



भारतीय दिवाला और शोधन अक्षमता बोर्ड  
Insolvency and Bankruptcy Board of India

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10<sup>th</sup> Oct, 2023

***Subject: Judgment<sup>1</sup> dated 5<sup>th</sup> October 2023 of Hon'ble NCLAT in Sanjay Pandurang Kalate, Suspended Director of Evirant Developers Pvt. Ltd Vs. Vistra ITCL (India) Ltd [CA (AT)(Insolvency) No. 742 of 2023]***

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***Brief Facts-***

On 09.10.2018, Evirant Developers Pvt. Ltd (CD) was carrying on the activity of development and construction of residential and commercial projects at Wakad, Pune. For this purpose, CD issued fully secured, redeemable, non-convertible debentures (NCD). On 26.11.2018 Vistra ITCL was appointed as the debenture trustee. As CD failed to redeem the NCDs and repay the due amount of Rs.65,08,05,433/-, FC filed an application for initiation of CIRP. In the meantime, the suspended director has filed an IA *inter alia* submitting the disputes amongst the other directors of CD on the basis of certain MoU leading to a collusive filing by the FC. Subsequently, AA passed admission order. Aggrieved by the admission order, suspended director of the CD filed an appeal before NCLAT, on the ground that AA failed to adjudicate the issues raised in the IA on plausible collusion between other directors of CD and FC.

***Issues Before Hon'ble NCLAT:***

Whether AA was right in admitting section 7 application filed by FC?

***Findings & Observations of the Hon'ble NCLAT:***

- Hon'ble NCLAT while dismissing the appeal observed that FC has successfully proved the existence of financial debt and default on the part of the CD. It is trite law that once a debt becomes due or payable, in law and in fact, and there is incidence of non-payment of the said debt in full or part thereof, CIRP may be triggered by the FC as long as the amount in default is above the threshold limit. It is also well accepted that debt means the liability in respect of a claim and claim means a right to payment even if it is disputed. In this case, at no point of time, the CD had contested before the AA the fact that the FC had disbursed credit facilities to it by issuance of NCDs. Admittedly, the CD failed to redeem these NCDs and remit the requisite amount to the FC and on its own volition admitted before the AA its default.
- It is a settled proposition of law that to prove any transaction to be collusive and fraudulent in nature, the degree of proof and evidence required should be of unimpeachable nature and beyond reasonable doubt. In a matter as serious as this where an imputation of fraud is being made by the Appellant on behalf of the CD against the Respondents, AA has rightly held that allowing such

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an application, without approval of the Board would suffer from impropriety and hence dismissed it as a frivolous and vexatious.

- It further observed “ *...the statutory construct of IBC, the scope and jurisdiction of the Adjudicating Authority being summary in nature, it is distinctly not as extensive as that of a civil court to enquire into disputes arising out of MoUs and related specific performance which have been agitated in the IA. Allowing such meritless and unscrupulous litigation would logically entail derailing the insolvency resolution process which goes against the twin objectives of the IBC of maximization of the value of assets and time-bound insolvency resolution..*”
- It further observed that the serious internal disputes amongst the suspended director of the CD cannot be ground for denying the right of the FC to claim payment towards debt owed to them.