

ACUITY **LAW**

**INSOLVENCY LAW**  
**NEWSLETTER**

**June 2022**

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## ABOUT ACUITY LAW

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic lawyers/ professionals led by Souvik Ganguly, Gautam Narayan, Deni Shah and Renjith Nair who have deep and diverse experiences in their chosen areas of practice. We advise Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors, and government agencies in various transactions in and outside India.

Acuity Law takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided into three departments. The Corporate practice is led by Souvik Ganguly, the Global Trade and Tax practice is led by Deni Shah and the Disputes practice is led by Gautam Narayan with assistance from Renjith Nair.

As part of the Corporate practice, Acuity Law advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency Law;
- Private Equity and Venture Funding;
- Employment and labour laws;
- Commercial and trading arrangements; and
- Corporate Advisory

As part of the Global Trade and Tax practice, Acuity Law advises on:

- Cross-border tax planning and jurisdiction analysis
- Strategies for acquisitions, mergers, divestitures, diversification or consolidation of businesses
- Inbound and outbound investment structuring
- Endowment planning / wealth management strategies
- Global Trade & Customs laws, including foreign trade policy
- International supply chain optimization
- Goods & Services Tax and other Indirect taxes

As part of the Disputes practice, Acuity Law advises and represents clients on domestic and cross - border:

- Civil disputes;
- Criminal law matters; and
- Arbitration matters

Acuity Law actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law, please visit our website [acuitylaw.co.in](http://acuitylaw.co.in) or write to us at [al@acuitylaw.co.in](mailto:al@acuitylaw.co.in).

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## INTRODUCTION

This newsletter covers key updates about developments in insolvency law during the month of June 2022.

We have summarized the key judgments passed by the Supreme Court (**SC**), the National Company Law Appellate Tribunal (**NCLAT**), and the National Company Law Tribunal (**NCLT**) and amendments notified by the Insolvency and Bankruptcy Board of India (**IBBI**). Please see the summary of the relevant regulatory developments below.

### 1) RESOLUTION PROFESSIONAL SHOULD INCLUDE CLAIMS OF ALL HOMEBUYERS IN THE INFORMATION MEMORANDUM REGARDLESS OF DELAY IN FILING CLAIMS

**Matter:** *Puneet Kaur v. KV Developers Private Limited*

**Order date:** 01 June 2022

#### Summary:

Corporate insolvency resolution process (**CIRP**) of KV Developers Private Limited was initiated by the NCLT. The claim of certain homebuyers was rejected by the Resolution Professional (**RP**) as being filed belatedly. Pursuant to the same, the homebuyers preferred an application before the NCLT. However, the same stood rejected on the ground that the claims were belatedly filed. Being aggrieved, the homebuyers filed the present appeal before the NCLAT.

The issue that came up before the NCLAT was whether the RP is obliged to include the claims of the homebuyers although no such claims have been filed? and, Whether the RP is obliged to include all the details of the homebuyers in the information memorandum that are reflected in the records of the corporate debtor?

The NCLAT, noting the difficulty of the homebuyers to file their claims opined that it is not necessary for all the homebuyers who reside in different jurisdictions to be aware of the CIRP of the corporate debtor and file their claims on time. Therefore, such delay in submission of claims is a common practice in real estate projects. Further, the NCLAT held that the claims not filed by the homebuyers ought to be included in the information memorandum by the RP if the same is reflected in the records of the corporate debtor. While noting the objective of CIRP, the NCLAT opined that if such claims are not considered by the RP, it would lead to inequitable and unfair resolution and defeat the very purpose of CIRP. Thus, the NCLAT directed the RP to submit details of belated claims of the homebuyers to the successful resolution applicant, after which the resolution applicant shall prepare an addendum to the resolution plan and place before the Committee of Creditors (**CoC**) for consideration.

### 2) NCLT / NCLAT CANNOT SIT IN AN APPEAL OVER THE COMMERCIAL WISDOM OF THE COMMITTEE OF CREDITORS TO WITHDRAW INSOLVENCY PROCEEDINGS OF THE CORPORATE DEBTOR

**Matter:** *Vallal RCK v. Siva Industries and Holdings Limited and Ors.*

**Order date:** 03 June 2022

#### Summary:

CIRP of Siva Industries and Holdings Limited (**Siva Industries**) was initiated by the NCLT. As no resolution plan was approved by the CoC, the RP filed an application for initiation of liquidation. Meanwhile, Vallal RCK, who is the promoter of Siva Industries, filed a settlement application before the NCLT showing its willingness to enter a one-time settlement plan (**Settlement Plan**). This Settlement Plan was approved by 94.23% voting share of the CoC. In light of this, the RP filed an application before the NCLT for withdrawal of CIRP.

However, the NCLT rejected the withdrawal application taking the view that the Settlement Plan was a 'Business Restructuring Plan' and liquidation of Siva Industries was ordered at a later date. The NCLT's order was upheld by the NCLAT, and present appeal was preferred before the SC.

The issue that came up for the consideration of the SC was whether the NCLT /NCLAT can sit in an appeal over the commercial wisdom of CoC to withdraw CIRP of a corporate debtor? The SC noted that under the Insolvency and Bankruptcy Code, 2016 (**Code**), CIRP can be withdrawn only if consented by 90% votes of the CoC. SC further observed that the main object of the Code

is to permit the corporate debtor to continue as a going concern and at the same time, pay the dues of the creditors to the maximum. The SC held that as the Settlement Plan had obtained the required 90% approval of the CoC, and this commercial wisdom of the CoC had to be given paramount importance. It cannot be watered down in any circumstance. On this backdrop, the SC held that the NCLT/ NCLAT cannot sit in appeal over the commercial wisdom of the CoC. Accordingly, the SC set aside the order of the NCLAT and allowed the application for withdrawal of the CIRP.

### 3) IBBI INTRODUCES CHANGES TO CIRP REGULATIONS

**Notification:** *IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022*

**Notification date:** 15 June 2022

#### **Summary:**

The IBBI notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2016 (**CIRP Regulations**) to make the process more efficient.

The key amendments are as follows:

- It is now mandated that an operational creditor shall furnish copies of relevant goods and service tax returns and copies of e-way bills in its application for initiation of CIRP.
- Amendment casts a duty upon the corporate debtor, its promoters or any other person associated with the management of the corporate debtor to provide the information in the form, manner and within timelines as prescribed by the RP.
- Amendment casts a duty upon the creditors to share information regarding the assets and liabilities of the corporate debtor, the financial statements and other relevant financial information to help the RP in preparation of information memorandum and filing of avoidance transaction application.
- Amendment mandates that the resolution plan must provide for the manner in which avoidance applications will be pursued after the approval of the RP and the manner in which the proceeds, if any, of such proceedings shall be distributed.
- Amendment gives discretion to the CoC to appoint a third valuer if there is a significant difference in valuation of the corporate debtor.

### 4) BID FOR CORPORATE DEBTOR AS A 'GOING CONCERN' IS TO BE GIVEN PREFERENCE OVER STANDALONE BID

**Matter:** *Arrhum Tradelink Private Limited v. Vineeta Maheshwari, Liquidator of Kaneria Granito Limited & Ors.*

**Order date:** 20 June 2022

#### **Summary:**

The liquidator of Kaneria Granito Limited (**KGL**) decided to sell the company's assets by e-auction. It adopted the following two methods simultaneously: (i) to sell the assets of KGL on a stand-alone basis, and (ii) to sell KGL as a going concern. One of the conditions of e-auction was that a person taking part in the auction process has to offer INR 500,000 more than what has been offered by the earlier bidder. Torrecid India Private Limited (**First Bidder**) had offered INR 384 million to purchase the assets of KGL on stand-alone basis, and within two minutes, the same amount was offered by Arrhum Tradelink Private Limited (**Second Bidder**) to purchase KGL as a going concern. As the Second Bidder had not raised the bid amount by INR 500,000 intermittently which was mandated by the tender document, its bid was rejected, and the First Bidder was declared as the successful bidder. The Second Bidder filed an application before the NCLT seeking directions from the liquidator to declare the Second Bidder as the successful bidder.

The NCLT held that the object of the Code is to maximize the value of the assets of the corporate debtor and to promote entrepreneurship apart from clearing the debts of the creditors. The NCLT further held that it is the duty of the liquidator to protect the existence of a corporate debtor as far as possible and avoid its death by ultimately pushing the corporate debtor into dissolution. For such reasons, the NCLT ordered the liquidator to declare Second Bidder as the successful bidder after it had deposited a sum

of INR 384 million within seven days from the date of the order, failing which the liquidator was to issue a certificate of sale in favor of the First Bidder.

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