



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

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110 001

21st August, 2023

Subject: Subject: Judgment¹ dated 21st August, 2023 of Hon'ble NCLAT in SVA Family Welfare Trust & Anr. Vs. Ujaas Energy Ltd. & Ors. [CA (AT) (Ins.) No. 266 of 2023]

**WHETHER A CLAUSE PROVIDING FOR EXTINGUISHMENT OF PERSONAL
GUARANTEE GIVEN TO THE FC IN RESOLUTION PLAN IS VALID?**

CoC decision-

- On 17.09.2020 CIRP was initiated against M/s. Ujaas Energy Limited (CD). Later, 30.08.2021 CoC with 78.04% vote approved the resolution plan which proposed the payment of INR 74,81,75,744/- against the liquidation value of INR 43,08,09,000/-. In the plan, the Appellant (SRA) had proposed INR 45,00,00,000/- towards the value of CD and INR 23,81,75,744/- towards release of personal guarantees. The personal guarantees were to be extinguished after paying due compensation to the FCs.
- Bank of Baroda, one of the members of the CoC holding 5.83% voting share, had filed objected to the Resolution Plan on the basis that it provided for extinguishment of its rights under personal guarantees.

AA decision-

NCLT(AA), *vide* order dated 06.01.2023, took the view that the CoC can take any commercial decision relating to insolvency of the CD only, it cannot extinguish right of the particular secured creditor to proceed against the personal guarantor of the CD under the garb of its commercial wisdom. Such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also against the provisions of law. Hence the resolution plan contravenes the provision of section

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30(2)(e) of the Code. Aggrieved by the AA's order dated 06.01.2023, SRA filed an appeal before NCLAT.

Findings & Observations of the Hon'ble NCLAT:

- NCLAT while setting aside the order of AA, observed that: -

- The Hon'ble SC in "*Lalit Kumar Jain v. Union of India- (2021) 9 SCC 321*" had occasion to consider the provisions of the Code as well as the law pertaining to personal guarantor and the consequence of approval of the Resolution Plan on the rights of the personal guarantors. In the said judgment, the Hon'ble SC held that sanction of a resolution plan does not *per se* operate as a discharge of the guarantor's liability. It was held that approval of a resolution plan does not *ipso facto* discharge a personal guarantor. The use of expressions '*per se*' and '*ipso facto*' clearly indicate that by approval of the Resolution Plan, personal guarantors are not *per se* and *ipso facto* discharged from their obligation which may arise of the guarantee given by them to the Financial Creditor. The use of above expressions conversely indicates that there may be situations and circumstances, for example, relevant clauses in the Resolution Plan by which personal guarantors may be discharged. The judgment of the Hon'ble Supreme Court in *Lalit Kumar's case* cannot be read to mean as laying down law that personal guarantee never can be discharged in a Resolution Plan.
- The present is not a case where issue pertaining to the release of the personal guarantee was not before the CoC and was not deliberated. There was a specific clause in the Resolution Plan pertaining to release of the personal guarantee which clause was deliberated. Even the objection raised by the Union Bank of India that personal guarantee cannot be released was noticed in CoC. The present is a case where CoC consciously considered the clauses in the plan for relinquishing the personal guarantees of the Financial Creditors and as noticed above for a consideration offered by the Successful Resolution Applicant for release of the personal guarantee passed the Resolution Plan accepting the clause in the plan for release of the personal guarantee.
- Relinquishment of personal guarantee was a commercial decision of the CoC.
- It also relied on *Edelweiss Asset Reconstruction Company Ltd. vs. Mr. Anuj Jain, Resolution Professional of Ballarpur Case Citation Industries Ltd. & Ors.* and observed that resolution plan allocates a plan value for extinguishment of personal guarantee which has been accepted with 78.04% votes of FC. The security interest can very well be dealt with in the resolution plan. The scheme as delineated by Regulation 37 of CIRP Regulations permits this.

- It held that resolution plan submitted by the SRA did not contravene section 30(2)(e) of the Code and directed AA to pass fresh order.