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### CREDITOR INDUCTED TO COMMITTEE OF CREDITORS ON THE BASIS OF AN IMPROPERLY VERIFIED CLAIM: REMOVED BY NCLAT

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#### *Introduction*

The National Company Law Appellate Tribunal (NCLAT) in the case of P.M. Cold Store Pvt. Ltd. v Goouksheer Farm Fresh Pvt. Ltd. & Anr. (Company Appeal (AT) Insolvency No. 615 of 2020) urged the Insolvency and Bankruptcy Board of India (IBBI) to investigate the conduct of a Resolution Professional (RP). This was basis his failure to exercise necessary care and diligence in verifying the claims and scrutinising the documents submitted by one of the purported creditors. Emphasising on the responsibility of an RP to verify claims as per Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the Tribunal set aside the induction of that creditor to the Committee of Creditors (CoC) on the basis of an improperly verified and time barred claim.

#### *Facts and Background*

Upon initiation of the Corporate Insolvency Resolution Process (CIRP) pursuant to an admission order by the National Company Law Tribunal, Kolkata (Adjudicating Authority), the CoC was constituted by the Interim Resolution Professional (IRP) with P.M. Cold Store Pvt. Ltd. (Appellant) as the sole financial creditor in the CoC.

In a subsequent CoC meeting, the RP informed the Appellant that the CoC had been reconstituted with the admission of claim of another financial creditor i.e., New Hind Silk House Pvt. Ltd. (NHSH). On such admission, the voting share of the Appellant in the CoC was reduced from 100% to 25.07%.

Having been aggrieved by the aforesaid admission of NHSH's claim by the RP, the Appellant filed an application before the Adjudicating Authority. The Appellant contended that the claim filed by NHSH was suspicious given the discrepancies in the documents filed by NHSH with its claim form. The Appellant specifically contended that NHSH's dubious claim was admitted by the RP as a retaliation to the Appellant's previous filing of an interim application for replacement of the said RP.

The Adjudicating Authority dismissed the application filed by the Appellant and held NHSH's claim to be admissible. Against the said dismissal, the Appellant preferred an Appeal under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (IBC), before the NCLAT. The Appellant contended that the NHSH's claim was time barred and questioned the authenticity of the ledger account confirmations purportedly acknowledging debt on behalf of the Corporate Debtor (CD). It was, *inter alia*, submitted that purported signatures of CD's directors on the said acknowledgments

did not match with the signatures of the relevant directors, as available on the website of the Ministry of Corporate Affairs (MCA).

### **Judgement**

Upon appeal, having found NSHS's claim to be time barred, the NCLAT set aside the order of the Adjudicating Authority and directed that NHSH shall not be a member of the CoC. Key aspects of the judgement are summarised below:

#### Authenticity and veracity of documents filed by NHSH in support of its claim:

- With reference to the ledger confirmations / debt acknowledgments relied upon by the RP to regard NHSH's claim being within limitation, the NCLAT noted that the purported signatures of CD's directors on the ledger confirmations did not match at all with the signatures available in MCA's records. Noting that the directors who were part of CD's board of directors on the relevant dates had retired subsequently, the NCLAT ruled that the present directors could not authenticate the signatures of past directors and confirm genuineness of these balance confirmations, as was contended by the RP. Not being convinced about the authenticity and veracity of the said ledger accounts confirmations, the NCLAT held that the same cannot be construed as written acknowledgement of the balance debt.

#### Reliance on balance sheets:

- The NCLAT also found RP's reliance on CD's balance sheets as acknowledgement of debt to be improper. The Appellate Tribunal held that balance sheets for FYs 2016-2017, 2017-2018 and 2018-2019 containing the purported admissions cannot be relied upon since the same were prepared on 12 March 2020, i.e., after admission of NSHS's claim by the RP;
- Further, with respect to inclusion of NSHS's debt in in the balance sheet for FY 2015-16 (prepared prior to initiation of CIRP), the NCLAT held that the same cannot be relied upon, as the relevant page did not contain the seal of the Chartered Accountant and the company.

#### Payment of TDS on interest cannot be considered acknowledgement of liability:

- It was also held that payment of TDS on the interest payable by the CD cannot be construed as an acknowledgment in writing of the liability by the CD.

#### Verification of claims as per Regulation 13 of the CIRP Regulations:

- NCLAT noted that Regulation 13 of CIRP Regulations casts on the IRP / RP the duty to exercise necessary care and diligence in verifying the claims and scrutinising the documents submitted with Form C for genuineness and authenticity. The Appellate Tribunal further noted that the voting share in the CoC is an extremely relevant and important element in an insolvency resolution process. Since the RP failed to undertake the necessary exercise, the tribunal urged IBBI to investigate the conduct of the RP and take necessary action.

### **Comments**

This is the first time that NCLAT has expounded on the RP's duty, under Regulation 13 of CIRP Regulations, to verify the genuineness and authenticity of claims submitted by creditors and proceeded to expel a financial creditor from the CoC on this count. As noted by the NCLAT, voting share of respective creditors in a CoC is one of the most crucial factors in a CIRP and therefore, it is imperative that members are inducted to CoC only after due verification of their respective claims. However, with this precedent,

possibility of fresh flood of challenges against induction of members to CoC on the ground that the claims were not properly verified cannot be ruled out.

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