MONTHLY CORPORATE LAW UPDATES

JUNE, 2023

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1. National Company Law Appellate Tribunal ("NCLAT") has no power to review its judgment: NCLAT [*Union Bank of India v. Dinkar T Venkatasubramanian & Ors*]. [Link]

In this case, the resolution plan was approved by the Committee of Creditors ("**CoC**"). But the appellant contested the CoC's decision and later filed a fresh application seeking recall of the previous order.

The NCLAT held that it does not have the power to review its judgments but can entertain applications for recall on sufficient grounds, disagreeing with previous judgments. Further, NCLAT discussed the distinction between review and recall. Although, the power to review is not conferred upon NCLAT, however, the power to recall its judgment is inherent to NCLAT under Section 11 of NCLAT Rules, 2016.

2. Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 ("IBC") for implementation of arbitral award is not maintainable: NCLAT [*KK Ropeways Limited v. M/s. Billion Smiles Hospitality*]. [Link]

The NCLAT held that the existence of a dispute, even if raised before a court or arbitral tribunal prior to receiving a demand notice under Section 8 of IBC, can be a valid ground for rejecting a petition under Section 9 of IBC.

Further, the Tribunal emphasized that arbitration proceedings and IBC proceedings cannot proceed simultaneously. In the present case, as the award based on a rental dispute was challenged by the corporate debtor ("**CD"**), the operational debt was in dispute. Therefore, the NCLT's dismissal of the application seeking recovery of the awarded sum in arbitration proceedings was upheld by the NCLAT.

3. Resolution Professional ("RP") has the authority to suspend claims temporarily: NCLAT [*Anheuser Busch Inbev India Limited v. Mr. Pradeep Kumar Sravanam*]. [Link]

The NCLAT held that the RP acted within their powers by keeping the admission of the appellant's claim in abeyance until the determination of CD's counterclaim, which could result in a set-off of the payable sum. They stated that in emergency situations, the RP has the authority to keep claims in abeyance for various reasons. Consequently, the appellant's plea to admit the claim during the pendency of arbitration proceedings and the counterclaim was not accepted by the tribunal.

4. Notification exempts CD's contracts under Oilfields (Regulation and Development) Act, 1948 ("Oilfields Act") from moratorium provisions of IBC: Ministry of Corporate Affairs ("MCA"). [Link]

The MCA in the recent notification has limited the scope of moratorium under Section 14(1) of IBC. The notification states that agreements, transactions and arrangements entered by the CD under the Oilfields Act falls outside of the scope of Section 14(1) of IBC. The notification also specifically mentions Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses, Mining Leases, and related transactions as being outside the scope of Section 14(1) of IBC.

5. RP cannot seek police help in place of private security for securing assets of CD: NCLAT [*RP Modern Syntex (India) Ltd v. Supdt of Police Anandpura, Vadodra Gujarat & Ors*]. [Link]

NCLAT has ruled that a RP, overseeing the insolvency process, cannot seek the deployment of police for the security of private property owned by the orporate debtor. Instead, the RP should hire private security personnel and bear the cost for their services. The bench expressed dissatisfaction with the RP's request to deploy police officers and stated that such prayers were inappropriate and rightly rejected by the adjudicating authority.

1. Standardized approach valuation of investment portfolio of Alternative Investment Funds ("AIF"): Securities and Exchange Board of India ("SEBI"). [Link]

SEBI has issued a standardized framework for the valuation of the investment portfolio of AIFs. These guidelines provide norms in relation to the responsibilities of managers, disclosure, reporting and the manner of valuation of AIFs.

As per the framework, the manager is required to ensure that the AIF appoints an independent valuer in accordance with the criteria as prescribed by SEBI. Furthermore, the manager and its key managerial personnel are responsible to ensure that the independent valuer computes and carries out the valuation of the investments in the prescribed manner. A specific timeline should be established for receiving audited reports from investee companies.

2. Investor Service Centres ("ISC") for stock exchanges: SEBI. [Link]

SEBI has issued guidelines to ensure the proper functioning of ISCs in line with the technological advancements within the securities market. An ISC provides counseling services to the aid of investors.

As per the guidelines, ISCs are required to maintain certain basic facilities at all times. These shall include a dedicated desktop/laptop with internet connectivity in order to facilitate investors to access relevant information available in the public domain, financial newspapers, arbitration and appellate facility, facility for investor grievances among others.

3. Disclosure of Information on Issuers Not Cooperating ("INC") with Credit Rating Agencies ("CRA"): SEBI. [Link]

SEBI observed a steady increase in the number of INCs with CRAs. Therefore, it has asked CRAs to disclose information on INCs in order to enhance transparency and information for market participants and other stakeholders within the market. CRAs are required to disclose two lists of INCs to SEBI namely listed securities and other ratings.

4. Participation of mutual funds in repo transactions on corporate debt securities: SEBI. [Link]

SEBI has issued guidelines to modify the permission given to mutual funds to invest in repo transactions on corporate debt securities. Mutual funds can participate in repos which are rated AAs, commercial papers and commercial deposits.

5. Trading preference by clients: SEBI. [Link]

SEBI has prescribed a standardized format of trading preferences in order to ensure that clients are able to access all stock exchanges in which the stock brokers are registered for the same segment. Furthermore, all stock brokers are mandated to register their new clients on all the active stock exchanges after obtaining the trading preference as per the standardized format.

1. Only a creditor, director or member of the company, can avail an appeal under the Companies Act, 2013 ("CA"): NCLAT [*Rajneesh Ghei v. Registrar of Companies & Ors.*]. [Link]

The NCLAT has ruled that only a person who is either a member, a creditor or a director of a company is entitled to an appeal under CA. The Tribunal observed that the appellant's name does not appear in the register of members of the company. No person can enjoy the privileges and entitlements available to a member unless their name is entered in the register of the company.

Further, as is in the present case, the appellant could not get a succession certificate in his favour with regard to the shares held by his deceased parents. Therefore, he is not entitled to the such privileges mentioned above. Thus, the Tribunal concluded by holding that the appellant cannot appeal under CA as he does not own any shares of the company nor is he a member or creditor or director of the company.

2. Amendment to Companies (Accounts) Rules, 2014 requiring Form CSR-2 to be filed before the financial year of 2024-2025 begins: MCA. [Link]

For the purpose of updating the filing provisions for Corporate Social Responsibility ("**CSR**") reports, MCA has mandated companies to file Form CSR-2 with the Registrar of Companies ("**ROC**") on or before 31st March, 2024. The form shall be filed after filing of either Form No. AOC-4, Form No. AOC-4-NBFC (Ind AS), or Form No. AOC-4 XBRL as per the filing requirement of the company.

3. A court cannot set aside decision of the company to allot more shares merely because of incidental gain to the directors of the company: Supreme Court ("SC"). [*Hasmukhlal Madhavlal Patel and Anr. v. Ambika Food Products Pvt Ltd. and Ors.*]. [Link]

The SC has held that a decision to allot extra shares to existing shareholders by the board of directors is valid even if the directors stand to benefit gaining more shares. The SC observed that the decision to issue further capital was to improve its debt-to-equity ratio. The resolution to allot more shares was held to be in the interest of the company. Members of the board being promoters of the company would benefit from the refusal of an existing shareholder to apply for the further issue of shares. The court concluded that the decision of the company was bonafide and did not amount to oppression as proper procedure was followed.

1. Consent foreign awards are enforceable under the New York Convention: Delhi High Court ("HC") [*Nuovopignone International SRL v. Cargo Motors Private Limited & Anr*]. [Link]

A consent agreement is a settlement reached at by parties after invocation of arbitration to settle their disputes. The Delhi HC has held that such a consent foreign award is enforceable under the New York Convention / Part II of the Arbitration and Conciliation Act, 1996 ("**A&C Act**"). The Court rejected the contention that an award must be based on adjudication in order to be recognised under the convention and held that an award that includes a settlement agreement reached by the parties while the proceedings were ongoing also qualifies as an award under the New York Convention.

2. Plea that an arbitrator is ineligible by law can be raised as an additional ground to challenge the award, without amending the petition under Section 34 of A&C Act: Delhi HC [*Man Industries (India) Limited v. Indian Oil Corporation Limited*]. [Link]

The Delhi HC has held that the plea that an arbitrator is by law ineligible to act as one is a plea of 'lack of jurisdiction'. Section 34 of A&C Act provides for surpassing the scope of arbitration. This plea can be raised as an additional ground in the petition filed under Section 34 of A&C Act, with or without making an amendment to the same.

3. The absence of an arbitrator during certain proceedings, and the order of the tribunal not being signed by all arbitrators, is not a valid ground to set aside the award: Delhi HC [*MMTC Limited v. Aust Grain Exports Pty. Ltd*]. [Link]

The Delhi HC has held that the absence of signatures of certain arbitrators or their absence from certain proceedings are procedural irregularities. Such a procedural irregularity cannot be a ground to set aside an award unless such irregularity goes to the root of the matter, making the award illegal.

4. Expert committee constituted by the Union Government for suggesting reforms in the A&C Act. [Link]

A sixteen-member expert committee led by Dr. T.K. Vishwanathan has been constituted by the Ministry of Law & Justice. It has been formed to examine the operation of the present arbitration regime in India and suggest possible changes to the A&C Act.

This step is being taken to limit the requirement for parties to seek judicial intervention by approaching the courts. The committee is expected to submit its recommendations by the 14th of July, 2023.

1. Public Sector Undertakings to come under Competition Law: SC [*Coal India Ltd v. Competition Commission of India*]. [Link]

The SC observed that Coal India Limited despite being a public sector undertaking did not carry out sovereign functions. Additionally, the fact that Coal India was also one of the public sector undertakings that were nationalized, does not mean that it would be completely out of the preview of the competition authorities. Therefore, SC held that Coal India Limited would come under the purview of Competition Law.

MISCELLANEOUS

1. Framework for Compromise Settlements and Technical Write-offs. [Link]

RBI has released the 'Framework for Compromise Settlements and Technical Write-offs'. This new framework allows banks to lend loans to wilful defaulters after five years, subject to change in promoters and business standards. Under this framework, regulated entities must have board-approved policies for compromise settlements and technical write-offs.

The framework ensures prudential treatment and reporting mechanisms, overseen by the board. A cooling period is also mandated before assuming fresh exposures to borrowers who have undergone compromise settlement. The framework does not affect legal proceedings or other statutes in force.

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