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SETTLEMENT PLAN OR RESOLUTION PLAN – THE WISDOM OF THE COMMITTEE OF CREDITORS IS PARAMOUNT

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Introduction

- The Supreme Court of India (**SC**) by way of a judgment in *Vallal RCK v. Siva Industries and Holdings Limited & Ors, Civil Appeal Nos. 1811-1812 of 2022* dated 03 June 2022 reaffirmed the legal position that an adjudicatory authority or an appellate authority cannot sit in appeal over the commercial wisdom of the Committee of Creditors (**COC**).

- The appeals were filed challenging a judgment dated 28 January 2022 passed by the National Company Appellate Law Tribunal, Chennai Bench (**NCLAT**) wherein the NCLAT dismissed the appeals filed by Vallal RCK, the promoter of Siva Industries and Holdings Limited (**CD**) against the orders of the National Company Law Tribunal, Chennai (**NCLT**), wherein the NCLT rejected an application filed by the resolution professional (**RP**) to withdraw the application filed by the financial creditor, IDBI Bank Limited under Section 7 (**Section 7 Application**) of the Insolvency Bankruptcy Code, 2016 (**Act**) as being settled under Section 12-A of the Act.

- The Application was admitted in July 2019. The RP received a resolution plan from a prospective resolution applicant which was rejected by the COC. In May 2020, the RP filed an application for liquidation of the CD (**Liquidation Application**). Pending the Liquidation Application, Vallal RCK, promoter of CD, proposed a one-time settlement plan (**OTS**) under Section 12-A of the Act for the consideration of the COC. After some deliberations, the OTS found the necessary 90% approval from the COC.

- The RP, in light of the approval, filed an application under Section 12-A of the Act read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**Regulations**) for withdrawal of the Section 7 Application. To note, this was not a resolution plan that was proposed by the promoters, but was merely a plan to settle the dues of the CD to overcome the insolvency proceedings.

- The NCLT rejected the RP's application to withdraw the Section 7 Application and directed initiation of liquidation proceedings, which was upheld by NCLAT.

- The question that arose in the appeals before the SC was whether NCLT or NCLAT could sit in appeal over the commercial wisdom of the COC in an application for withdrawal of a Section 7 application. Interestingly neither the RP nor the COC

contested the proceedings before the SC. However, the SC, in light of the importance of interpreting Section 12-A of the Act, passed a detailed judgment.

Summary of findings

- The SC held that once the COC had accepted the settlement plan with the voting share of 94.23%, the NCLT and NCLAT erred in rejecting the settlement plan and withdrawal of the Section 7 Application. The SC set aside the orders of the NCLT and NCLAT and allowed the RP's application for withdrawal of the Section 7 Application. The SC traced the history of Section 12-A, noting that was it was not originally present in the Act, but found its way by way of an amendment to ensure settlement of proceedings and avoidance of unnecessary insolvency proceedings. It similarly drew out the history of Regulation 30 of the Regulations.

- The SC observed that the main object of the Act was to permit the corporate debtor to continue as an on-going concern and at the same time, pay the dues of the creditors to the maximum. The Court discussed the scope of Section 12-A of the Act and Regulation 30-A of the Regulations and emphasized the intent of the Act is to promote settlement amongst all the creditors and the debtor.

- The SC pointed out the different provisions of the Act which required a resolution plan to be approved by 66% of the committee of creditors, compared to a settlement which required 90% approval of the committee of creditors. The requirement of 90% approval of the committee of creditors was far more stringent in the eventuality of a settlement and the commercial wisdom of the committee of creditors had to be given paramount importance and could not be watered down in any circumstance.

- The Court additionally relying on its judgment in *Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Anr, (2021) 7 SCC 474*, emphasized the need for minimal judicial interference by the NCLT and NCLAT in matters concerning the Act.

Comment

- This judgment is the first wherein the issue of the commercial wisdom of the COC in the context of a Section 12-A application was deliberated upon by the SC. While the SC has previously in a number of cases, including *K. Sashidhar v. Indian Overseas Bank*, (2019) 2 SCC 150 and *Maharashtra Seamless v. Padmanabhan Venkatesh*, (2020) 11 SCC 467, held that the commercial wisdom of the COC could not be questioned by the NCLT and/ or NCLAT when it came to the issue of a confirmation and/ or rejection of a resolution plan, this was the first instance where the wisdom of the COC in a Section 12-A scenario was considered. The judgment affirmed the principle that when 90% and more of the committee of creditors, in their wisdom after due deliberations, approved a settlement and consequential withdrawal of the insolvency proceedings, the NCLT or the NCLAT ought not sit in appeal over the said decision.

- *Thriyambak J. Kannan (Partner) and Hareepriya E. Narasimhan (Associate)*

For any queries please contact: editors@khaitanco.com