

ACUITY **LAW**

INSOLVENCY
LAW NEWSLETTER

March 2022
acuitylaw.co.in

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 or write to us at al@acuitylaw.co.in.

The information contained in this document is not legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

INTRODUCTION

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

We have summarized the key judgments passed by the Supreme Court (**SC**) and National Company Law Appellate Tribunal (**NCLAT**). Please see the summary of the relevant regulatory developments below.

1) **SC ALLOWS HOMEBUYERS TO WITHDRAW INSOLVENCY PROCEEDINGS AGAINST THE BUILDER EVEN AFTER THE CONSTITUTION OF THE COMMITTEE OF CREDITORS (CoC)**

Matter: Amit Katyal v. Meera Ahuja & Others

Order dated: 3 March 2022

Summary:

Jasmine Buildmart Pvt. Ltd. i.e., the corporate debtor (**Jasmine**) introduced a Gurgaon based housing project i.e., Krrish Provence Estate. The homebuyers of Krrish Provence Estate made an application for initiation of corporate insolvency resolution process (**CIRP**) against Jasmine before the National Company Law Tribunal (**NCLT**) as Jasmine could not complete the project even after a period of eight years. Additionally, the homebuyers sought a refund of approximately INR 69 million on the grounds of inordinate delay. The NCLT admitted the said application and appointed an interim resolution professional (**IRP**) and declared moratorium.

Jasmine challenged the order of admission before the NCLAT and tried to settle the matter with the homebuyers during the course of the appeal. However, the settlement failed and the NCLAT affirmed the order of the NCLT. The IRP issued a public announcement and constituted the CoC. Thereafter, Jasmine preferred an appeal before the SC. During the hearing, the homebuyers submitted that they have entered into a settlement with Jasmine on the following conditions (a) that it shall complete and hand over the possession of flats within one year and (b) it will refund an amount of approximately INR 33 million to the homebuyers. Accordingly, the homebuyers made an application under the provisions of the Constitution of India (**Constitution**) and the NCLT Rules, 2016 for withdrawal of the CIRP.

The SC noted that, (a) out of 128 homebuyers, 82 home buyers have agreed to the settlement with Jasmine and have no objection to the withdrawal of the CIRP proceedings, (b) as per the Insolvency and Bankruptcy Code, 2016 (**Code**), an application for withdrawal of CIRP may be allowed only with 90% approval of the CoC. However, the SC in another case held that the relevant provision regarding the withdrawal of CIRP is directory, depending on the facts of each case, (c) the CoC comprises 91 members, of which 70% are homebuyers who are agreeable for the CIRP proceedings being set aside, and (d) the legislative intent behind the amendments to the Code is to secure, protect and balance the interests of all home buyers.

Considering the above, the SC opined that it was a fit case to exercise powers under the relevant provisions of the Constitution and the NCLT, Rules 2016, and permitted the withdrawal instead of relegating the matter back to the NCLT.

2) **WHETHER CLAIM FOR PAYMENT OF LICENSE FEE FOR USE AND OCCUPATION OF PREMISES FOR COMMERCIAL PURPOSES AMOUNTS TO A CLAIM OF 'OPERATIONAL DEBT'**

Matter: Jaipur Trade Exposure Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd.

Order date: 7 March 2022

Summary:

Jaipur Trade Exposure Pvt. Ltd. (**JTEPL**), the appellant, entered into a license agreement (**Agreement**) with Metro Jet Airways Training Pvt. Ltd. (**MJATPL**) for the purposes of running an educational establishment on the premises owned by JTEPL. The Agreement was entered for an initial period of five years at an agreed fee of INR 4 lakhs per month. It is the case of JTEPL that a part payment was received by it towards the outstanding license fee in November 2017 and thereafter some cheques, amounting to INR 20 Lakhs were handed over to it by MJATPL. The cheques which were handed over by MJATPL were dishonored and despite several reminders, MJATPL did not clear the outstanding payment towards licensee fee. Consequently, a demand notice was issued by JTEPL to MJATPL claiming outstanding dues along with the interest amount. Since no reply was received to the said demand notice, JTEPL preferred an application before the NCLT. The application was rejected by NCLT on the ground that

a claim arising out of a grant of license to use immovable property does not fall within the category of 'operational debt'. Aggrieved by the findings of the NCLT, JTEPL preferred an appeal before NCLAT.

The NCLAT considering the aspects of the present matter analyzed the definitions of 'operational creditor' and 'debt' and observed that having taken the premises for commercial purposes from JTEPL for the purposes of running an educational institute, the parties are included under the expression 'provision of services'. It further held that the failure to pay the license fee by MJATPL is nothing but a 'debt' which has been defaulted. However, the NCLAT observed that a coordinate bench of the NCLAT had taken a divergent view in the matter of M. Ravindranath Reddy v. G. Kishan & Ors. Accordingly, the NCLAT referred the issue to a larger bench of three judges to resolve the conflict in opinions.

The matter is now pending before the chairperson on the administrative side for constitution of a larger bench.

3) NCLAT DIRECTS FULL PAYMENT OF PROVIDENT FUND DUES TO THE EMPLOYEES

Matter: Sikander Singh Jamuwal v. Vinay Talwar & Ors.

Order date: 11 March 2022

Summary:

CIRP was initiated against Applied Electromagnetics Pvt. Ltd. (**Corporate Debtor**) by an employee. The resolution professional appointed by the CoC verified the liabilities of the Corporate Debtor to be INR 685 million. The resolution applicant proposed an amount of INR 129.9 million towards settlement of all past dues and liabilities of the Corporate Debtor. The amount computed for payment of provident fund by the relevant authority was INR 13 million approximately, whereas the resolution applicant had proposed INR 7.8 million for the same under the resolution plan. The resolution plan was approved by the NCLT. An appeal was made by an employee challenging the approval of the resolution plan before the NCLAT.

It was contended by the employee that (a) the resolution plan has not provided for payment of the entire provident fund dues, (b) financial creditors have been paid much more than the operational creditors, and (c) the resolution plan is discriminatory and violates provisions of the employees' provident fund law. On the other hand, the financial creditors contended that it is the CoC's prerogative to decide the quantum of payment to each class of creditors. Further, dues of workman and employees were proposed at 7.5% but, however, on the request of the operational creditor's representative, it was enhanced 12.67%.

The NCLAT analyzed the relevant provisions of the Code relating to the approval of a resolution plan by the CoC, the factors to be considered during such approval and the provisions of the employees' provident fund law. The NCLAT observed that the resolution plan must not contravene any provisions of the law for the time being in force. Further from the employees' provident fund law, the resolution applicant is liable to pay the contribution and other sums due from the employer. The NCLAT also noted that (a) this is not a commercial wisdom of the CoC as compliance of law must be ensured and (b) provident fund dues are not assets of the Corporate Debtor.

Accordingly, the NCLAT directed the resolution applicant to release full provident fund dues in terms of the provisions of the provident fund law immediately by releasing the balance amount that is not considered under the resolution plan.

Our co-ordinates:

Mumbai

506 Marathon Icon
Off Ganpatrao Kadam Marg
Lower Parel, Mumbai – 400013

Email: al@acuitylaw.co.in