

IN BRIEF

FINANCIAL CREDITORS AS KEY CONTRIBUTORS: IMPORTANCE OF HEARING INTERVENORS IN DEBT-RELATED INSOLVENCY MATTERS



Background

The Insolvency and Bankruptcy Code, 2016 (Code) is a dynamic and evolving law that has undergone several amendments since its inception. These amendments reflect the need to address emerging challenges and improve the effectiveness of the legislation. Despite its evolving nature, the Code still faces certain grey areas that require further clarity. These areas include ambiguous interpretations of certain provisions and inconsistent applications of the law across different cases. One such example of this is the filing of an intervention application in a petition filed under Section 7 of the Code.

Intervention in Insolvency Proceedings before Initiation of CIRP

Intervention applications, especially those filed by financial creditors, may serve as a means for the Adjudicating Authority to obtain clarity and crucial information, knowledge, expertise, and insights in the workings of a corporate debtor. By granting intervenors the opportunity to be heard, a comprehensive understanding of the financial situation and solvency of the corporate debtor can be obtained, leading to better-informed decisions.

When a financial creditor who has lent money to a corporate debtor seeks to intervene, their inclusion becomes relevant. Such creditors may possess vital

information regarding the debtor's financial standing, repayment history and potential resolution options. The involvement of financial creditors through such intervention can bring transparency to the proceedings and facilitate a more accurate assessment of the debtor's financial position. It is for this reason that the Committee of Creditors is constituted and comprises solely of creditors, for their specific knowledge and expertise aside of their financial exposure

The Supreme Court in the case of *Vidarbha Industries Power Limited vs. Axis Bank Limited (2022 SCC OnLine SC 841)*, laid down that the Adjudicating Authority while hearing an application under Section 7 of the Code, is required to not only ascertain the existence of a debt and default, but is also required to take into consideration the financial health of the corporate debtor. While the said judgment may have been passed keeping in mind the facts involved therein, it does highlight the relevance of solvency for the corporate debtor.

The main purpose, objective and spirit for the enactment of the Code, as stated in the preamble, is for the reorganization and insolvency resolution of the corporate persons and Courts have time and again reiterated that the provisions of the Code cannot be used as a substitute for recovery proceedings. The Hon'ble Supreme Court of India in the matter of *Swiss Ribbons Private Limited and Anr. vs. Union of India and Ors. (2019 4 SCC 17)* has carefully and categorically held that the main intent and purpose of the Code is maximizing the value of assets in the process of 'Resolution' and that the process under the Code is not for recovery proceedings and the main aim is to keep the corporate debtor as a going concern, by maximizing the value of its assets. The relevant extracts of the judgement in the matter of *Swiss Ribbons Private Limited and Anr. vs. Union of India and Ors. (2019 4 SCC 17)* are captured below:

"It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors".

Therefore, an application for intervention may assist the Adjudicating Authority in weeding out frivolous applications and shed light on the solvency and financial status of a corporate debtor. The Hon'ble National Company Law Appellate Tribunal in the matter of *CFM Asset Reconstruction Private Limited vs. Saudi Basic Industries Corporation Limited (Company Appeal (AT)(Ins) No. 1231 of 2022)* has held that a financial creditor cannot ordinarily be allowed to intervene in

the proceedings of insolvency, however, if there are reasons and allegations which require consideration by the Adjudicating Authority, intervention can be allowed. In the abovementioned case, the appellants were allowed to intervene in an application filed under Section 9 of the Code, on account of exceptional facts and circumstances.

Further, the Hon'ble National Company Law Tribunal in the matter of *Sh. Suresh Kumar Verma & Ors vs. Eco Green Buildtech Private Limited (C.P.(IB) No. 129 of 2023)* had allowed an intervention application filed by SBICAP Ventures Limited (Fund Manager of SWAMIH Investment Fund I) and had given an opportunity to the manager of SWAMIH, to put the corporate debtor back on its feet and to ensure that the petitioners/ flat buyers are given possession of the units allotted to them. The Hon'ble NCLT had stated that once an order is passed under Section 7(5)(a) of the Code and the Corporate Insolvency Resolution Process (CIRP) is initiated, a lengthy process is initiated to resolve the corporate debtor. Even after the process is completed, there is no guarantee that the corporate debtor will be revived or put back on its feet. The purpose of the Code, according to the Hon'ble NCLT, is to guarantee that the corporate debtor receives outside assistance in order to get back on its feet.

The Hon'ble National Company Law Tribunal, while passing the present order took note of the case *E.S. Krishnamurthy & Ors. vs. M/s Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No. 3325 of 2020)*, wherein it was held that it is not always necessary to send the corporate debtor to CIRP. The Hon'ble NCLT also took note of the matter of *State Bank of India vs. M/s Krishidhan Seeds Pvt. Ltd (T.P No. 82 of 2019 in C.P.(IB) No. 500 of 2018)* where the Hon'ble NCLT, after acknowledging the earnest effort of the corporate debtor management to extricate the company from its debt predicament, opted not to immediately admit the corporate debtor into CIRP.

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