

## ERGO

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### DISMISSAL OF APPLICATION FILED BY A RELATED-PARTY CREDITOR FOR INITIATION OF CIRP

24 August 2022 On 27 July 2022, the National Company Law Appellate Tribunal (NCLAT) in *Zoom Communications Private Limited v Par Excellence Real Estate Private Limited*, Company Appeal (AT) (Insolvency) No. 619 of 2022 upheld the order of the National Company Law Tribunal, New Delhi (NCLT) dated 17 May 2022 dismissing an application to initiate Corporate Insolvency Resolution Process (CIRP) on the ground that the debt appeared suspicious and collusive in nature.

#### **Background**

Zoom Communications Private Limited (Appellant), the Operational Creditor was engaged by Par Excellence Real Estate Private Limited (Respondent) for the purpose of procuring a loan. Over alleged disputes arising from the non-payment of the procurement fee, the Appellant sought for an application under Section 9 (Application) of the Insolvency and Bankruptcy Code 2016 (Code).

While adjudicating the Application, the NCLT took cognisance of the balance sheets for the financial year 2017-2018 as filed by the Respondent / Corporate Debtor and the existence of disclosures made by the Corporate Debtor in such balance sheets, recording the transaction with the Appellant as a 'related party transaction'. The NCLT further *suo motu* sought for the records of the Ministry of Corporate Affairs to determine the past directorships of Mr. Gulshan Kumar Jhurani, a sitting director of the Respondent and it was therefore identified that Mr. Jhurani was a member of the board of directors at the time of the transaction between the Appellant and Respondent.

The NCLT, as a result, of the above observation held that the transaction between related parties with a common directorship was suspicious and collusive, more so given the nature of the transaction being 'dues towards fees for the procurement of a loan'.

The NCLT further directed the issuance of a show cause to the Appellant, Respondent and Mr. Gulshan Kumar Jhurani as to why penalty need not be levied under Section 65(1) of the Code for fraudulent and malicious institution of proceedings.

#### **Finding and Observation of the NCLAT**

The NCLAT upheld the order of the NCLT with the following observations:

- The NCLT is correct in its view that '*the intention of a related party of initiating the CIR Process shall always raise eyebrows*' and therefore, upon a piercing of

the corporate veil, the Application under Section 9 of the Code instituted by the Appellant was liable to be dismissed.

- In furtherance of the above, the NCLAT observed that when both the Appellant / Operational Creditor through its common director Mr. Jhurani and the Respondent / Corporate Debtor were applicants to the default amount, it was incomprehensible that the Appellant / Operational Creditor can claim payment of fee for procuring the loan.
- The NCLT is correct in holding that on the mere consideration of the debt sought for under Section 9 being suspicious, the Application was liable to be dismissed.

The NCLAT with regard to the issuance of the show cause notice under Section 65(1) of the Code for fraudulent and malicious initiation of proceedings observed that the same may be considered by the NCLT without the influence of the order dismissing the Application.

### Comments

This judgement, in interpretation, possibly enlarges the scope of preferential transactions under Section 43 to the extent of vitiating transactions between related parties with the malicious intent of initiating CIRP proceedings under the Code. It further brings about a binding precedence with respect to related party transactions and resultant fraudulent initiation of CIRP, to a line of judgements that have allowed a discretionary observation over and above the two-year lookback period as prescribed under Section 43 of the Code.

The parties are entitled to file a statutory appeal to the Supreme Court of India in terms of the Code against this judgment.

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