



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

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1<sup>st</sup> September 2023

***Subject: Judgment dated 31<sup>st</sup> August 2023 of National Company Law Appellate Tribunal, Chennai Bench in the matter of Giriraj Enterprises Vs. ReGen Powertech Pvt. Ltd. & Ors. [CA (AT) (CH) (Ins) No. 323/2021]<sup>1</sup>***

- 1. Whether the customer companies are an operational creditor under the IBC ?**
- 2. Whether the consolidation of CIRP be done for the two CDs i.e., RPPL and RISPL wherein RISPL is wholly owned subsidiary of RPPL?**

## **I. BRIEF BACKGROUND**

Various customer companies had entered into agreements with Regen Powertech Private Limited (RPPL) for supply, procurement and supply of Wind Turbine Generators. Further, a supply agreement and agreement for Operation and Maintenance (O&M) of the Wind Turbine Generators was entered into by these companies with Regen Infrastructure and Services Private Limited (RISPL) , a wholly owned subsidiary of RPPL.

Both the companies RPPL as well as RISPL were admitted into CIRP on 09/12/2020 and 19/02/2020, respectively by NCLT Chennai Bench (AA). The resolution plan for RPPL was approved, however for RISPL the resolution plan was kept on hold. An application was filed after a resolution was passed in the CoC of RISPL for simultaneous CIRP of both the corporate debtors (CDs).

Customers of the wind turbine generators had also filed an application before NCLT seeking consolidation and simultaneous CIRP of the CDs for the purpose of filing claims *inter alia* praying that a single RP should be appointed for both the CDs. However, the AA, vide a common order dated 01/11/2021, dismissed the applications seeking consolidation of the CIRPs.

Against this order an appeal was filed by the customers before NCLAT.

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## II. FINDINGS & OBSERVATIONS :

1. On the first issue, the Appellate Tribunal referred to section 5(21) and 3(6) of the Code which defines operational debt as 'claim' in respect of the provision of goods and services which in turn is the 'right to remedy for breach of contract' and held that purchasers are operational creditors. It relied on the judgment of the Hon'ble Supreme Court in the matter of Consolidated **Construction Consortium Limited Vs. Hitro Energy Solutions Pvt. Ltd.**
2. On the second issue the Appellate Tribunal took into account the criteria for consolidation viz., interlinking between the two CDs in terms of economic unit, assets, liabilities, accounts, finances, compliances, control and such other factors. It observed that both the CDs had interconnected businesses and RISPL was created for operational convenience of RPPL. It clarified that intent of the Code is such that the '*synergy and value addition of the assets ought to be the driving force*'.
3. Reference was also made to the Report of the mediator dated 23.04.2021, wherein the mediator had observed that there was unanimity that the Resolution Plan must be one for both the companies and the efforts must be to identify a single entity for purchase of both the companies. The Appellate Tribunal also referred to the recommendations of the Working Group constituted by IBBI for facilitation of Group Insolvency Resolution and the executive summary published by MCA. NCLAT concurred with the view that adoption of single entity approach in Group Insolvency create divergence in the economic realities of the group. Thus, the view implied impending need for Group insolvency for value maximization.
4. Regarding the argument that the Code does not confer equity jurisdiction to the AA as well as the Appellate Tribunal, it clarified that '*there is no exercise of 'Equity Jurisdiction' in ordering Consolidation*'. Reliance was placed on its decision in the matter of **Radico Khaitan Ltd. Vs. BT & FC Pvt. Ltd. & 6 Ors.** and **Oase Asia Pacific Pte Limited Vs. Axis Bank and other Financial Creditors**' and reiterated that because the parameters for consolidation set out in the mentioned cases have been fulfilled which includes 'common directors, common control, common liabilities, interdependence and intricate links between the companies' RPPL and RISPL can be treated as 'single economic unit'.

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