms of the original contracts and thus were violative of Section 28(3) *(which provides that arbitral tribunal to take into account the terms of the contract and trade usages applicable to the transaction)* of the Arbitration Act.

3. That the arbitral tribunal had created an issue in respect of which there was no pre-existing dispute and made out a new case which was not made by the claimant in the statement of claim.

4. That the foreign awards violate the principles of natural justice and went against the fundamental policy of Indian law.

The Respondents argued the following points:

1. That the applications filed by the Petitioner were not maintainable as these were precluded by the doctrine of *res judicata,* issue estoppel and cause of action estoppel.

2. That conduct of the Petitioner was indicative of an attempt to overreach the Court.

3. That on merit, the grounds urged by the Petitioner would not come under the scope of Section 48 of the Arbitration Act, which is limited and does not require the Court to look at foreign awards. These grounds could at best be urged by the Petitioner against the foreign award in an appeal filed against the award as governed by the UK Arbitration Act, 1996.

4. That the claims of fraud raised by the Petitioner against the arbitral tribunal and the Respondents were baseless and only raised as a means of protracting the recovery of dues.

5. That the Petitioner claim regarding violation of public policy as under Section 48 of the Arbitration Act were untenable based on the established case law in the field.

Observations of the Supreme Court

The Supreme Court observed that though the Petitioner had not filed any formal application to raise the issue of maintainability of the execution case, but the learned single judge of the Calcutta High Court had permitted the Petitioner to orally urge “all available grounds”. Additionally, in the special leave petitions filed before the Supreme Court, the Petitioner had articulated questions of law and the grounds also in reference to the scope of Section 48 of the Arbitration Act which included the enforceability of the subject foreign awards. The learned single judge of the Calcutta High Court had made it amply clear that the foreign awards issue had been deemed to be decrees and thereby were enforceable. Moreover, the Supreme Court added that the grounds for maintainability of the

execution case as raised by the Petitioner was intrinsically linked to the question of enforceability of subject foreign awards.

The Supreme Court then went on to recognize that certain actions of the Petitioner were indicative of an attempt to overreach the Supreme Court and prevent the Respondent from claiming its dues under the foreign award. These include the Petitioner undergoing a change of name from LMJ International Limited to Sri Munisuvrata Agri International Limited within 3 days of the Respondent laying a claim on it permitting the withdrawal of part of deposited amount under the contract, and moving the National Company Law Tribunal in an application under Section 10 of the Insolvency and Bankruptcy Code, 2016, with the ostensible aim of forcing a moratorium period to prevent the Respondent from enjoying the fruits of the subject awards.

Decision of the Supreme Court

The Supreme Court ruled in favour of the Respondent and laid down the rule that the scheme of Section 48 of the Arbitration Act does not envisage a piecemeal consideration of the issue of the maintainability of the execution case concerning foreign award in the first place, and the issue of enforceability thereof. The Supreme Court noted that taking any other view would encourage a situation wherein successive and multiple rounds of proceedings would be encouraged in relation to execution of foreign awards. The bench dismissed the petitions with exemplary costs of INR 20,00,000 on the Petitioner.

VA View

The Supreme Court has emphasized that the underlying intent of the Arbitration Act is to circumscribe the supervisory role of the court in arbitral proceedings which predicated limited interference by the courts. Further, it also stressed that the objections raised by the Petitioner were in a quagmire of despondency and a desperate attempt to resist the enforceability of an enforceable award rather than there being any real challenge towards the maintainability of the petition.

This judgement has strengthened the legislative intent which provides for speedy disposal of the arbitration proceedings and further clarified the scope of review afforded to courts under the scheme of Section 48 of the Arbitration Act. The judgment in the current case has served to avoid successive and multiple challenges to foreign awards by ensuring that challenges of maintainability to execution cases would be examined simultaneously with issues regarding the enforcement of the foreign award.

III. Supreme Court: Fiduciary relationship between complainant and accused does not affect the presumption raised under Section 139 of the Negotiable Instruments Act

The Supreme Court in the case of ***Bir Singh v. Mukesh Kumar*** *(decided on February 6, 2019)* has held that a fiduciary relationship between a complainant and accused does not affect the presumption raised under Section

139 of the Negotiable Instruments Act, 1881 (**"NI Act"**). The Supreme Court also dealt with the issues of subsequent filing of a signed cheque and the exercise of revisional jurisdiction by courts.

Facts

Mukesh Kumar (**"Respondent" or "Accused"**) issued a cheque bearing Cheque No.034212 dated March 4, 2012, in the name of Bir Singh (**"Petitioner" or "Complainant"**) towards repayment of a 'friendly loan' of INR 15 lakhs, advanced by the Petitioner to the Respondent. On April 11, 2012, the Petitioner deposited the said cheque in his bank, but the cheque was returned unpaid with the endorsement 'Insufficient Funds'. After receiving an assurance for repayment, the cheque was re-presented to his bank on May 23, 2012, and it was once again returned unpaid with the remark 'Insufficient Funds'. On June 6, 2012, the Petitioner issued a legal notice to the Respondent directing the Respondent to pay the cheque amount. The said notice, sent by registered post, was according to the Petitioner, duly served on the Respondent. The Respondent neither replied to the notice nor paid the cheque amount to the Petitioner.

The Petitioner filed a criminal complaint against the Respondent, before the Judicial Magistrate First Class, Palwal (**"JMFC"**), under Section 138 of the NI Act. By a judgment and order dated February 2, 2015, the JMFC convicted the Respondent by sentencing him to undergo simple imprisonment for a period of one year and directing him to pay compensation of INR 15 lakhs to the Petitioner within one month from the date of the said judgment and order.

Being aggrieved, the Respondent filed a criminal appeal in the court of Additional Sessions Judge, Palwal. The appellate court upheld the conviction of the Respondent, confirmed the compensation of INR 15 lakhs directed to be paid to the Petitioner and reduced the sentence of imprisonment from one year to six months.

The Respondent filed a Criminal Revision Petition in the High Court challenging the judgment and order of the appellate court. The Petitioner also filed a Criminal Revision Petition challenging the reduction of the sentence from one year to six months.

By a common final judgment and order dated November 21, 2017, which is impugned before the Supreme Court, the High Court of Punjab and Haryana reversed the concurrent factual findings of the trial court and the appellate court, and acquitted the Respondent of the charge under Section 138 of the NI Act.

Issues

1. Whether a revisional court, in the exercise of its discretionary jurisdiction, can interfere with an order of conviction in the absence of any jurisdictional error or error of law?

2. Whether the payee of a cheque is disentitled to the benefit of the presumption under Section 139 of the NI Act, of a cheque duly drawn, having been issued in discharge of a debt or other liability, only because he is in a fiduciary relationship with the person who has drawn the cheque?

Arguments

The Respondent majorly relied on the argument that the Petitioner (who also happened to be the income tax consultant of the Respondent), had misused a blank signed cheque given to the Petitioner for deposit of income tax.

Arguments of the Petitioner were not discussed in the judgment.

Observations of the Supreme Court

The Supreme Court observed that as per the provisions of the Code of Criminal Procedure, 1973, the revisionary power of the High Court does not extend to the power to upset concurrent factual findings and re-interpret or re-analyze the evidence on record, especially in the absence of any perversity in the order.

The payee (Petitioner) is entitled to the benefit of the presumption under Section 139 of the NI Act regardless of the nature of the relationship between the payee of a cheque and its drawer, in the present case being a fiduciary one. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. The fact that the Petitioner is an income tax practitioner, he may not have advanced the loan, or may not have issued a receipt, is of no consequence to the law relating to the dishonor of a cheque and therefore the onus to rebut the presumption under Section 139 of the NI Act, that the cheque has been issued in discharge of a debt or liability is on the accused (Respondent).

The Supreme Court further observed that the presumption of issuance of a cheque in discharge of debt or liability is obligatory, as held by the Supreme Court in various judgements such as ***State of Madras v. Vaidyanatha Iyer [AIR 1958 SC 61], K.N. Beena v. Muniyappan and Another [(2009) 2 SCC 513],*** however this presumption is rebuttable by the accused provided the accused supplies compelling evidence that there is no debt or liability. The onus for rebutting this presumption must lie on the accused and cannot be shifted to the complainant, as erroneously held by the High Court.

Decision of the Supreme Court

The judgment and order of the High Court overturning the conviction of the Respondent was set aside and the appeals were allowed by the Supreme Court. The Respondent was convicted under Section 138 of the NI Act, and sentenced to a fine of INR 16 lakhs payable as compensation to the Petitioner.

VA View

The judgment has reinforced the jurisprudence of negotiable instruments, strengthening the presumption against the drawer of the cheque. Since the introduction of the NI Act and the reversal of the burden of proof against the drawer, there have been several attempts over the years to present new, cosmetically augmented arguments in an attempt to frustrate the efficacy of this legislation. This was yet another such attempt, foiled by the Supreme Court.

Apart from laying down a law on the effect of a fiduciary relationship between a drawer and a drawee, the court has also reiterated the principles of presumption, subsequent filling of an unfilled cheque, post dated cheques and revisional jurisdiction of courts, especially in criminal cases. This judgement will prevent frivolous arguments on the nature of relationships between the complainant and the accused in an NI Act case.

IV. Supreme Court: Former directors of a company under resolution process have a right to receive the resolution plans

The Supreme Court in the case of ***Vijay Kumar Jain v. Standard Chartered Bank and Others*** *(decided on January 31, 2019)* held that the former directors of a company under the corporate insolvency resolution process (**"CIRP"**) under the Insolvency and Bankruptcy Code, 2016 (**"Code"**) must be provided with the resolution plans to be discussed along with the notice of meeting of the Committee of Creditors (**"COC"**).

Facts

Vijay Kumar Jain (**"Appellant"**), an erstwhile director of Ruchi Soya Industries Limited, a company under CIRP approached the National Company Law Tribunal, Mumbai (**"NCLT"**), seeking the right to participate in the meetings of the COC and to access all the documents and/or information including the resolutions plans being discussed in the meetings of the COC, for effective participation in the meetings.

The NCLT on August 1, 2018 held that the directors have the right to attend the COC meetings as per Section 24 of the Code. It also stated that since resolution plans are confidential, the directors could not receive them. In the first appeal, the decision of the NCLT was upheld by the National Company Law Appellate Tribunal (**"NCLAT"**) on August 9, 2018, after which the Appellant then approached Supreme Court, to challenge the decision of the NCLAT.

Issue

Whether the erstwhile directors of the company under CIRP have a right to access to all documents including the insolvency resolution plans?.

Arguments

The Appellant argued that as per Section 24(3) of the Code and Regulation 21 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"CIRP Regulations"**), access to the resolution plans and other relevant documents under consideration at these meetings must be supplied together with the notice of the meeting to members of suspended Board of Directors. Regulation 21(3) of the CIRP Regulations provides that notice of the meeting shall contain the copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting. A dichotomy was drawn between the COC and meetings of the COC and it

was stated that since the erstwhile board of directors are participants in the meetings of the COC, despite not having voting rights, they should be given the necessary documents so that their view can be considered by the COC. The Appellant also argued that, under Section 31(1) of the Code, once the NCLT passes the resolution plan, it is binding on the corporate debtor together with guarantors and other stakeholders. The erstwhile board of directors consists of people who may have given personal guarantees for the debts owed by the corporate debtor, and thus will be bound by the resolution plan. Therefore, they have a vital stake in what ultimately gets passed by the COC.

On the other hand, the resolution professional asserted that the reason for participation of the erstwhile board of directors in meetings of the COC is to furnish information to them to assess the financial position of the corporate debtor. They are not in the position of other creditors, who may go into merits and demerits of resolution plans as such resolution plans only affect creditors. Therefore, it is not necessary to furnish the resolution plans to them. Further, the resolution professional argued that Regulation 7(2)(h) of the IBBI (Insolvency Professional) Regulations, 2016 states that confidential information can only be shared with the consent of all the relevant parties. Further, the confidential information contained in proposed resolution plans can only be shared with members of the COC after receiving an undertaking from them under the said regulations.

Observations of the Supreme Court

With respect to the former members of the board of directors, the Supreme Court examined the provisions of the Code and the CIRP Regulations and observed that the statutory scheme makes it clear that though the erstwhile board of directors are not members of the COC, yet they have a right to participate in every meeting held by the COC, and also have a right to discuss all resolution plans that are presented at such meetings under Section 25(2)(i) of the Code.

Further, every participant is entitled to a notice of every meeting of the COC. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting under Regulation 21(3)(iii) of the CIRP Regulations. The Supreme Court stated that resolution plans can be included in the wide interpretation of the expression *"documents".* The resolution plans are *"matters to be discussed"* at such meetings, and the erstwhile board of directors are *"participants"* who will discuss these issues.

Decision of the Supreme Court

The Supreme Court held that all relevant documents, including the resolution plan has to be sent to all participants of the COC meeting which would include members of the erstwhile board of directors. Such copy can only be sent to participants because they are vitally interested in the outcome of such resolution plan, and may, as

persons aggrieved, file an appeal against the NCLT's order approving the plan to the NCLAT under Section 61 of the Code. With respect to confidential information, the resolution professional can take an undertaking from members of the erstwhile board of directors, as has been taken in the facts of the present case, to maintain confidentiality.

VA View

This is a welcome judgement, and greatly clarifies the law with regard to the director's rights within the COC. Providing them with all relevant information prior to the meetings will ensure that the meetings of the COC, and consequently, the decisions taken by the COC are transparent in nature. It has been clarified that even if they do not have any vote, a right to be heard in the COC meetings includes a right to be provided with all the information necessary to form an informed opinion about the matters to be discussed in the COC meetings.

Further, the Supreme Court also delved into the issue of operational creditors being furnished with a copy of the resolution plans by stating that it is imperative that even though they are only participants in COC meetings with no voting rights, yet they have a right to be given a copy of the resolution plans before such meetings are held, with a view to safeguarding their interest.

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