CORPORATE LAWS
Case Law Update

CS Makarand Joshi

CASE-1 Companies Act

In the matter of *M/s. Murlidhar Vincom Pvt. ltd. vs. M/s. Skoda (India) Pvt. Ltd.* NCLAT Principal Bench, New Delhi order dated 26th November 2024.

Facts of the case

- M/s Skoda (India) Pvt Ltd ('hereinafter called Company') is the corporate debtor and M/s Murlidhar Vincom Pvt Ltd ('hereinafter called Appellant') argues to be the financial creditor of the company.
- In the financial year 2009-10, the Appellant gave an amount of 6.6 Lakhs to the Company against which the Company allotted shares to the Appellant. Thereafter, in years 2011 and 2012, the Appellant gave ₹ 1.32 crores to the company, out of which, the Company could repay only 40 Lakhs and agreed to issue shares against the remaining amount of 92 Lakhs if the Appellant infuses more funds in the company.
- Therefore, the Appellant infused a further amount of ₹ 79.6 lakhs in the company. But the Company neither allotted shares against this amount, nor returned the same.
- Therefore, the Appellant sent a demand notice to the Company demanding the refund of money along with the interest as provided under section 42(6).
- Since the Company could not refund the said money, the Appellant filed an application before Hon'ble National Company Law Tribunal ['NCLT'] under section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC') for initiating the CIRP process against the company.
- However, the Hon'ble NCLT rejected the application for the reason that the share application money against the un-allotted shares cannot be treated as financial debt under section 5 of IBC.

Appellant's contentions

- As per section 42 of the Companies Act 2013 ('the Act'), the shares must be allotted against share application money within 60 days from receipt of such money and if such allotment is not made within 60 days, then the application money has to be returned within 15 days from the end of 60th day.
- As per sub-section (6) of section 42 of the Act, if the money is not refunded

within 15 days from the end of 60th day, then interest has to be paid on such money and as per the companies (Acceptance of Deposit) Rules, 2014 (CADR rules) the said money if not refunded within 15 days, shall be treated as a deposit.

- Since in the given case, the share application money was not refunded by the Company, it should be treated as a deposit and hence should be considered as financial debt under section 5(8) of IBC.
- Placing reliance on the judgment of this Tribunal in the case of ***Kushan Mitra vs. Amit Goel and Ors. in CA(AT) (Ins) No. 128 of 2021***, it was submitted by the Ld. Counsel for the Appellant that this Tribunal in the Kushan Mitra judgment supra clearly held that share application money in the event of non-allotment of share attracts interest under sub-section (6) of section 42 of the Act and therefore falls within the ambit of financial debt under sub-section (8) of section 5 of the IBC.
- The Adjudicating Authority had erred by relying upon the judgment of this Tribunal in the case of ***Promod Sharma vs. M/s Karanaya Heart Care Pvt. Ltd. in CA(AT)(Ins) No. 426 of 2022*** as it was based on distinguishable facts as in that case the principal amount had already been refunded and Section 7 application was filed only on the outstanding interest amount.

Held

- The point which requires our consideration is, "Whether in the facts of the present case, the share application money which was deposited with the Corporate Debtor by the Appellant fell in the category of Section 5(8) of the IBC?"
- When we look at Rule 2(c)(vii) of the CADR Rules, 2014 and the explanatory clause appended thereto, it becomes clear that it refers to any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards a subscription to any securities, including share application money. It flows therefrom that for the aforementioned CADR Rules to be attracted in respect of share application money, there has to be a clear nexus to show that the share application money amount was advanced in conformity with the relevant provisions of the Act.
- Sub-section (2) of Section 42 of the Act stipulates the requirement to issue of private placement offer letter in such cases. From the records available on file, we do not find that the Corporate Debtor had issued any such private placement offer letter to the Appellant. There is no evidence of any valid concluded agreement between the two parties with respect to the allotment of shares. Hence, the amount which was advanced by the Appellant cannot be treated to be amount in response to the private placement offer.
- Rule 2 of CADR Rules envisages that only if any amount is received pursuant to any private placement offer made in accordance with the provisions of the Act and no shares are allotted, only then the sum becomes a deposit. When no proof of any private placement offer

made in accordance with the provisions of the Act has been placed on record by the Appellant, the CADR Rules cannot be held to be applicable.

- Since the amount advanced cannot be related to Section 42 of the Act, the applicability of sub-section (6) of section 42 cannot be pressed as is being sought by the Appellant in the present case.
- We would also like to add here that the Kushan Mitra judgment supra cannot come to the aid of the Appellant since the above judgment of this Tribunal was challenged before the Hon'ble Supreme Court of India in ***Shobori Ganguly vs. Amit Goel and Ors. in Civil Appeal No. 4333 of 2022*** and a stay has been put on this judgment. On the other hand, the Adjudicating Authority has relied on the precedent laid down in a subsequent three-bench judgment of this Tribunal in Promod Sharma judgment supra wherein it has been held that the amount given as share application money did not constitute a financial debt under Section 5(8) of the IBC.
- In sum, we do not find any infirmity in the order of the Adjudicating Authority rejecting the Section 7 application of the Appellant. It shall however remain open to the Appellant to seek a refund/ recovery of the share application money in appropriate proceedings before an appropriate forum in accordance with law. There is no merit in the Appeal. The Appeal is dismissed.

CASE-2 – SEBI

Securities and Exchange Board of India Adjudication Order in the Matter of Insider Trading in the Scrip of Jagsonpal Pharmaceuticals Limited dated 22 November 2024

Facts of The Order

- M/s Jagsonpal Pharmaceuticals Limited (hereinafter referred to as 'JPL'/'company') made an announcement to the National Stock Exchange (NSE) of the press release (titled '*Intimation for Public Announcement under Regulations 3(1) and 4 read with Regulations 13(1), 14 And 15(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011*') dated 21 February, 2022 regarding a substantial acquisition of shares by Convergent Finance LLP. This announcement pertained to an open offer for the acquisition of 26% equity shares of JPL. The news of the substantial acquisition of shares was announced pre-market hours on 22 February, 2022.
- It was observed that the said news impacted the price of the scrip of JPL as it registered a rise of around 20% on a close-to-close basis and a rise of 5.96% on an open-to-close basis. Further, it was also observed that the scrip of the company hit a new 52-week high price on 22 February, 2022. Thus, the announcement dated 22 February, 2022 made by JPL to NSE as regards the substantial acquisition of its shares under Regulations 3(1) and 4 read with Regulation 13(1), 14 and 15(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 was observed to

be a UPSI under the provisions of Regulation 2(1)(n) of the Securities and Exchange Board of India (Prohibition of Insider Trading), Regulations, 2015 ['PIT Regulations']

- Thereafter, a detailed investigation was undertaken by SEBI to ascertain whether the suspected entity/ies traded in the scrip of JPL when in possession of the UPSI and if there were any violations of the provisions of the Securities and Exchange Board of India Act, 1992 and the PIT. The period of investigation was taken from 24 December, 2021 to 31 March, 2022.

- Based on the analysis of trading pattern, Mr. Maneesh Kumar Jain (hereinafter referred to as 'Mr. Maneesh'/'Noticee no.1') was shortlisted by SEBI as a suspected entity. The focus of SEBI's investigation was to examine whether the aforesaid suspected entity had traded in the scrip of JPL being in possession of UPSI during the investigation period.

- Upon examining the call data records (CDRs) of Noticee No. 1, it was, *inter alia*, alleged that Noticee No. 1, who had traded in the scrip of JPL, had communication/contact, on a frequent basis, with Mr. SV Subha Rao, the Chief Finance Officer (CFO) of JPL (hereinafter referred to as **'Noticee No. 2'**) during the relevant period.

- On examining the trading pattern of Noticee No. 1 during the relevant period on NSE and BSE, it was alleged that Noticee No. 1 had traded in the scrip of JPL during the UPSI period. Out of the trades executed by Noticee No.1 during the investigation period, it was noticed that his trades in the scrip of JPL were the fourth largest trades in terms of value and the same were executed during the existence of the UPSI i.e. 28 December, 2021 to 21 February , 2022.

- It was alleged that on the basis of the UPSI communicated by the Noticee No. 2, an insider, him being the CFO of JPL, to Noticee No. 1, Noticee No. 1 had traded in the scrip of JPL when in possession of UPSI and thereby, the Noticees allegedly violated the following provisions of securities laws

Charges Levied

- It was alleged that Noticee No.2/ Mr. S.V. Subha Rao (*CFO of JPL*), being an insider, was in possession of UPSI regarding the substantial acquisition of shares of the company and allegedly, communicated the said UPSI to Noticee No. 1/Mr. Maneesh Kumar Jain.

- In view of the same, Noticee No. 2 alleged to have violated the provisions of Regulation 3(1) of PIT Regulations and Section 12A(e) of SEBI Act, 1992.

- Further, it was alleged that Noticee No. 1 procured the UPSI from Noticee No. 2 and traded in shares of JPL, while being in possession of UPSI related to the substantial acquisition of shares in JPL, and made a profit of Rs. 31.39 Lakhs. Therefore, Noticee No. 1 had allegedly violated the provisions of Regulation 4(1) of the PIT Regulations and Sections 12A(d) and 12A(e) of the SEBI Act, 1992.

Contentions by the Noticee

A. Noticee no.1 contended that he traded in the shares of JPL on the basis of his own research:

- Noticee no. 1 submitted that he was a former employee of Value First Digital Media Private Limited and had resigned from the said company in December 2016. Since then, the said Noticee has been an active trader, trading based on his own research and technical analysis of various companies. He has adopted a sector agnostic approach for trading and the average shares sold by Noticee No. 1 annually during the period from F.Y. 2019-20 to F.Y. 2023-24 has been around INR 123 crores. Noticee No. 1 stated that the trades in question in the SCN forms only 2% of the total shares sold by him in the F.Y.

- Noticee no.1 stated that he became acquainted with Noticee no. 2 in and around December, 2021 and met in person in January, 2022 to discuss marriage proposals of their children and based on subsequent meetings, gatherings, calls, discussions, their children got married on December 11, 2022.

- It is further submitted that as alleged Noticee No. 2 has communicated UPSI to Noticee No. 1 and SCN places reliance on particular call data records of January 25-26, 2022 with respect to trades undertaken by Noticee No, 1 on February 10-11, 2022 and telephonic communication on February 20, 2022 with respect to trades undertaken by Noticee No. 1 on February 21, 2022. However, it is the case of the Noticees that for charging entities with the violation of insider trading, any finding of possession and communication of UPSI ought to be based on cogent evidence and not conjectures and surmises. The Noticees have placed reliance on the judgement in the case of ***Balram Garg vs. SEBI (2022 SCC Online SC 472*)** to support their contention.

- In addition, the Noticees have submitted that the SCN has tried to co-relate the call on 20 February, 2022 between the Noticees with the trade of Noticee No. 1 on 21 February, 2022. However, the SCN failed to provide details of the nature of the communication and has relied on two facts to allege the same that the said call was the only call/contact between the Noticee no.1 and Noticee no.2 in the month of February 2022 and that the said telephonic conversation between the Noticee no.1 and Noticee no.2 is of the longest duration.

- Noticee no.1 and Noticee no.2 submitted that considering their impeccable careers, to charge them with violation of the PIT Regulations is very serious and would have a long-term impact on their careers. Further, it was submitted that the only allegation in the SCN was that Noticee No. 2 allegedly violated the provisions of the PIT Regulations for purportedly communicating the alleged UPSI to Noticee No. 1 and that subsequently, Noticee No. 1 had traded based on such alleged communication. However, **there is no material evidence of the alleged communication and the Noticees therefore, deny all the allegations**.

- Contentions by Noticee no.2: Noticee No. 2, submitted that he was a former Chief Financial Officer (CFO) of JPL and retired on February 2024 after working for 31 years with the Company. While in service, there were no disciplinary actions and/or any regulatory proceedings initiated against him in his career.

Submission by Noticee

Contentions by SEBI

- Noticee no. 1 traded in shares of JPL on the basis of his own research: SEBI stated that Further during the investigation, vide email dated January 24, 2023, that JPL had made submissions to SEBI wherein the names of certain individuals who were in possession of the UPSI in the instant case i.e. substantial acquisition of shares of JPL, included the name of Noticee No. 2.. Noticee No. 2 was part of the meetings/discussions wherein UPSI was discussed. Therefore, considering that Noticee No. 2 was one of the persons who was in possession of the information with respect to the acquisition of shares of JPL which has already been established to be a UPSI, there is hesitation to conclude that Noticee No. 2, being the CFO of JPL and on the basis of the aforesaid facts, was an 'insider' under Regulation 2(1)(g) of the PIT Regulations.
- SEBI further stated that on analysing the said CDRs it was observed that Noticee No. 1 had communications/ contact with the CFO of JPL i.e. Noticee No. 2. The details of the communication between the Noticee no.1 and Noticee no.2 ('Noticees') clearly reflected, that the Noticees were in frequent communication with each other during the investigation period and thus, knew each other.
- SEBI further highlighted that Noticees had admitted that they became acquainted with each other in and around December, 2021 and met in person in January, 2022 to discuss marriage proposals of their children and based on subsequent meetings, gatherings, calls, discussions, their children got married on December 11, 2022.
- Hence it is clear that Noticees were knowing each other and were communicating with each other frequently during the relevant period under consideration in the present proceedings.
- Furthermore, from the CDRs it can be seen that Noticee No. 1 had a call with Noticee No. 2 on 20 February , 2022 **for a duration of 530 seconds**. As per the trading data analysis of the trades executed by Noticee No. 1 during the relevant period, on the very next day i.e. 21 February, 2022, it was noted that Noticee No. 1 had bought a significant quantity of shares (90,000 shares) of JPL. It is also noted from the material available on record that, during the whole month of February, 2022, there were no calls between the Noticees apart from the call on 20 February, 2022. As per the CDR, the next telephonic call/contact between the Noticees was made only on 18 March, 2022. On further analysing the trading of Noticee No. 1, it was observed that the said Noticee was registered only with ICICI Securities

Limited and no other trading member. Further, the trading details and the quantum of profit made by Noticee No. 1 by trading in the scrip of JPL after the announcement of the Press Release on 22 February, 2022 was 31,39,000/- (Thirty one Lakhs and thirty nine thousands).

- SEBI further stated that 90.20% of total shares bought by Noticee No. 1 on 21 February, 2022, were bought subsequent to the telephonic call with Noticee No. 2 (*CFO of JPL*) on February 20, 2022.
- Further SEBI stated that the Noticee No. 1 had not traded in shares of any other pharmaceutical companies except in the shares of JPL in such huge quantity i.e. 1,02,000 shares and that the trades executed during the UPSI period by Noticee No. 1 in the scrip of JPL were done for the first time.
- The Noticee No. 1, indeed bought a significant quantity of shares of JPL, that too, post the telephonic conversation with Noticee No. 2 who was in possession of the UPSI during the UPSI period. Further, as already admitted by Noticee No. 1, had not purchased such a quantity of shares in the scrip of JPL before or after the UPSI period.
- The Noticees have not brought on record any cogent evidence or any circumstantial proof to show that the trades undertaken by Noticee No. 1 were not based on the procurement of UPSI to prove their innocence.
- From the facts and circumstances of the case and the circumstantial evidence available, it is logical to conclude that the Noticee No. 1 would have purchased such a quantity of shares of JPL immediately after the telephonic conversation (*on February 20, 2022*) between the said Noticees on the very next day of the conversation i.e. on 21 February 2022. The fact that the Noticee No. 1, bought shares of JPL during the period when the UPSI existed, just before the UPSI became publicly available and was in frequent communication with an insider (*Noticee No. 2*), who was in possession of the UPSI, and the trading pattern which shows that Noticee No. 1 had sold shares in the scrip of JPL post UPSI period are the foundational facts, on which the present proceedings rest, which are inclined towards a strong inference that Noticee No. 2, during the telephonic conversation which took place on 20 February, 2022, had communicated the UPSI with respect to the substantial acquisition of shares which was likely to materially impact the price of the securities of JPL once becoming generally available to the public at large.
- Looking into Notice No. 1's trading pattern, summary of trades undertaken by him in different sectors during the relevant time, data of trades executed by Noticee No. 1 only in the pharma sector, the fact that Noticee No. 1 had not bought shares in the scrip of JPL before or after the UPSI period it can be concluded that the trades in the scrip of JPL were executed by Noticee No. 1 to take undue advantage of the price rise once the information becomes

public when in possession of the UPSI which was communicated to him by Noticee No. 2.

Order

- Noticee No. 2, being the *'insider'*, had communicated the UPSI with respect to the substantial acquisition of shares to Noticee No. 1 which led to the execution of a trade by Noticee No. 1 in the scrip of JPL on February 21, 2022 i.e. during the UPSI period, thereby, violating the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act, 1992 which specifically prohibits communication of UPSI to any other person.
- Noticee No. 1 traded in the scrip of JPL, when in possession of the UPSI (*procured from Noticee No. 2*) relating to the substantial acquisition of shares and thereby made an unlawful gain of ₹ 31.39 lakhs. Therefore, Noticee No. 1 has violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and 12A(e) of the SEBI Act, 1992 which prohibit trading when in possession of UPSI.
- In view of the violation of the provisions of the PIT Regulations, 2015 and SEBI Act, 1992 by the Noticees, as noted above, the Noticees be issued with appropriate directions for debarment from accessing the securities market and dealing in securities. Further, a direction under Section 11B(1) of the SEBI Act, 1992 is also warranted to be issued against Noticee No.1 to disgorge an amount of ₹ 31,39,000/- (Rupees Thirty-One Lakh Thirty-Nine Thousand Only) which has been established as the 'unlawful gains' made by the said the Noticee by way of trading in the shares of JPL when in possession of the UPSI during the existence of the UPSI.
- The Noticees are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securitised (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of this order;
- Further, the monetary penalties on the Noticees under the provisions of Section 15G of the SEBI Act, 1992 for their respective violations of the provisions of the SEBI Act, 1992 and the PIT Regulations under section 15 G of SEBI Act 1992 was on Maneesh Kumar Jain ₹ 15,00,000/- and ₹ 10,00,000/- on S. V. Subha Rao.

CASE-3 – IBC

In the matter of *Mr. Vidyasagar Prasad - Appellant vs. UCO Bank* - Respondent in the order dated 22 October 2024 passed by the Supreme Court

Facts of the Case

- Kaizen Power Limited - Corporate Debtor/CD. The CD had taken loans and credit facilities from UCO Bank - Financial Creditor/FC and other consortium banks between 2010 and 2012. These funds were intended to support the CD's thermal power plant project. Having defaulted on repayment

of principal as well as interest levied thereupon the CDs account was declared as a Non-Performing Asset (NPA) on 5 November 2014.

- Subsequently, FC initiated recovery proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act and the Debts Recovery Tribunal (DRT).
- FC also filed an application u/s 7 of the Insolvency and Bankruptcy Code, 2016 (the IBC) to initiate a Corporate Insolvency Resolution Process (CIRP) proceeding against the CD before the National Company Law Tribunal (NCLT). These proceedings were resisted by the CD, primarily on the grounds of limitation.
- The main objection to the initiation of CIRP proceedings on the ground of limitation was rejected by the NCLT on the ground that there is an acknowledgment of debt in the financial statements as well as auditor's report of the CD for the year ending on 31 March 2017.
- The NCLT rejected the CD's contention that the name of the FC was not explicitly mentioned in the relevant balance sheet entry. The tribunal referred to the Explanation to Section 7(1) of the IBC, which clarifies that proceedings can be initiated even if the default by the CD pertains to a Financial Creditor other than the applicant.
- The NCLT admitted the application u/s 7 of the IBC. Aggrieved by the admission, initiation of CIRP and appointment of Interim Resolution Professional (IRP), the appellant preferred an appeal to the National Company Law Appellate Tribunal (NCLAT). The NCLAT dismissed the appeal.
- The appeal in the Hon'ble Supreme Court was filed by Mr. Vidyasagar Prasad, a suspended director of the CD, challenging both the NCLT's and the NCLAT's decisions to admit UCO Bank's application for CIRP.

Arguments of the Appellant

- The appellant, a suspended director, argued that FC's claim was time-barred, as more than three years passed since the CD's account became a NPA in 2014.
- The entries in the balance sheets did not contain a clear and unequivocal acknowledgment of the CD's debt.
- In the absence of clear demarcation regarding the amount owed by the CD to the FC, the said entries cannot be relied upon for extending the period of limitation u/s Section 18 of the Limitation Act. Even, if the entry is taken to be an acknowledgment of debt, it does not support the respondent's case as it fails to specifically mention the name of the FC.

Arguments of the Financial Creditor

- The Balance Sheets of a Company are prepared in the prescribed statutory format as per Section 129, read with Schedule III of the Companies Act 2013, which does not provide for giving specific names of each and

every Secured and Unsecured creditor. The *judgment in* ***Asset Reconstruction Company (India) Ltd.*** **vs.** ***Bishal Jaiswal,*** was quoted in support, where it was observed that there was no compulsion for Companies to make any particular admissions in the balance sheet, except for what is prescribed.

Held

- The statutory scheme provides for the commencement of a fresh limitation period from the time of acknowledgment of the debt. Section 238A of the IBC extends the applicability of the Limitation Act to proceedings under the IBC. Consequently, with the Limitation Act applying to IBC proceedings, the benefit of Section 18 of the Limitation Act—relating to the effect of a written acknowledgment of debt—also becomes applicable.
- Having considered the specific facts and circumstances of this case, the NCLT as well as the NCLAT have concurrently held that the entries in the balance sheets amount to clear acknowledgment of debt. The Hon'ble Supreme Court agrees with the findings.
- Furthermore, Note 3.4 appended to the balance sheet entry dated 31 March 2017 stated that "the company has made certain defaults in the repayment of term loans and interest" and referred to a continuing default. The entry also mentioned long-term borrowings. The conclusions drawn by the NCLT and NCLAT regarding the acknowledgment of debt are, therefore, unimpeachable.
- Following the principles as expounded in the case of *Bishal Jaiswal* (supra), the NCLT as well as the NCLAT examined the case in detail and concluded that the entry made in the balance sheet coupled with the note of the auditor of the appellant clearly amounts to an acknowledgment of the liability. The Hon'ble Supreme Court sees no reason whatsoever to take a different view of the matter.
- The findings arrived at by the NCLT and NCLAT are correct in law and fact. There was no merit in the appeal and the appeal was dismissed accordingly.

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"Let miseries come in millions of rivers and happiness in hundreds! I am no slave to misery! I am no slave to happiness!"

— *Swami Vivekananda*