



## news flash

June 2020



### The Insolvency and Bankruptcy Code, 2016

#### Introduction

The National Company Law Appellate Tribunal (“NCLAT”), New Delhi on 22 May 2020, passed a landmark order in the case of *State Bank of India* (“**Financial Creditor**”) *V/s Metenere Limited* (“**Corporate Debtor**”) and upheld the substitution of an interim resolution professional (“**IRP**”), on the ground of apprehension that the IRP (being an ex-employee of the Financial Creditor) would be biased towards the Financial Creditor.

#### Brief Facts

- The Financial Creditor filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) against the Financial Creditor before the National Company Law Tribunal (“**NCLT**”), New Delhi to initiate the Corporate Insolvency Resolution Process (“**CIRP**”) for default in payment of financial debt.
- The Financial Creditor in its application proposed the name of Mr. Shailesh Verma (who was an ex-employee of the Financial Creditor) as the IRP.
- The Corporate Debtor objected to the appointment of Mr. Shailesh Verma as the IRP as he had worked for the Financial Creditor for 39 years and his judgement on the matter could be biased.
- The NCLT passed the judgment in the favour of the Corporate Debtor and directed the Financial Creditor to perform its statutory obligation and appoint a different resolution professional.
- The Financial Creditor challenged the said order of NCLT, Delhi before the NCLAT.

#### Contentions of the Parties

➤ The Financial Creditor contended that:

- The appointment of IRP who was an ex-employee of the Financial Creditor was not barred by any disqualification under the IBC and the relevant regulations.
- The IRP was not required to act as an umpire between the Financial Creditor and the Corporate Debtor and the IRP has no adjudicatory powers and only acts as a facilitator in the CIRP as all major decisions are taken only with the approval of the committee of creditors.
- The IRP was not on any panel of the Financial Creditor or handling any portfolios nor has any role in the decision making committee.

➤ The Corporate Debtor contended that:

- The IRP worked for the appellant for a long period of time; retired at a very senior level (i.e. Chief General Manager) and was drawing pension from the Financial Creditor.
- Pension falls within the definition of ‘salary’ under the Income Tax Act, 1961 (“IT Act”).
- The IRP falls under the ambit of interested person being on the payroll of the Financial Creditor and thereby becoming ineligible to act as an IRP.

### **Judgement**

The NCLAT held that:

1. An IRP drawing pension though falls under the head of salary as per the provisions of the IT Act, does not mean that the individual is still working for the organization from which he draws his pension. Pension is paid for the services rendered to the employer in the past and it is a benefit earned for such past services. The pensioner is entitled to such benefit as a privilege and not as a boon from the ex-employer.
2. The NCLAT further agreed with the contentions of the Financial Creditor that there was no express bar on an ex-employee being appointed as the IRP; provided that the IRP and all partners and directors of the insolvency professional entity are independent of the Corporate Debtor as per Regulation 3(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the appointment would not be invalid.
3. Further, the NCLAT also relied to the case of *Ranjit Thakur v Union of India and Ors.*<sup>1</sup> Wherein the Supreme Court made the following observations:  
*“17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, “Am I Biased?”; but to look at the mind of the party before him”*
4. The fact that the IRP is supposed to collate all the claims submitted by the creditors raised an apprehension in the mind of the Corporate Debtor that he was unlikely to act fairly. This apprehension could not be dismissed off-hand and the NCLAT was justified in seeking substitution of the IRP to ensure the CIRP took place in a fair and unbiased manner.
5. Thus, the NCLAT upheld the order of the NCLT and the appeal was dismissed.

### **Disclaimer**

This news flash has been written for the general interest of our clients and professional colleagues and is subject to change. This news flash is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news flash. For further clarification and details on the above, you may write to Mr. Vaishakh Kapadia (Partner) at [vkapadia@almtlegal.com](mailto:vkapadia@almtlegal.com), Mr. Ankit Parekh (Senior Associate) at [aparekh@almtlegal.com](mailto:aparekh@almtlegal.com) and Mr. Vinit Shah (Associate) at [vshah@almtlegal.com](mailto:vshah@almtlegal.com).

---

<sup>1</sup> (1987) 4` SCC 611