

ACUITY **LAW**

INSOLVENCY

LAW NEWSLETTER

October 2021

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 the Insolvency Law during the month of October 2021.

We have summarized the key judgments passed by the Supreme Court of India (**SC**), National Company Law Appellate Tribunal (**NCLAT**), the National Company Law Tribunals (**NCLT**) and the amendments in the Insolvency and Bankruptcy Code, 2016 (**Code**) by the Government of India. Please see below the summary of the relevant regulatory developments.

1) GOVERNMENT AMENDS THE RULES RELATING TO INSOLVENCY OF CORPORATE DEBTOR TO ENSURE TIME BOUND INSOLVENCY PROCESS.

Notification dated: 30 September 2021.

The Insolvency and Bankruptcy Board of India (**IBBI**) has introduced amendments to the IBBI (Resolution Process for Corporate Persons) Regulations, 2016. In order to address the issue of delays in the corporate insolvency resolution process (**CIRP**), modifications in the invitation of expression of interest, the request for resolution plan, the evaluation matrix, and the resolution plan will now only be permitted once. Further, the amendments mandate that the Committee of Creditors (**CoC**) cannot consider resolution plans that are received beyond the specified period or received from someone outside the final prospective applicants' list or is not in accordance with law.

The resolution professional can now use a challenge mechanism to allow resolution applicants to improve their resolution plans. The challenge mechanism has been introduced to improve transparency of the CIRP while also resulting in maximization of value of the corporate debtor.

Please click [here](#) to read our detailed note on the amendment.

2) GOVERNMENT AMENDS THE RULES RELATING TO LIQUIDATION OF CORPORATE DEBTOR.

Notification dated: 30 September 2021.

IBBI has introduced amendments to the IBBI (Liquidation Process) Regulations, 2016 largely increasing the scope of the role played by the Stakeholders Consultation Committee (**SCC**). Now the SCC can also advise the Liquidator on the appointment of professionals and their remuneration, and also on the sale process to be adopted by the Liquidator, i.e., manner of sale, pre-bid qualifications, reserve price, earnest money, marketing strategy, etc. The Liquidator will also have to place before the SCC in the first SCC meeting the decisions taken prior to the SCC's constitution. If the Liquidator does not follow any advice given by SCC or rejects the highest bid submitted, then the reasons for the same must be mentioned in the next progress report.

Also, earlier the representative of each class of stakeholder was selected based on highest claim. However now, the representative in the SCC shall be selected by a majority vote of present and voting stakeholders of that class. The amendment has introduced certain conditions with respect to the participation fee and earnest money deposit requirements during the sale of assets by the Liquidator. Now the Liquidator cannot require a non-refundable deposit or fee for participation in an auction. Further the amendment also states that the earnest money deposit must not exceed 10% (ten percent) of the reserve price.

Please click [here](#) to read our detailed note on the amendment.

3) IBBI TO NOW PUBLISH ALL PUBLIC NOTICES OF AUCTIONS ON ITS ONLINE PLATFORM

Notification dated: 30 September 2021

To encourage participation of buyers and to improve visibility of liquidation of assets, the IBBI has announced a centralized electronic platform for publishing notices of auctions. The Liquidators are now required to publish a notice of auction on ibbi.gov.in from 01 October 2021.

4) OPERATIONAL CREDITORS CAN BE CLASSIFIED INTO DIFFERENT CLASSES FOR DECIDING THE WAY IN WHICH THE MONEY IS TO BE DISTRIBUTED TO THEM.

Matter: Gail India Ltd. v Ajay Joshi (Resolution Professional of Alok Industries Ltd. & Ors.)

Order Dated: 04 October 2021

In the present case, the order of the NCLT, Ahmedabad Bench, which had approved the resolution plan in which only operational creditors of Alok Industries Ltd. having dues less than INR 300,000 were paid in full, while the remainder got no payment, was challenged before the NCLAT. Gail India Ltd., an operational creditor with a claim of INR 5.07 billion, challenged the order claiming that the entire resolution plan is unreasonable and arbitrary as it fails to treat equals as equal, and is not as per the provisions of the Code.

The NCLAT noted that the average liquidation value of Alok Industries Ltd. was around INR 44.3 billion, the total admitted financial claim was INR 295.2 billion and the total financial outlay in terms of the resolution plan was INR 62.5 billion. So, the liquidation value will be exhausted for the payment of the insolvency resolution process costs, workmen dues and the dues to be paid to the financial creditors, which are to be paid in priority to operational creditors. Although operational creditors were entitled to no payment, the resolution applicant had provided for the full payment of INR 483 million for three hundred and fifty-seven operational creditors with admitted claims up to INR 300,000.

The NCLAT opined that there is no embargo under the Code on classification of operational creditors into separate/ different classes for deciding the way in which the money is to be distributed to them by the CoC. The NCLAT also opined that the CoC has the final discretion in relation to the amount to be paid and quantum of money to be paid to a certain category or the incidental category of creditors, and that the NCLAT or NCLT has no jurisdiction to gauge the 'commercial wisdom' of the CoC. Consequently, the NCLAT dismissed the appeal and upheld the order passed by NCLT while observing that classification of operational creditors is allowed under the Code.

5) ONCE A RESOLUTION PLAN IS APPROVED BY THE COC, NO FRESH PLANS CAN BE ENTERTAINED.

Matter: Amanat Randhawa Hotels Pvt. Ltd. v. Shashi Kant Nemani and Ors.

Order Dated: 07 October 2021

Summary:

In the present case, the NCLT, New Delhi Bench dismissed an application that was filed by an unsuccessful resolution applicant seeking directions to consider its Expression of Interest (**EoI**). This application was filed after another resolution plan was already approved by the CoC and an application seeking final approval of the resolution plan by the NCLT was pending.

This order of the NCLT was appealed before the NCLAT where the unsuccessful resolution applicant contended that the invitation of EoI was not widely published by the resolution professional as required under the Code, and that it had sent an e-mail to the resolution professional for consideration of its plan, however, there was no response to the same. The NCLAT observed that a resolution plan has already been approved by the CoC by 100% (one hundred percent) voting share after the consideration of 9 (nine) plans presented before it. Moreover, the NCLAT observed that the appellant had never participated in the EoI. Based on this, the NCLAT opined that granting of any relief to the unsuccessful resolution applicant would delay the timelines under the Code and upheld the NCLT's order refusing to entertain any late unsolicited bids. NCLAT held that once a resolution plan is approved by the majority of the CoC as provided under the Code, no fresh plans can be entertained in the intervention of an already approved resolution plan.

6) THE PERIOD OF LIMITATION FOR FILING APPEAL AGAINST AN ORDER OF THE NCLT WILL START AS SOON AS THE ORDER IS PRONOUNCED AND NOT FROM THE DATE WHEN THE ORDER IS UPLOADED ON THE WEBSITE.

Matter: V. Nagarajan v. SKS Ispat and Power Ltd.& Ors.

Order Dated: 22 October 2021

Summary

In the present case, the NCLT, Chennai Bench's order dismissing an application of Mr. V. Nagarajan (**Appellant**) was pronounced in open court on 31 December 2019, but the copy of the order was uploaded on NCLT's website first on 12 March 2020 (with an error) and then on 20 March 2020 (corrected copy). Though the Appellant applied for a certified copy of the order on 23 March 2020, the same was not received on account of the COVID-19 induced national lockdown. The appeal filed by the Appellant before the NCLAT on 08 June 2020, challenging the NCLT's order, was dismissed on the grounds that the appeal has been filed beyond the 30 (thirty) day limitation period under the Code and is therefore barred by limitation.

The Appellant then approached the SC stating that the clock of limitation should start running only after issuance of the certified copy of order in accordance with the law, and not from date of pronouncement of order. The SC noted that the Code mandates a limitation period for appeals to be 30 (thirty) days extendable by 15 (fifteen) days, whereas the Companies Act, 2013 provides for a limitation period of 45 (forty-five) days "*from the date the order is made available to the aggrieved party.*" The SC opined that the Code is a complete code and will have an overriding effect on Companies Law, 2013, and therefore the period of limitation under the Code will prevail over that of the Companies Act, 2013. Further, the conscious absence of the phrase "*from the date the order is made available to the aggrieved party*" from the Code shows that the legislative intent was not to extend the limitation period for filing an appeal until a certified copy of the order is made available to an aggrieved party. Accordingly, the SC upheld the NCLAT's order and held that the limitation period under the Code for filing an appeal will start running from the date of pronouncement of order and not the date on which the order is uploaded on the website or certified copy is made available to a party.

Our co-ordinates:

Mumbai

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

Email: al@acuitylaw.co.in