Admission of CIRP Applications on the basis of Form D (Record of Default) issued by NeSL-Information Utility

NCLAT, Principal Bench, New Delhi dismissed the Company Appeal (AT) (Ins.) No. 139 of 2024 vide order dated 09.12.2024, with an observation of no infirmity in the impugned order of Hon'ble NCLT, Mumbai Bench-I in the admission of CIRP Application filed by ASREC (India) Ltd under Section 7 of IBC, 2016 (CP(IB)/280(MB)2023), for initiation of Corporate Insolvency Resolution against the Corporate Debtor M/s Barracks Retail India Pvt. Ltd, vide order dated 09.01.2024.

In the above-mentioned Order, **the Hon'ble members of NCLAT have placed reliance on the contents of the Records of Default issued by NeSL-IU** in determining the validity of the amended default date, for disposing the appeal filed under Section 61 of IBC, 2016 and upheld the decision of Hon'ble NCLT.

The relevant extracts of the Orders of NCLT are as under:

Page 24 – Para 32:

*"Hon'ble Supreme Court in **Dena Bank v. C. Shivakumar Reddy and Anr** ((2021) 10 SCC 330) ruled that amendments to the application or submission of additional documents could be made before the final order admitting or rejecting the petition under Section 7. The Court clarified that the law does not explicitly bar such amendments, as they support the IBC's goal of comprehensive debt recovery. However, the Court noted that such amendments should not manipulate the limitation period, but may reflect new acknowledgments of debt or judgments creating a fresh cause of action."*

Page 28 - Para 43:

*"In determining the validity of the amended date of default, it is crucial to examine the evidence relied upon by the respondent. It is seen that RBI as the regulatory authority during the inspection of the bank found that compliance with the conditions laid down in the sanction letters were not met and hence the CD was ineligible for restructuring. Accordingly, due to noncompliance the extent sanction letter dated 17.03.2020 became void ab-initio and the same was not tenable in the eyes of law. Banks have to mandatorily comply with the guidelines of the RBI in this regard. Therefore, the date of NPA became 01.11.2019 and the original date of default would be 02.08.2019 i.e., 90 days prior the date of NPA as per RBI IRAC Guidelines. **The amended date of 02.08.2019 is also supported by records from the National E Governance Services Limited (NESL) database, which confirms the occurrence of a default prior to the COVID-19 moratorium period**.*

Page 30 – Para 46:

*"The Reserve Bank of India's guidelines on restructuring do not suggest that pre-*existing defaults are *automatically nullified by subsequent restructuring agreements. Rather, restructuring serves to provide temporary relief, while acknowledging the debtor's existing financial obligations. The documentation provided by the respondent supports the conclusion that the default occurred on 02.08.2019 and that subsequent restructuring efforts did not negate this default."*

Page 30 – Para 47:

"The respondent's actions in initiating CIRP are consistent with the objectives of the IBC, which prioritize the resolution of insolvency cases in a time-bound manner to maximize asset value and ensure the equitable treatment of creditors. The evidence presented demonstrates the corporate debtor's prolonged financial incapacity and failure to fulfil its debt obligations despite multiple opportunities to restructure and repay. The respondent, as a financial creditor, is entitled to seek relief under the IBC when defaults are established and substantiated by documentary evidence. The Hon'ble Supreme Court's decision in Swiss Ribbons Pvt. Ltd. v. Union of India underscores the importance of balancing creditor rights and debtor obligations within the insolvency framework."

Page 31 – Para 48:

"In light of the above discussion, we find no infirmity in the impugned order of the Adjudicating Authority. The appeal is dismissed, pending IAs if any, are disposed accordingly. There is no order as to costs."