

VEDANAM

A Mehta & Mehta's monthly Newsletter



MEHTA & MEHTA

Legal and Advisory Services

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Knowledge is Power

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HEAR FROM THE EXPERTS

*Every Saturday at
11:00 AM.*



Ms. Dipti Mehta
Founder Partner - Mehta & Mehta

*Find out more details inside the
newsletter.*

UPDATES AND AMENDMENTS

Securities Exchange Board of India

SEBI mandates disclosure of Complaints against the Stock Exchange(s) and the Clearing Corporation.

https://www.sebi.gov.in/legal/circulars/oct-2021/disclosure-of-complaints-against-the-stock-exchanges-and-the-clearing-corporations_53112.html

SEBI revises Formats for filing Financial information for issuers of non-convertible securities.

https://www.sebi.gov.in/legal/circulars/oct-2021/revise-formats-for-filing-financial-information-for-issuers-of-non-convertible-securities_53136.html

SEBI revises Formats for Limited Review/ Audit Report for issuers of non-convertible securities

https://www.sebi.gov.in/legal/circulars/oct-2021/revise-formats-for-limited-review-audit-report-for-issuers-of-non-convertible-securities_53279.html

Ministry of Corporate Affairs

MCA revised Form MGT-7 and Form MGT-7A

<https://www.mca.gov.in/MinistryV2/comp-anyformsdownload.html>

Ministry of Corporate Affairs

MCA extends due date of filing of Form 8 of LLP till 30th December 2021

<https://mca.gov.in/bin/dms/getdocument?mids=D6JwDgXJxJkSj9vnkrkNZw%253D%253D&type=open>

Reserve Bank of India

The Reserve Bank of India has introduced prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks so as to move towards greater consistency and transparency in the published accounts.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12171&Mode=0>

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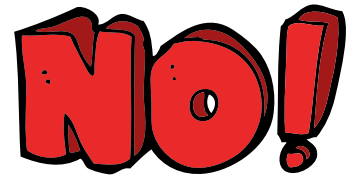
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CASE LAWS - COMPANY LAW

DIRECTORS CAN'T BE BE HELD LIABLE FOR THE DEFAULT MADE BY THE COMPANY



FACTS:

The supreme court has directed prosecuting agencies not to take any actions against directors of the companies merely because of their position as it leads to humiliation and loss of reputation in the corporate society. The Supreme court was hearing an appeal filed by Dayle de Souza challenging an order of Madhya Pradesh, which dismissed his plea seeking quashing of the case against him.

Quashing prosecution and summons were issued against the director of Writer Safeguard pvt ltd which had entered into agreement with NCR Corporation India Pvt Ltd for providing services related to ATM machines of SBI. Later on it was noticed by labour enforcement officer which inspected SBIs ATM and issued a notice alleging non compliance under Minimum Wages Act 1948.

PROVISION :

Section 22C of Minimum Wages Act states that if the person committing any offence under this Act is a company than every person who at the time of offence committed, is in charge and responsible to the company for the conduct of such offence of the company as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

ANALYSIS :

On this Supreme Court said that vicarious liability would be attracted only when the offence was committed with the consent, connivance, or is directly attributable to the neglect on the part of the director, manager, secretary, or other officer of the company and the liability cannot be merely imposed on director because he holds a responsible position in the company.

A Bench of Justices R.S. Reddy and Sanjiv Khanna said that vicarious liability is attracted when the offence is committed with the consent or neglect on the part of a director, manager, secretary, or other officer of the company. It is the duty and responsibility of the public officer to proceed responsibly and ascertain the true and correct facts. Execution of law without appropriate acquaintance with legal provisions and comprehensive sense of their application may result in an innocent being prosecuted," the Supreme court said.

JUDGEMENT :

"Criminal law should not be set into motion as a matter of course or without adequate and necessary investigation of facts on mere suspicion, or when the violation of law is doubtful, The Supreme Court has said this while quashing a criminal case against the director of a company.

Legal Manager

4-5 Years Mumbai

Key Skills: Compliance, Insolvency, Laws, Legal

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CASE LAWS - COMPANY LAW

HIGH COURT RULES THAT ISSUE RELATED TO DISPUTES OF SHAREHOLDERS TO BE TRIED BEFORE NCLT AND NOT BEFORE CIVIL COURT EVEN THOUGH THE DISPUTE PERTAINS TO THE RESIDENTIAL FLAT

CASE:

Jaiveer Singh Virk v. Sir Sobha Singh & Sons Pvt. Ltd.

APPELLANT:

4th generation descendant

RESPONDENT:

A family-owned private Company incorporated in Delhi by Sobha Singh

FACTS:

Mr. Sobha Singh has built Delhi's first housing complex in the name of Sujan Singh Park. Its shareholders were the family members of the Builder. The complex had 84 residential flats and descendants of Sobha Singh upto fourth generation would receive each flat subject to seniority. A seniority-wise list of 23 great-grand-children was made on basis of which flat will be allotted by Respondent as and when a flat becomes vacant. This was duly approved by family settlement and Board Resolution.

The Appellant was on 18th number and this practice was duly followed until 17th grandchildren. Instead, the 18th being given the flat, it was allotted to 19th one and when another flat became vacant, it was proposed to sell it. The Appellant on the strength of his right as per the Board Resolution, filed writ seeking possession



of the flat, injunction to Respondent Company to allot the said flat and cancellation of allotment made out-of-run as well as damages.

The Single Judge Bench held that issues were to be raised before the specialized tribunal i.e., National Company Law Tribunal. The Appellant being aggrieved by order of Single Judge, approached High Court.

The High Court ruled that a corporation may modify its choices at any time as per the law and if it outside the law, the concerned shareholders can bring the matter to the relevant forum. The concern of the shareholder over his right mentioned in the Board Resolution is a management issue and shall be brought before the proper body i.e., NCLT under Company Law, 2013 as NCLT has jurisdiction over issues pertaining to shareholder disputes relating to management of the Company. It has nothing that can be enforced in a civil court.

JUDGEMENT:

Issue related to disputes of shareholders to be tried before NCLT and not before Civil Court

Chartered Accountant

0-1 Years Mumbai

Key Skills: Accounting Standards, Audit, Balance Sheet, Chartered Accountant, Direct Taxation, GST, Income Tax, Indirect Taxation, Statutory Audit, Taxation, TDS

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CASE LAWS - INSOLVENCY AND BANKRUPTCY CODE



LIQUIDATOR CAN ASK THE SECURED CREDITOR TO RETURN BACK THE ASSETS TO THE LIQUIDATION ESTATE, IF SECURED CREDITOR DOES NOT SELL SECURED ASSET.

CASE TITLE

Dhanlaxmi Bank Ltd. Vs. Techno Fab Manufacturing Ltd. & Ors

DATE OF ORDER -28th Sept 2021

CASE CITATION - 777 NCLAT

FACT OF THE CASE

An Appeal was preferred by the Appellant, who being a secured creditor in the liquidation process of the Corporate Debtor intimated the Liquidator to realize its asset over which it has exclusive first charge under Section 52(1) (b) of the IBC and in physical possession of the asset. The Liquidator asked the Appellant to vacate its physical possession and to return back asset to the liquidation estate. However, the appellant needed a further time period of 6 months and preferred an application before the Adjudicating Authority which was dismissed.

DECISION

Hon'ble NCLAT dismissed the appeal with following observations:

"4. In the present case, the order of liquidation was passed on 05.09.2018, three years has been lapsed and the liquidation proceeding could not be completed and after granting ample opportunity the Appellant has failed to realize its security interest.

Therefore, Ld. Adjudicating Authority has rightly directed the Appellant to handover the asset in possession back to the liquidator within 7 days. 5. We have gone through the impugned order and relevant provisions. We find no legal flaw in the impugned order. Thus, the Appeal is dismissed summarily."

IN A SITUATION WHERE APPLICATION FOR INITIATION OF CIRP FOR THE CORPORATE DEBTOR IS PENDING AT NCLT THEN, INITIATION OF CIRP OF THE CORPORATE DEBTOR IS NOT A PREREQUISITE FOR INITIATING IR PROCESS AGAINST THE PERSONAL GUARANTOR OF THAT CORPORATE DEBTOR BEFORE THE NCLT

CASE TITLE

PNB HOUSING FINANCE LTD. VS MR. MOHIT ARORA

DATE OF ORDER -29th Sept 2021

CASE CITATION - 395 NCLT

FACT OF THE CASE

An Application was preferred by M/s PNB Housing Finance Ltd. (Applicant), under Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 for initiating the Insolvency Resolution Process against Mr. Mohit Arora (Personal Guarantor), who is the Managing Director of Supertech Ltd. (the Corporate Debtor). It was submitted by the Applicant that there were multiple IBC proceedings pending against the Corporate Debtor before the Adjudicating Authority.

Head of Corporate Secretarial and Legal

5-6 Years | Mumbai

Key Skills: Companies Act, Company Secretary, FEMA, maintaining statutory register, ROC Compliances, Shares



CASE LAWS - INSOLVENCY AND BANKRUPTCY CODE



DECISION

Hon'ble NCLT disposed of the application with following observations:

"31. ...in the case herein, there is a situation where various IB applications for initiation of CIR process against the Corporate Debtor are pending. In our considered view, the moment the IB application in relation to Insolvency resolution of the Corporate Debtor is pending before this Adjudicating Authority, the provisions of Section 60(1) get attracted and the jurisdiction to entertain insolvency process against the personal guarantor would, therefore, lie with the NCLT.

32....we would like to summarise that in the case herein, since (i) there are pending IB cases in relation to initiation of insolvency resolution of the Corporate Debtor; ii) Section 60(2) of IBC 2016 is without prejudice to Section 60(1) as held by the Hon'ble Supreme Court in the matter of Lalit Kumar Jain V. Union of India; and iii) Section 179(1) of IBC 2016 is subject to Section 60 of IBC 2016, which includes Sub-Section (1), therefore, in our considered view, the jurisdiction in relation to the insolvency resolution (and liquidation) for corporate persons including corporate debtor and personal guarantors thereof shall be the National Company Law Tribunal in terms of Section 60(1) of IBC 2016.

Company Secretary

1-2 Years Jaipur

Key Skills: company secretary, company secretarial activities, Income-Tax, Taxation, Drafting legal documents, legal content writing, legal writing, Report Writing, Social Media

Manager

4-5 Years Kolkata

Key Skills: Company Secretary, ROC Filing, Secretarial compliance, Legal Drafting, Vetting

ONCE THE RESOLUTION PLAN IS APPROVED BY MAJORITY OF THE COC AS PROVIDED FOR UNDER SECTION 30 OF THE CODE, THEN NO FRESH RESOLUTION PLANS MAY COME IN INTERVENTION OF AN ALREADY APPROVED PLAN.

CASE TITLE - Amanat Randhawa Hotels Pvt. Ltd. Versus Shashi Kant Nemani Resolution Professional of Aryavir Buildcon.

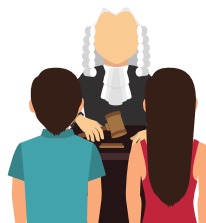
CASE CITATION - 701 NCLAT New Delhi
DATE OF ORDER - 7TH OCT 2021

FACT OF THE CASE

An Appeal was preferred by the Unsuccessful Resolution Applicant- 'Amanat Randhawa Hotels Pvt. Ltd.' against the impugned order of the Adjudicating Authority wherein the Adjudicating Authority dismissed the Application preferred by the Applicant for consideration on the ground that the Application was filed after the approval of the Resolution Plan by the CoC.

DECISION

Relying on the decisions of Hon'ble Supreme Court in the matters of 'Committee of Creditors of Essar Steel India Limited' Vs. 'Satish Kumar Gupta & Ors.' and also in other matters, Hon'ble NCLAT dismissed the appeal with following observations: "19. taking into consideration, the legislative intent of the statute together



CASE LAWS - INSOLVENCY AND BANKRUPTCY CODE



with the fact that in the instant case the Resolution Plan was accepted by 100% of voting share in the CoC Meeting dated and having regard to the fact that the Appellant had never participated in the EoI, we are of the view that any reliefs granted in contra to the timelines would be ultra vires to the scope and objective of the Code. The ratio of the Hon'ble Supreme Court in 'EbiX Singapore Pvt. Ltd.' (Supra) is squarely applicable to the facts of this case wherein it was observed by the Hon'ble Apex Court that once the Plan is approved by majority of the CoC as provided for under Section 30 of the Code, then no fresh plans may come in intervention of an already approved Plan."

NCLT REJECTS CIRP APPLICATION U/S 9 AS DEMAND NOTICE ISSUED AFTER APPOINTMENT OF AN ARBITRATOR ON DISPUTE – SREI INFRASTRUCTURE FINANCE LTD. VS. ASSAM ELECTRONICS DEVELOPMENT CORPORATION LTD. – NCLT GUWAHATI BENCH

CASE TITLE

SREI Infrastructure Finance Ltd. Vs. Assam Electronics Development Corporation Ltd.

CASE CITATION – 712 NCLT

DATE OF ORDER – 7TH OCT 2021

The present petition has been preferred by the Applicant/Operational Creditor, SREI Infrastructure Finance Limited under Section 8 & 9 of the Code seeking for initiation of CIRP in respect

of the Corporate Debtor Company, namely, Assam Electronics Development Corporation Limited (AMTRON).

Adjudicating Authority observed that the Operational Creditor/Petitioner here has filed an Arbitration Petition before the Hon'ble High Court, Guwahati stating that the total amount of Revenue support released by the Respondent, has triggered a dispute among them and as the Master Service Agreement provides for an arbitral clause for settlement of disputes among the parties, the Petitioner has approached this Hon'ble High Court for appointment of Arbitrator as per the provisions of Section 11(4) of The Arbitration & Conciliation Act 1996. The same Petition has been disposed of by the Hon'ble High Court on 23/09/2021 and appointed a Sole Arbitrator with the consent of the parties.

Adjudicating Authority held that it is clearly established that there is an existence of dispute prior to issuing of demand notice/filing of the application as the Applicant here itself has gone to Hon'ble High Court in the year 2019 and thereafter this Application has been filed by the Petitioner under Section 9 of the IBC before this Bench on 10/04/2021. One of the main provisions under Section 9 of IBC is that, if there is an existence of dispute prior to issuing of demand notice by the OC, then the said Application needs to be rejected. Considering the points mentioned above, this Application filed under Section 9 of IBC is hereby rejected.

Manager- Security Trustee Division

🏠 2-3 Years 📍 Mumbai

Key Skills: Mortgage, Agreement Drafting, Legal, LLB



ARTICLES

DEBENTURES



INTRODUCTION

Debentures are loan instruments that are offered by both large companies as well as government companies for long term. Debentures are mainly issued by authorities to borrow money from the public at a predetermined rate of interest. It is one of the methods of raising the capital by the company. In simple words it can be called as "Debt or loan".

Provisions under Companies Act, 2013:

Section 71 deals with debentures. The Companies Act ("Act") provides innumerate safety measures in order to protect the interest of creditors. Some important provisions are as follows:

∅ It is not compulsory for a Company to issue debentures with an option to convert them into Shares.

∅ Consent of shareholders is required if debentures are with an option to convert them into Shares either wholly or partially as conversion likely affect the rights of existing shareholders.

∅ It is mandatory to create a debenture redemption reserve out of the profits available for payment of dividend and such amounts shall not be used by the company except for redemption of debentures.

∅ A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules.

∅ Debentures shall not carry voting rights.

Types of debentures

In general, debentures are classified into various types such as redeemable and irredeemable. In order to understand non-convertible debentures, it would be better to understand the meaning of convertible debentures first. The convertible debentures are those debentures which are converted to equity shares of a company after a specified term. Such debenture earns regular income in form of interest up to the period they are converted to equity shares of the company. Hence, non-convertible debentures ('NCDs') can be regarded as those debentures which are not convertible to equity shares of the company after the expiry of a certain period.

Therefore, secured NCDs are backed up by some assets which can be liquidated for paying off the debenture holders in case the company issuing the same is not able to redeem them. . For this reason the returns on secured NCDs are lower than unsecured NCDs.

ARTICLES

DEBENTURES



Depending upon the convertibility, debentures may be of various types, namely :

- (1) Non-Convertible Debenture (NCD)
- (2) Partly Convertible Debenture (PCD)
- (3) Fully Convertible Debentures (FCD)

As the name suggests, Non-convertible debentures cannot be converted into equity Shares and as such, will never carry any voting rights. Partly convertible debentures will also be converted only to some extent. Thus, on conversion there will be dilution of shareholders rights; so the consent of shareholders will be required. Fully convertible debentures will also be dealt with in the same way but more cautious approach needs to be taken as the whole amount will be converted into equity. The capital base will hugely increase.

Process regarding conversion of debenture holders

1. Company going for conversion process should provide or have option for conversion in its Article of association.
2. Board Meeting should be held for passing the board Resolution for allowing the process of conversion of debentures into shares and approving notice of general meeting to take approval from the shareholders of the company.

3. Shareholders of the Company must hold General meeting and pass Special Resolution for Conversion of CCD into Equity Shares. Special Resolution should be accompanied by explanatory statement containing necessary information of Conversion.

4. Form-MGT-14 should be filed within 30 days of passing a Special Resolution with the Registrar of Companies.

5. A letter of option is sent to the debenture holders for verifying the process of conversion of debentures into shares. Company Secretary should validate the consent of debenture holders for the conversion.

A copy of letter should be shared with Securities & Exchange Board of India (SEBI) also.

6. The Company should have a valuation report for determining the price.

7. Post conversion, allotment of a share should be completed within 12 months from the date of the passing of special resolution.

8. Company will prepare and issue Share Certificate in Form SH-1.

9. 1.A return of allotment in Form PAS-3 should be filed within 30 days of allotment with following attachments-

- List of Allottees
- Board Resolution
- Special Resolution
- Valuation Report

Manager - Security Trustee Division

Company:



Catalyst Trusteeship Limited

3-4 Years Mumbai

Key Skills: Mba Finance, Agreement Vetting, Drafting & Vetting of Agreements, Legal Drafting



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