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A THREE JUDGE BENCH OF SUPREME COURT UPHOLDS THE PREVAILING VIEW THAT NCLT HAS INHERENT POWERS TO RECALL AN ORDER APPROVING A RESOLUTION PLAN

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Introduction

A three Judge Bench of the Supreme Court (Supreme Court) in Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr, 2024 SCC OnLine SC 122 recently upheld the prevailing view that NCLT has the power to recall its order. The Supreme Court set aside an order passed by the National Company Law Appellate Tribunal (NCLAT) dated 24 November 2022 (Impugned Order) dismissing two interlocutory applications filed by the Appellant, Greater Noida Industrial Development Authority, seeking recall of an order passed by the National Company Law Tribunal, Delhi (NCLT), and challenging the decision of the Resolution Professional of JNC Construction (P) Limited (Corporate Debtor) to treat the Appellant as an operational creditor, and not as a financial creditor of the Corporate Debtor.

Brief background:

The Appellant, a statutory authority constituted under the U.P Industrial Area Development Act, 1976 acquired land for the purposes of setting up an urban and industrial township. The Appellant allotted one plot to the Corporate Debtor by way of lease for a residential project, for which the Corporate Debtor was liable to pay premium to the Appellant, in instalments starting from 2012 to 2020.

The Corporate Debtor committed default and was admitted into the corporate insolvency resolution process under the provisions of the Insolvency & Bankruptcy Code, 2016 (Code) pursuant to which claims were invited by the Resolution Professional.

The Appellant submitted its claim to the Insolvency Resolution Professional on account of unpaid instalments due towards the lease premium as a financial creditor. However, the Resolution Professional treated the Appellant as an operational creditor and called upon the Appellant to submit its claims as an operational creditor. The Appellant did not re-submit its claims as an operational creditor. See in this context, our Ergo Update on NOIDA v Anand Sonbhadra, (2023) 1 SCC 724 where the Supreme Court held that dues of NOIDA in its capacity as a lessor fall under the category of "operational debt" under the Code. [ERGO UPDATE](#)

In the interregnum, the committee of creditors of the Corporate Debtor approved a resolution plan which was also approved by NCLT. The order approving the resolution plan recorded that the Appellant had not submitted its claims before the Resolution Professional.

The Appellant filed two separate applications seeking (i) recall of NCLT's order approving the resolution plan, and (ii) challenging the decision of the Resolution Professional to treat the Appellant as an operational creditor. The NCLT dismissed the applications holding that

the Appellant had not taken steps against the Resolution Professional for not deciding its claim and that it was not permissible at a belated stage to decide on the claims made by the Appellant since the resolution plan had been approved.

The Appellant challenged NCLT's order before the NCLAT. The NCLAT vide the Impugned Order dismissed the appeal holding that, the Appellant had opted not to file its claims as an operational creditor, despite being informed to do so by the Resolution Professional. Hence, the challenge made by the Appellant after the resolution plan was approved was liable to be rejected.

The Supreme Court's analysis:

The Supreme Court, while hearing the present appeal, framed the following issues for consideration:

- i. Whether the NCLT has the power to recall an order approving a resolution plan passed under Section 31(1) of the Code?
- ii. Whether the Appellant's application seeking recall of the order approving the resolution plan was time-barred?
- iii. Whether the resolution plan approved by the NCLT met the requirements of Section 30(2) of the Code, read with Regulations 37 and 38 of the CIRP Regulations, 2016?

The Supreme Court answered the first issue by holding that a Tribunal, in the absence of any statutory prohibition to the contrary, has inherent powers to recall its orders to secure the ends of justice, or prevent abuse of process of the Court. Neither the Code nor the regulations framed thereunder prohibits the NCLT from exercising such a power. The Apex Court traced the power of the NCLT to recall its orders to the non-obstante clauses contained in Section 60(5)(c) of the Code, and Rule 11 of the NCLT Rules, 2016 with the caveat that such powers are to be exercised sparingly, and not as a tool to re-hear the matter. The three-judge Bench approved the view of a two-judge bench of the Supreme Court in *Union Bank of India vs. Financial Creditors of M/s Amtek Auto Ltd. & Ors.*, MANU/SCOR/113659/2023 which upheld the prevailing view of a five-member Bench of NCLAT in *Union Bank of India v. Dinakar T. Venkatasubramaniam & Ors.*, MANU/NL/561/2023.

The Supreme Court answered the second issue by holding that the application seeking to recall the order approving the resolution plan was not time barred, as it had been filed promptly and immediately upon the Appellant coming to know about NCLT's order approving the resolution plan. The Apex Court further held that the application was well within the timelines in terms of the Supreme Court orders extending limitation period in the background of the Covid19 Pandemic (see *In Re: Cognizance for Extension of Limitation*, (2021) 5 SCC 452).

The Supreme Court answered the third issue with respect to the specific facts of the case, holding that there were sufficient grounds to recall NCLT's order approving the resolution plan, as the approved plan did not meet the requirements of the Code and the Regulations. The Court held that while the resolution plan recorded that the Appellant had not filed its claim, the record indicated that the Appellant had filed its claim with proof as a financial creditor. The Court held that even if the Appellant did not file its claim as an operational creditor as advised by the Resolution Professional, its claim could not have been overlooked by the Resolution Professional merely because it was not filed in the correct form. The Court reiterated that the forms specified in the Code are merely directory, but what is mandatory is that the claim is substantiated with evidence.

The three-judge Bench further held that as the resolution plan did not acknowledge the Appellant's claim, it was unsustainable in law. The Bench pointed out that although the Appellant was an operational creditor with dues of more than 10% of the debt, it did not receive notice of the meetings of the committee of creditors as per the requirement of Section 24(3)(c) of the Code. The Court also pointed out that the Appellant was a secured creditor by operation of law but this was not reflected in the approved resolution plan. Therefore, the resolution plan approved by the NCLT clearly did not meet the parameters specified in the Code and the Regulations and resultantly stood vitiated.

Ultimately, the Court set aside the order of the NCLT approving the resolution plan and remanded the resolution plan back to the committee of creditors for reconsideration after satisfying the parameters set out under the Code and the Regulations.

Comments

The three-judge Bench affirmed the prevailing view that NCLT could recall its own order so as to meet the ends of justice and to prevent any abuse of the process of the Court. This will enable a litigant in to pursue a legal remedy before the NCLT after a resolution plan is approved by NCLT instead of preferring an Appeal before NCLAT in an appropriate case.

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