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NCLAT rules

# SETTLEMENT: AN EXIT ROUTE FOR CORPORATE DEBTORS

The NCLAT in its recent order dated 14.07.2020 in the case of *Vivek Bansal and Burda Druck India Pvt. Ltd.*, allowed companies to exit the ongoing corporate insolvency resolution process by means of a settlement, even when an insolvency resolution professional has been appointed and the moratorium period was imposed and in subsistence. This note analyses the NCLAT Order dated 14.07.2020 and also gives a brief background of the same matter.

## **A Order dated 27.05.2020 passed by the National Company Law Tribunal, New Delhi Bench-V, in the matter of Burda Druck India Private Limited vs. Dynamic Textbooks Printers Pvt. Ltd. (for short “Order dated 27.05.2020”)**

- <sup>1</sup> Vide the Order dated 27.05.2020, the NCLT in terms of Section 9 of the Insolvency Bankruptcy Code, 2016 (for short “IBC”) passed an Order of initiation of Corporate Insolvency Resolution Process (for short “CIRP”) against Dynamic Textbooks Printers Pvt. Ltd. (for short “Corporate Debtor”) on an application made by Burda Druck India Private Limited (for short “Operational Creditor”)
- <sup>2</sup> Issues were raised with regard to the limitation period of initiation of CIRP as the last invoices were raised between 03.09.2015 to 30.11.2015 and the CIRP application was filed on 11.09.2019, which was not within the period of limitation period of three years as per Article 137 of the Limitation Act, 1963.
- <sup>3</sup> The NCLT held that the application under Section 9 of the IBC was within limitation period as the last payment against invoices raised by the Operational Creditor was made by the Corporate Debtor on 18.01.2017. The limitation period began from the last date of payment made by the Corporate Debtor as per Section 19 of the Limitation Act, 1963. The application was well within three years limitation period.
- <sup>4</sup> The second issue which was raised was as per Section 8 (2) of the IBC, the Corporate Debtor was required to bring to the notice of the Operational Creditor any dispute or documents regarding payment of debt. However the Corporate debtor failed to establish any dispute or documents regarding payment as per Section 8(2) of the IBC. Therefore the objection raised by the Operational Creditor regarding this issue was admitted.

- <sup>5</sup> The Application under Section 9 of the IBC filed by the Operational Creditor was admitted and a moratorium was brought into effect against the Corporate Debtor.

## **B Order dated 14.07.2020 passed by National Company Law Appellate Tribunal in the matter of Vivek Bansal vs. Burda Druck India Pvt. Ltd. & Anr. (for short “NCLAT Order”)**

- <sup>1</sup> An Application was filed by the Corporate Debtor i.e. Vivek Bansal, partner of Dynamic Textbooks Pvt. Ltd. under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 (for short “NCLAT Rules”) for recording the settlement arrived at between Vivek Bansal, partner of Dynamic Textbooks Pvt. Ltd. i.e. the Corporate Debtor and Burda Druck India Pvt. Ltd. i.e. the Operational Creditor. The following was contained in the Settlement Agreement.
  - <sup>a</sup> The Settlement Agreement was executed on 07.07.2020.
  - <sup>b</sup> For an amount of Rs. 4,25,00,000/-.
- <sup>2</sup> Since the parties reached a settlement and the ‘Committee of Creditors’ was not constituted, in exercise of powers under Rule 11 of the NCLAT Rules, the Order dated 27.05.2020 was set aside.
- <sup>3</sup> Under Rule 11 of the NCLAT Rules, the NCLAT has inherent powers to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.
- <sup>4</sup> The parties were allowed to exit from the corporate insolvency resolution process relying on the verdict of *Swiss Ribbons Pvt. Limited and Anr. vs. Union of India & Ors.* (2019)4 SCC 17, (Para 80-83).
- <sup>5</sup> The application by the Operational Creditor under Section 9 of IBC was disposed of as withdrawn.

## **C Analysis of the Order**

- <sup>1</sup> On a perusal of the NCLAT Rules, it is clear that under Rule 11 of the NCLAT Rules, the NCLAT has inherent powers to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.
- <sup>2</sup> The judgment of *Swiss Ribbons Pvt. Ltd. vs. Union of India & Ors.* (2019)4 SCC 17, (Para 82) clarified the point on the issue of settlement or withdrawal of



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claims under the NCLAT Rules. The Hon'ble Supreme Court held that at any stage where the Committee of Creditors is not constituted, a party can approach the Tribunal under Rule 11 of the NCLAT Rules for withdrawal or settlement. Once the Committee of Creditors is constituted, the Application for withdrawal could be filed only with the approval of the Committee of Creditors. The same would be decided after hearing all the parties concerned and considering all the relevant factors on the facts of each case.

<sup>3</sup> As per Section 12A of the IBC, the Adjudicating Authority may allow the withdrawal of application admitted under Sections 7, 9 or 10, with the approval of ninety percent voting share of the committee of creditors, in such a manner as may be specified.

<sup>4</sup> In the case of *Brilliant Alloys Private Limited v. Mr. S. Rajagopal & Ors.* 2018 SCC Online SC 3154, the Supreme Court held that Section 12A contains no time stipulation and allowed the settlement, even after issue of invitation for expression of interest, thereby annulling the CIRP proceedings.

<sup>5</sup> The NCLAT Order has given a good opportunity to the companies who have entered the CIRP but want to exit the insolvency process to ensure liquidity and positive cash flow by means of a settlement. However this will be based on the facts and circumstances of each case and will be determined by the Tribunal under its inherent powers.