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DBS BANK LIMITED SINGAPORE V RUCHI SOYA INDUSTRIES LIMITED AND ANOTHER - SC REIGNITES THE DISCUSSION ON THE MINIMUM LIQUIDATION VALUE PAYABLE TO A DISSENTING SECURED FINANCIAL CREDITOR

23 January 2024

Introduction

In its recent judgment in the matter of *DBS Bank Limited Singapore v. Ruchi Soya Industries Limited and Another* 2024 SCC OnLine SC 3 (*Ruchi Soya*), the Hon'ble Supreme Court reignited an important discussion under the framework of the Insolvency and Bankruptcy Code, 2016 (IBC) with regards to the manner of calculation of the minimum liquidation value payable to a secured dissenting financial creditors (Secured DFC) in terms of Section 30(2)(b)(ii) of the IBC (Minimum Liquidation Value or MLV).

A two-judge bench of the Supreme Court in *Ruchi Soya* (the Bench) examined the issue of whether the MLV payable to a dissenting secured financial creditor (Secured DFC) is required to be calculated on the basis of the voting share enjoyed by such creditor in the committee of creditors (CoC) of the concerned corporate debtor or on the basis of the value of the security interest enjoyed by such financial creditor. The Bench took the latter view and held that the MLV payable to a Secured DFC should be calculated by taking into account the value of the security interest enjoyed by such creditor. However, on account of a differing view taken by another two-judge bench of the Hon'ble Supreme Court on this issue in 2021, the Bench directed the matter to be placed before the Hon'ble Chief Justice for appropriate orders for reference of the matter to a larger bench.

The Issue of the amount payable to a dissenting financial creditor in corporate insolvency resolution proceedings is therefore reopened and subject to the outcome of the view taken by the larger bench.

The main issue before the Bench was whether the amended Section 30(2)(b)(ii), amended by the entry into force of the Amendment Act of 2019, was applicable to the present case when it was being heard before the Hon'ble National Company Law Appellate Tribunal (NCLAT). Relying on *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.* (2020 8 SCC 531), the Bench held that since the proceedings were pending, the amended Section 30(2)(b)(ii) should have been considered by the NCLAT.

The Bench held that the purpose of the amended Section 30(2)(b) of the IBC is to protect the dissenting financial creditors and operational creditors by ensuring that they are paid a minimum amount that is not lesser than their entitlement upon the liquidation of the corporate debtor. Particularly, in the context of a Secured DFC, once a resolution plan is approved, an unwilling secured creditor is constrained to forego the security interest created in his favour as opposed to this relinquishment being a consequence of such creditor's choice in liquidation. Since, this limitation imposed upon a Secured DFC constructively engineers a scenario mirroring a situation in liquidation wherein a secured creditor has relinquished its security in favour of the liquidation estate, such a Secured DFC is entitled to

the value of the security which would otherwise be available to such creditor in the event of liquidation of the corporate debtor.

The Supreme Court held that Section 30(2)(b)(ii) provides assurance to a dissenting creditor that it will receive the same amount that it would have received in case of liquidation proceedings. ***In other words, Section 30(2)(b)(ii) of the IBC ensures that a Secured DFC receives payment of the value of its security interest.***

The view taken by the Bench differed from the view expressed earlier by another two-judge bench of the Hon'ble Supreme Court in *India Resurgence ARC Private Limited v. Amit Metaliks Limited & Another* 2021 SCC Online SC 409 (*India Resurgence*) which held that a Secured DFC would receive payment of the amount as per its entitlement under the resolution plan. Additionally, even though secured DFC's have been enabled to realise the amounts due to them by enforcing the security interest, their recoveries could only be basis the amounts allotted to them in the resolution plan. In other words, in *India Resurgence*, the Hon'ble Supreme Court held that notwithstanding the value of the security interest available to a DFC, the Minimum Liquidation Value payable to a Secured DFC shall be calculated basis the exposure of the concerned creditor in the corporate debtor and in proportion to the voting share enjoyed by such creditor in the CoC.

Since the Bench took a differing view from *India Resurgence*, the issue was referred to a larger bench of the Supreme Court. Consequently, the matter was placed before the Hon'ble Chief Justice for appropriate orders.

Comments

An essential facet of any insolvency resolution regime is effectively safeguarding the interests of dissenting creditors getting crammed down by the decisions taken by the assenting creditors. With this objective, the Parliament introduced the amended Section 30(2)(b)(ii) of the IBC in 2019 to propose mandatory minimum payments to be made to a dissenting financial creditor. However, legal uncertainty on the manner of computation of such mandatory minimum payment posed a major challenge for accomplishing the objective sought to be achieved under the Amendment Act of 2019. In this context, reference of this issue to a larger bench of the Supreme Court and its conclusive adjudication will bring in a much-needed clarity on a crucial aspect of IBC framework in India.

In the meantime, for the NCLTs, it may be an open issue which they may decide either by following *Ruchi Soya* or *India Resurgence* which may lead to more litigations and consequently delays in implementation of resolution plans. Accordingly, it will be important for the Supreme Court to decide this issue quickly to preserve the sanctity of the time bound nature of insolvency resolution proceedings and with a view to create certainty in the process.

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