CS Makarand Joshi

CORPORATE LAWS

Case Law Update

1. Companies Act, 2013

M/s Indiana Hospital and Heart Institute Limited (Petitioner) vs. Ministry of Corporate Affairs (ROC Bengaluru/Respondent), NCLT, Bengaluru Bench order dated 28th May, 2021

Facts of the case

- Petitioner issued total 2,53,000 5% Redeemable Cumulative Preference shares (RCPS) of ₹ 100 each in the year 2010, 2011 and 2013. The said shares were due for redemption after 10 years from the date of issue.
- Anticipating the normal growth rate as achieved in previous years petitioner distributed all its reserves in the AGM held in the year 2018 by paying off accumulated dividend to preference shareholders of the Company. Also declared and paid Final Dividend and interim dividend in 2019 and 2020 to both equity and preference shareholders of the Company.
- The Company was under impression that it will be able to raise required amount for the redemption of the 5% RCPS falling due on October, 2020 to January 2023.
- Subsequently due to the unexpected spread of Covid-19 pandemic since March, 2020 across the country and related general economic slowdown and fall in the business, the petitioner was not in a position to mobilize the funds via further issue of shares.
- Sudden spread of COVID-19 pandemic affected the normal operations of the petitioner Company and it could not generate enough profits as envisaged by the board and the Company
- Company at its Board Meeting consented to extend the tenure of the 5% RCPS by a further period of 2 years and approval of 5% RCP shareholders was also received in a convened EGM. 16 shareholders holding 33.13% of 5% RCPS attended the meeting and unanimously consented to the extension of said tenure
- Petition was filed u/s 55 of Companies Act, 2013 *inter alia* seeking to allow the petitioner to extend the tenure of 5% Redeemable Cumulative Preference Shares (5% RCPS) for a period of 2 years by issue of further 5% Redeemable

Cumulative Preference Shares in lieu of old preference share equal to amount due on original shares

- The Company is willing to pay dividend for the extended period at the existing rate and stated that no hardships shall accrue to the preference shareholders due to proposed action

Respondents Observation in Report

ROC, Karnataka had filed a report stating that:

- As per Sec. 48(1) and Sec. 55(3) the approval of preference shareholders with 3/4th in value of such preference shareholders is mandatory in nature
- However only **16 preference shareholders** attended the meeting with **33.13% voting rights** only, **out of total 83 preference shareholders**. It is noticed that the Company has not obtained the approval of 5% RCPS with **3/4th of the shareholders** of the particular class **u/s 48(1) r/w Sec. 55(3)** of the Companies Act, 2013.
- Further the Company has **not obtained the approval of equity shareholders** and 5% Convertible preference shareholders of the Company **with 3/4th majority as per proviso to Sec. 48(1)** of the Companies Act, 2013 as the **rights attached** to the respective shareholders would get **adversely affected by such extension** of tenure of 5% RCPS as they are entitled for cumulative dividend

Arguments on behalf of petitioner

In response to the observations, Ld. Council on behalf of petitioner contended that:

- The **consent of the remaining shareholders** has been obtained. The details are as follows:

Sr. No.	*Category of shareholder*	*Consents received (as % of shares issued)*
1.	Equity shareholder	78.92%
2.	5% RCPS	78.64% (incl. consent given in EGM)
3.	5% Convertible preference shares	100%

Held

- It is seen that the **petitioner Company has obtained the approval** of 5% RCPS with 3/4th of the shareholder of the particular class u/s 48(1) r/w Sec. 55(3) of the Companies Act, 2013
- Further the **other categories of shareholders** who **may be impacted by the prayer** for extension of the period of redemption by 2 years by issue of fresh **shares have also given their consent**.
- In view of reasons cited, namely the spread of the COVID-19 pandemic and the resulting economic slowdown, leading to the company's inability to mobilize funds, the court was of considered view that the **petition deserves to be allowed**. This is in line with court's stance of taking a **liberal view of matters in this pandemic period**, to promote the **Govt.'s initiative of ease of doing business, and in the interest of equity and justice**.

2. SEBI

Final Order of Whole Time Member of Securities and Exchange Board of India dated: June 15, 2021 for violation of Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), Regulation 33(1)(d) and Regulation 30(6) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with Section 21 of Securities Contract Regulation Act, 1956.

Name of the Case
In the matter of Inter Globe Finance Ltd

Facts of the case

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a letter dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as **"MCA"**) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs.

2. In respect of listed shell companies including Inter Globe Finance Ltd (hereinafter referred to as "IGFL/Noticee no. 1/the Company"), vide its letter dated August 7, 2017, SEBI placed trading restrictions on promoters/ directors so that they do not exit these listed companies. SEBI further placed the scrip in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. IGFL then vide its letter dated August 9, 2017 made a representation to SEBI inter-alia stating that it is an active company and not a shell company.

3. IGFL further filed an appeal No. 189 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as **"SAT"**). Hon'ble SAT vide order dated September 11, 2017 inter-alia directed SEBI and stock exchanges to investigate the case and initiate proceedings if deemed fit. Pursuant to above mentioned SAT Order, SEBI had called for various information/ explanation from IGFL and after granting an opportunity of personal hearing to IGFL, an interim order dated March 1, 2018 came to be passed by Whole Time Member, SEBI, *inter-alia* directing stock exchanges to conduct a forensic audit and allowing promoters and directors of IGFL to purchase shares of IGFL but not permitting them to transfer shares of IGFL. Further directions given by Whole Time Member, SEBI in the interim order dt: March 1, 2018 were partially confirmed vide order dated December 27, 2018 inter-alia revoking the restraint on sale of shares of IGFL by directors/ promoters.

4. Pursuant to Interim Order BSE appointed BDO India LLP as the Forensic Auditor on January 9, 2019 and the Forensic Audit Report was submitted to BSE by BDO India LLP on August 30, 2019. On the basis of this Forensic audit Report and investigation by SEBI Show Cause Notice ('SCN') was issued to the Company, Mr Navin Jain, (Noticee no. 2), Mr Pritam Kumar Choudhary – Independent Directors (Noticee no. 3), Ms Seema Gupta – Independent Director, (Noticee no.4), Mr Anirban Dutta – Independent Director,

(Noticee no. 5) and Mr Vikas Kedia – Independent Director, (Noticee no.6) [hereinafter referred to as "Noticees"].

5. SEBI SCN alleged that the Noticees have failed to present true and fair financial statements of IGFL and had executed transactions which are non-genuine in nature amounting to misrepresentation of the accounts/financials statement and misuse of funds of the Company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the Company and had the potential to mislead the investors.

6. SEBI further alleged that the Noticee no. 2 to Noticee no. 6 of IGFL had failed to exercise duty of care, and failed to discharge their fiduciary responsibility. SEBI further alleged that IGFL has violated Regulation 33(1)(d) of Chapter IV of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [hereinafter referred to as 'SEBI LODR'] as the auditor of the Company is not subjected himself to the peer review process of Institute of Chartered Accountants of India (hereinafter referred to as 'ICAI') and does not hold a valid certificate issued by Peer Review Board of ICAI. SEBI further alleged that IGFL has violated Regulation 30(6) of SEBI LODR Regulations, by not disclosing to the stock exchange about its acquisition of shares in 6 companies

Charges levied

SEBI charged that the Company and its directors (Noticee no. 2 to 6) have violated Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), Regulation 33(1)(d) and Regulation 30(6) of LODR Regulations read with Section 21 of SCRA, 1956.

Arguments made by Noticees

1. **Acquisition of shares of Investee Companies amounting to ₹ 34.24 lakhs in Cash:** IGFL submitted that the investments made in Investee Companies via bank withdrawal have been properly recorded in our books under non-current investments in the annual accounts of FY 2015-2016. In addition, it has also been properly recorded in the books of M/s Kashiram Jain & Co. in its annual audited accounts for the financial year 2015-16 filed by them with BSE. The amount of ₹ 34.64 lakhs might seem large but it was the *total* amount invested into the six *different* Investee Companies. Therefore, investment into each Investee Companies was not a large sum whatsoever. Further, at the time this transaction was carried out, i.e. in the FY 2015-2016, there were no restrictions on cash transactions in terms of the Income Tax Act, 1961 in the country. IGFL submitted that our bankers in compliance with RBI master circular (RBI/2014-15/92) on cash transactions have also not raised any suspicious over the bank withdrawal and considered the same as genuine business transaction. Further Noticee no. 3 to Noticee no. 6 being Independent Directors of IGFL during relevant period also submitted that Independent Directors shall not be held responsible for entering into high value of cash transactions as they are not part of the day to day business. IGFL submitted that the acquisition of shares was a good governance practice.

2. **No economic and business rationale behind the sale and repurchase of shares to/from its subsidiary:** IGFL

submitted that this allegation of sale and repurchase of shares amounting to ₹ 10.28 Crore by IGFL to/from its subsidiary has no basis and has not been substantiated either in the Forensic Audit Report or in the SCN. It further submitted that Board of Directors in their meetings held on 4th April 2015 and 5th April 2016 had decided to reduced business volatility by reducing share trading transactions. Consequent to this IGFL Audit Committee in their meeting held on 12th November 2016 approved sale of investments in Inter Globe Overseas Ltd ('IGOL') and Inter Globe Reality Ltd ('IGRL') to Inter Globe Tradex Services Ltd ('IGTSL'), subsidiary company of IGFL. Intimation in this regard was also given to BSE. The decision to transfer shares of IGOL and IGRL to IGTSL rather than outside of their Investee Companies was taken with the intention of not impacting the overall revenue of IGFL and its shareholders. IGFL further submitted that profits of the Company increased five times in next few years and it was also disclosed to members in Annual reports in coming years. Further Forensic Audit Report has also stated that the sale and re-purchase fulfilled all the legal requirements. IGFL further submitted that these transactions were scrutinised by Income tax department & an assessment order was also passed by two different assessing officer claiming the transaction as genuine.

3. **Around 44 companies have same registered office address as that of IGFL:** The allegation has been made in the SCN and Forensic Audit Report by relying on a non-official and random website called '*Zauba*'. No official records have been relied on and instead of relying on the records of the Ministry of Corporate Affairs (MCA), a fly-by-night website is being relied on. Such records are not in any way official records. This allegation is, therefore, absolutely factually incorrect and does not require any warrant any further argument whatsoever. Forensic Auditors also have not raised any adverse observations in this regard. IGFL does not conduct its business from the entire first floor of the building (Aloka House) wherein its registered office is located. There are almost thirty-two (32) office spaces/blocks/rooms on the first floor itself (numbered from B-1 to B-32). Hence, to sweepingly assume that the office of other entities and IGFL is same is incorrect.

4. **Statutory Auditor of IGFL does not hold a valid certificate issued by the Peer Review Board of ICAI:** IGFL submitted that current auditors, M/s Bijan Ghosh & Associates, as well as the past auditors, M/s Manish Mahavir & Co, of IGFL subsequently subjected themselves to the peer board review process and obtained valid certificates issued by the peer board review of the ICAI.

5. **IGFL did not make disclosure to stock exchange within 24 hours informing acquisition of shares in the Investee Companies:** IGFL submitted that share purchase transactions were entered into two tranches. First tranche of the transaction was completed on November 13, 2015 and second tranche of transaction was completed on February 06, 2016. IGFL submitted that agreement to purchase 99% shares of the Investee Companies was executed

on 6th November, 2015 when the LODR Regulations had not even come into force. SEBI LODR came into force from 1st December 2015. IGFL further held that only after February 19, 2016 BSE entered into a fresh agreement with IGFL for continued admission of trading of its securities on the floor of the exchange. Therefore, an allegation of violating the SEBI LODR cannot arise in regard to this transaction and is completely baseless. IGFL further submitted that final acquisition of shares was completed only September 1, 2016 when IGFL's name was entered as a shareholder in the register of members of the Investee Companies. Immediately on such acquisition, IGFL filed proper disclosures with the BSE (on September 1, 2016) under the LODR Regulations by way of abundant caution.

6. **Board of Directors cannot be held responsible for violation of SEBI LODR Principles:** Noticee no. 3 and 6 contended that they were independent directors of the Company and did not have any day to day control over the affairs of the Company, therefore, they cannot be held liable for the violation of SEBI LODR Principles and other allegations under the SCN.

Conclusions made by SEBI

1. **Acquisition of shares of Investee Companies amounting to ₹ 34.24 lakhs in Cash:** SEBI stated that acquisition of the shares of the Investee Companies by IGFL by means of cash transaction with M/s Kashiram Jain & Co., amounting to ₹ 34.64 lakhs was a not a good governance practice. SEBI stated that this raises concern over genuineness of transaction. SEBI further stated that the contention of the Noticees that cash transactions for ₹ 2 lakh and above were not banned prior to 1st April 2017 u/s 269ST of Income Tax Act, 1961 may be correct but SEBI contented that Noticee no. 1 being a listed company besides being non-deposit taking NBFC registered with RBI must be transparent in its transactions. SEBI stated that IGFL shall fund transactions, especially of the nature which are in question here, through banking channels which could ensure proper audit trails of the funds transacted. SEBI further contented that Noticee no. 1 has not furnished any reason to explain as to why it was required to pay consideration for purchase of shares in the six Investee Companies in cash. SEBI further noted that cash that was withdrawn by the Noticees on November 13, 2015 and February 6, 2016 from Karnataka Bank was ₹ 25 Lakhs on each occasion, however, the amount that was purportedly spent by the Company to buy shares of Investee Companies turns out to be only ₹ 34.64 Lakhs. Thus, even these entries do not tally. While addressing contention of Noticees that Karnataka Bank Ltd in its letter dt: September 10, 2020 did not disclose it as Suspicious Transaction, SEBI stated that merely because the impugned transactions were not reported by Karnataka Bank in the Suspicious Transaction Report, does not ipso facto lead to any favourable inference about the transaction. Finally SEBI held that though dealing in such high value transaction worth ₹ 34.64 Lakh, in cash, may not be prohibited by the then prevailing provisions of Income Tax Act, 1961, but it certainly cannot by any stretch of thought be

said to be a normal and regular business practice, as claimed by the Noticees, particularly by an NBFC which is also a listed company (more-so without any compelling reason), let alone a good governance practice. SEBI further held that Noticee nos. 3 and 6, being the independent Directors of IGFL and being part of the audit committee of IGFL, reviewed the financial statements of IGFL and approved the financials of IGFL as part of the board of directors of IGFL. Failure to raise any concern regarding the financials of IGFL, as member of the audit committee as well as the board of directors of IGFL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations. Therefore, the contention raised by Noticee no. 3 and 6 is not tenable.

2. **No economic and business rationale behind the sale and repurchase of shares to/from its subsidiary:** SEBI stated that contention of Noticees that shares were sold as a part of Business Strategy as was approved by Board of Directors in their meeting held on April 4, 2015 and April 5, 2016 is incorrect. SEBI further highlighted that what was resolved was to reduce trading in shares of companies, which by nature are volatile, and focusing on long term investment rather than day to day trading but it needs to be noted here that IGOL and IGRL are basically public unlisted companies. SEBI further contended that shares of IGOL and IGRL were sold to IGTSL and repurchased from IGTSL by IGFL within a span of nine months for which there is no valid explanation. SEBI further noted that even though share transfer formalities of IGOL and IGRL to IGTSL got completed on December 15, 2016 but actual consideration was not received by IGFL. With respect to argument by IGFL that share sale transactions were reviewed by Assessing Officer, Income Tax and were found genuine SEBI held that share sale transactions were carried out over a period of two Financial Years 2016-17 and 2017-18. Assessment in case of IGFL for FY 2016-17 and Assessment of Inter Globe Tradex Services Ltd. for FY 2016-17, was conducted by two different Assessing Officers and re-purchase transaction happened in the FY 2017-18. Thus, the Assessing Officers never had the opportunity to scrutinize the impugned transaction holistically. So inference sought to be drawn by the Noticees from the Assessment Orders of the Income Tax Dept. is not sustainable and are in violation of Regulation 4(2)(f)(iii)(3) and 4(2)(f)(iii)(6) of LODR Regulations

3. **Around 44 companies have same registered office address as that of IGFL:** Noticees have contended that the allegation has been made in the SCN and Forensic Audit Report by relying on a non-official and random website called 'Zauba', a fly-by-night website. Noticees have submitted that there are about 32 office space/blocks/rooms on the first floor of the Aloka House and also submitted office lay out plan of Aloka House, 1st Floor, 6B, Bentinck Street, Kolkata, West Bengal – 700001 prepared by licensed building surveyor. SEBI further stated that the Noticees have also produced copy of a certificate dated November 27, 2020 issued by Sweety Sharma, Practicing Company Secretary, certifying that IGFL was not

sharing its office space with any other company and that IGFL is based out of office no. B-19 on the First Floor of Aloka House. SEBI further held that after making two site visits to the aforesaid registered office address of the Company, Forensic Audit Report observed that the Company seem to be operating in the normal course of business. In view of all the aforesaid, I find that no adverse inference can be drawn regarding the business operations of the Company on the basis of said registered office address.

4. **Statutory Auditor of IGFL does not hold a valid certificate issued by the Peer Review Board of ICAI:** SEBI stated that Noticees have submitted that the current auditors, M/s Bijan Ghosh & Associates, as well as the past auditors, M/s Manish Mahavir & Co., of IGFL subsequently subjected themselves to the peer board review process and obtained valid certificates issued by the peer board review of the ICAI. SEBI stated that subsequent compliance does not validate the past non-compliance. Therefore, I find that for the FY 2015-16, the Company has violated Regulation 33(1)(d) of LODR Regulations and Clause 41(I)(h) of the erstwhile Equity Listing Agreement

5. **IGFL did not make disclosure to stock exchange within 24 hours informing acquisition of shares in the Investee Companies:** SEBI stated that at the time of signing of Share Purchase Agreement the provisions of erstwhile equity listing agreement were applicable and Clause 36 and Clause 49 of erstwhile Listing Agreement clearly mandated disclosure of acquisition of shares. Further SEBI held that board of directors of IGFL had approved the acquisition of stake in the Investee Companies on November 6, 2015 and a Share Purchase Agreement was signed on the same day. Further SEBI disagreed with the contention of the Noticees that only the event of final acquisition of shares, which was completed on September 1, 2016 when IGFL's name was entered as a shareholder in the register of members of the Investee Companies, was a material event for disclosure. Thus by not disclosing the information of deciding to acquire controlling stake in the Investee Companies, the Company has violated Clause 36(7)(2) and Clause 49(I)(C)(1) of the erstwhile Listing Agreement read with Regulation 30(6) of LODR Regulations. With regard to second tranche of transaction SEBI noted that when second tranche of transaction was completed on February 6, 2016 when SEBI LODR was in force and in term of Regulation 30(6) of SEBI LODR disclosure was required. SEBI further stated that the contention of the Noticees that the provisions of the SEBI LODR became applicable to them when the Company signed the fresh listing agreement with BSE is flawed, as the coming into force of LODR Regulations qua the Company was not dependent on signing of fresh listing agreement by the Company with BSE. SEBI also highlighted the fact Promoter/Director of IGFL took positions on Board of Investee companies even before formal registration of IGFL as a shareholder on September 1, 2016. It shows that IGFL started exercising control over the affairs of Investee Companies. Hence SEBI stated that disclosure of acquisition of shares should have been disclosed to BSE within 24 hours without waiting for

IGFL name to be entered in Register of Members.

6. **Board of Directors cannot be held responsible for violation of SEBI LODR Principles:** In this regard SEBI stated that Regulation 4(2)(f) refers to Board of Directors of Company, it does not make any distinction between Independent Director or other directors. Hence the contention of Independent Directors is not tenable. SEBI also brought to the attention of Noticees that post amendment to Section 27 of SEBI Act, 1992 with effect from March 8, 2019 going forward Board of Directors will be held vicariously liable for civil violations of Company.

Penalty

Under Section 15HB of SEBI Act for violation of Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), Regulation 33(1)(d) and Regulation 30(6) of LODR Regulations read with Section 21 of SCRA, 1956:

Name of Company	***Penalty***	***Debarrment***
IGFL	₹ 9 lakh	Debarment six months
Mr Navin Jain	₹ 9 lakh	Debarment six months
Mr Pritam Kumar Choudhary	₹ 3 lakh	Debarment three months
Ms Seema Gupta	₹ 3 lakh	Debarment three months
Mr Anirban Gupta	₹ 9 lakh	Debarment six months
Mr Vikas Kedia	₹ 3 lakh	Debarment three months

Cases referred: Noticees: Chander Kant Bansal [(2008) 5 SCC 117]

SEBI: ***Collector of Central Excise vs. Pradyumna Steel (2003) 9 SCC 234.***

3. IBC

Ghanashyam Mishra and Sons Private Limited (Appellant) vs. Edelweiss Asset Reconstruction Company Limited & Others (Respondent) **in the order dated 13 April, 2021- passed by Supreme Court.**

Facts of the Case

- State Bank of India (Financial Creditor) filed an application of the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) before the National Company Law Tribunal, Kolkata (NCLT) against the Orissa Manganese & Minerals Limited (Corporate Debtor).
- The NCLT vide its Order dated 3 August, 2017 admitted the CIRP application and interim resolution professional (IRP/RP) was appointed. The RP initiated the CIRP in accordance with the provisions of the IBC
- During the process, three resolution plans (plan/plans) were received, each from Edelweiss Asset Reconstruction Company Limited (EARC), Orissa Mining Private Limited (OMPL) and

Ghanshyam Mishra & Sons Private Limited (GMSPL).

- After deliberations between the EARC, GMPSL and the Committee of Creditors (COC), COC rejected the plans submitted by them. COC decided to annul the existing process and initiate a fresh process for invitation of plan from those who had submitted their Expression of Interests (EOI). Accordingly, plans were received each from GMSPL, EARC and Srei Infrastructure Finance Limited (SIFL).
- The COC approved the plan submitted by GMSPL and the RP filed an application for approval of the plan submitted by GMSPL before NCLT. On the other hand, EARC challenged the approval of the plan submitted by GMSP.
- EARC's claimed that the corporate debtor had executed a corporate guarantee securing a loan obtained by one of its sister concerns and that the entity assigned its rights to EARC. EARC being the assignee of the aforesaid, submitted its claims to the RP. The claim was not considered by the RP and therefore, in not admitting the claim on the strength of corporate guarantee, RP violated Regulations 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations).
- However, NCLT approved the plan of GMSPL and rejected all other applications filed by the EARC, vide its order dated 22 June, 2018.
- Aggrieved by the order EARC filed the appeal before the National Company Law Appellate Tribunal, New Delhi (NCLAT). The NCLAT also held that the plan of GMSPL is better than the other Applicants. However, NCLAT observed that that the claims of the parties, which are not included in the resolution plan could be agitated by them before other forums.
- Aggrieved by the observations made by NCLAT - GMSPL filed application before the Supreme Court against the NCLAT.

Arguments by the Appellant

- The commercial wisdom of CoC in accepting or rejecting the Plan is paramount. The interference would be warranted within the limited parameters of judicial review that are available under the Statute.
- Once the NCLT approves the plan, it shall be binding on everyone including Corporate Debtor and its employees, members, creditors including the Central Government, any State Government or any local authority, to whom a debt is owed in respect of the payment of dues arising under any law for the time being in force, guarantors and other stake¬holders, involved in the plan.
- Once a resolution plan is accepted, if any additional liability is thrust upon the plan, the entire plan would become unworkable, resulting into the frustration of the very purpose of the enactment i.e., revival of the Corporate Debtor.
- On perusal of the plan submitted by EARC – it was revealed that that all the debts dues, liability or obligations other than the one, which are included in plan, shall be deemed to have been

irrevocably waived and permanently extinguished and written off in full. The same has been provided in the plan approved by the COC.

Arguments by the Respondent

- NCLAT has only reserved the right of EARC to invoke the Corporate Guarantee in its favour. On account of the erroneous conduct of the proceedings by RP and CoC, EARC has been put in a precarious condition.
- On one hand - RP has not recognized EARC as a financial creditor thereby, depriving its nomination to CoC and participation in finalisation of proceedings. On the other hand, denying EARC to encash its bank guarantee would leave EARC high and dry.
- A substantial claim of EARC would be rendered futile, in the event the order passed by NCLT is to be maintained

Held

- Supreme Court noted that EARC had not even invoked the corporate guarantee based on which claim was filed by it. The corporate guarantee was invoked during the period when moratorium was in force, therefore, such invocation could not give rise to any claim being contrary to section 14 of the Code. Besides, the conduct of EARC was also a matter of concern as EARC did not choose to challenge the rejection of its claim by RP at the first instance. Instead, it kept participating in the resolution process and approached NCLT only when its resolution plan was rejected by CoC.
- Once a resolution plan is duly approved by NCLT u/s 31(1) of the IBC, the claims as provided in the plan stands frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt., any State Govt. or any local authority, guarantors and other stakeholders.
- On the date of approval of resolution plan by NCLT, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.
- Amendment to Sec. 31 of the IBC in 2019 is clarificatory and declaratory in nature and therefore will be effective from the date on which IBC has come into effect
- Consequently all the dues including the statutory dues owed to the Central Govt., any State Govt. or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which NCLT grants its approval u/s 31 could be continued.

■●■

"Education is the manifestation of perfection already existing in man."

— *Swami Vivekananda*