

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

29th March, 2023

Subject: Judgment¹ dated 28th March, 2023 of Hon'ble Supreme Court of India in the matter of Abhishek Singh Vs. Huhtamaki PPL Ltd. & Anr. [SLP (Civil) No.6452 of 2021]

I. Brief Background:

An application under section 9 of the Code was filed before Adjudicating Authority (AA) for initiation of corporate insolvency resolution process (CIRP) against corporate debtor (CD) for an outstanding operational debt of Rs.1,31,00,825/-. Vide orders dated 01.03.2021, AA admitted the petition and CIRP was initiated. Within couple days of the admission order, the application for withdrawal was filed because of the settlement between the parties. On 08.03.2021, the entire settlement amount was paid by CD. Meanwhile, the appeal was also filed before NCLAT challenging the admission of CIRP on the ground of pre-existing dispute. In view of settlement between the OC and CD, the event of settlement was also submitted to Appellate Tribunal. NCLAT vide order dated 26.03.2021, allowed withdrawal of application and stayed the constitution of CoC. AA ignoring the interim order passed by NCLAT, rejected the application for withdrawal of CIRP under section 12A of the Code vide orders dated 13.04.2021. Thereafter, IRP constituted CoC on 15.04.2021. Aggrieved by the order dated 13.04.2021 passed by AA, suspended director of the CD had filed SLP before the Hon'ble SC.

II. Issue:

Whether AA was right in rejecting the application of the appellant filed under section 12A of Code?

III. Findings & Observations of the Hon'ble Supreme Court –

Hon'ble SC while allowing the appeal, set aside order dated 13.04.2021 passed by AA. SC while upholding the powers of Insolvency and Bankruptcy Board of India to make regulations observed that The Board was conferred with powers to frame regulations for various purposes referred to in section 240 of IBC and the other allied sections. These regulations may be subordinate in character but would still carry a statutory flavor and would be binding on the NCL

Further held that regulation 30A allows withdrawal applications before the constitution of CoC and is not violative of section 12A of the Code. On the issue of AA invoking inherent powers in order to meet the ends of justice in the case, SC, noted *“The NCLT ought to have immediately taken the decision on the application. Once the parties had settled the dispute even before the CoC had been constituted, the application ought to have been allowed then and there rather than await the other creditors to jump into the fray and allow the IRP to proceed further.”*

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