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Who would own the assets of the Corporate Debtor, which have not been disclosed as part of the information memorandum?

SPS Steel Rolling Mills v. Central Bank of India

The Insolvency and Bankruptcy Code, 2016 (“IBC”) introduced a structured, time-bound legal framework that has significantly reshaped corporate insolvency resolution. It streamlines insolvency and reorganization processes, emphasizes maximizing asset value, and seeks to maintain the corporate debtor as a going concern. A key component of the IBC regime is the process for approving and implementing resolution plans designed to revive financially distressed companies that have defaulted on their financial obligations.

1. Brief Facts

An application for initiation of the corporate insolvency resolution process (“CIRP”) was filed by Allahabad Bank against SPS Steel Rolling Mills (“Appellant/Corporate Debtor”). The Adjudicating Authority approved the resolution plan submitted by Shakambari Ispat and Power Limited. The management and assets of the Appellant were taken over by Shakambari Ispat and Power Limited as the successful resolution applicant and further, the resolution plan was implemented leading to the clearing of dues by the Appellant.

Subsequently, the Appellant found two fixed deposit receipts (“FDR/s”) with two banks i.e., Central Bank of India and the Indian Overseas Bank which had neither been claimed or disclosed during the preparation of the information memorandum on the basis of which resolution plans are submitted. The FDR with Indian Overseas Bank was lying as margin money against the bank guarantees issued by the bank. Whereas the FDR with Central Bank of India, was adjusted by the bank towards its own dues post implementation of the resolution plan. The Appellant requested both banks to release the FDRs. While the Indian Overseas Bank released a part of the amounts lying with them, they later disputed the discharge of the bank guarantees.

Being aggrieved with the conduct of the banks in failing to release the FDRs, the Appellant filed applications before the National Company Law Tribunal (“NCLT”) under Section 60(5) of the IBC seeking directions against both the banks (collectively referred to as the “Respondents”) to credit the FDRs with interest at commercial rates in favor of the Appellant. The NCLT rejected the applications and refused to provide the FDRs to both the Appellant and the Respondents.

The NCLT reasoned that if the information memorandum contained the details of FDRs, the resolution plan would have been enhanced, and all the creditors would have been paid accordingly. Further, the NCLT directed the Appellants to refund the amount received from Indian Overseas Bank and directed for the matter to be decided by the erstwhile Committee of Creditors as per their commercial wisdom.

2. Issue considered by the NCLAT

The order of the NCLT was challenged by the Appellant before the National Company Law Appellate Tribunal ("NCLAT") with the primary issue being who would own the assets of the Corporate Debtor, which did not form part of the information memorandum.

3. Contentions before the NCLAT

The Appellant contended that the FDRs had been deposited as a margin against issuance of bank guarantees and since then, all the bank guarantees had expired. Further, the Respondents were members of the Committee of Creditors ("CoC") and had received their dues in accordance with the approved resolution plan. Reliance was placed by the Appellants on the landmark judgement of Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC¹ to contend that that the Corporate Debtor cannot be saddled with uncertain liabilities arising in future. However, the same principal may not be applicable to the assets which may come to the notice of the Corporate Debtor post the approval of the Resolution Plan.

On the other hand, the Respondents submitted before the NCLAT that since the FDRs were not made part of the information memorandum and were discovered at a later time, the Appellants cannot claim the same as they had been adjusted to the bank dues as per the terms of sanction. While it was conceded that no burden of new claims can be passed upon the successful resolution applicant running the corporate debtor, it was contended that if there are any newly discovered assets, then such assets should be considered in a similar way and by applying similar principles as applicable to the liability side. Since these FDRs are treated as 'contingent assets' and the resolution plan is silent regarding the same, the Appellant has no claim over it.

4. Findings of the NCLAT

After considering the submissions put forth by the Appellant and the Respondents, the NCLAT held as follows:

- a. **Nature of Margin Money:** Relying on the precedent set in Indian Overseas Bank vs. Arvind Kumar, the NCLAT noted that since the bank guarantees had expired, the margin money could not become the property of the banks and logically must be viewed as the assets of the Corporate Debtor. The banks had no right to "adjust" the FDRs after the resolution plan had been fully implemented.
- b. **Nature of Margin Money:** Relying on the precedent set in Indian Overseas Bank vs. Arvind Kumar², the NCLAT noted that since the bank guarantees had expired, the margin money could not become the property of the banks and logically must be viewed as the assets of the Corporate Debtor. The banks had no right to "adjust" the FDRs after the resolution plan had been fully implemented.
- c. **Regulations on resolution process:** The NCLAT observed, that while the purpose of the information memorandum under Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulations") is to contain all relevant information and act as a comprehensive document for guidance of the resolution applicant, the word 'contingent asset' is conspicuously absent. The NCLAT stated that 'contingent assets' are assets whose existence may be confirmed at a future date by uncertain events. Generally, contingent assets are not recognised in the financial statements of an entity to avoid recognising income that may never happen.
- d. **Omission Does Not Forfeit Assets:** The NCLAT stated that Regulations 37 (Resolution plan); 38 (Mandatory contents of the resolution plan) and 39 (Approval of resolution plan) of the Regulations neither bind the Resolution Applicant to submit details of assets being taken over nor does it dictate that assets omitted from the information memorandum are forfeited to the erstwhile CoC. It is entirely

¹ (2021) 9 SCC 657

² Company Appeal (AT)(Insolvency) No. 558 of 2020

possible for physical or financial assets to be skipped by the Resolution Professional by mistake, and this omission should not prejudice the right of the successful resolution applicant to claim them later.

- e. **Applicability of the Clean Slate Principle:** The NCLAT distinguished between undiscovered liabilities and undiscovered assets. The principle in Ghanashyam Mishra ensures a Corporate Debtor is not saddled with undiscovered liabilities arising in the future, but this principle of extinguishment does not apply to subsequently discovered assets of the Corporate Debtor post-approval.

5. Our Thoughts

While the ruling in SPS Steel Rolling Mills v. Central Bank of India serves the legitimate purpose of ensuring that inadvertent omissions in the information memorandum do not defeat the rights of the successful resolution applicant, it may also be capable of misuse if assets are deliberately or negligently excluded from disclosure during the preparation of the information memorandum and other relevant material on the basis of which resolution plans are prepared and subsequently sought to be characterized as undiscovered assets.

In such a scenario, material value may escape the scrutiny of the committee of creditors, thereby distorting the commercial basis of the resolution process and potentially conferring a benefit upon the successful resolution applicant. This may also dilute the centrality of the information memorandum as a disclosure document under the IBC framework and weaken the principle of transparency that underpins the CIRP.

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