

Dear All,

The NCLAT in the matter SBI VS Mr. V. Ramakrishnan and M/s. Veasons Energy Systems Pvt. Ltd on 28th February 2018 has held that the 'Moratorium' will not only be applicable to the property or the assets of the 'Corporate Debtor' but also on the 'Personal Guarantor'. The NCLAT has relied upon various sections of the IBC for the same. They are Section(s) 5(8),30 and 31 of the IBC. The Court concluded that the 'Resolution Plan' if approved by the Committee of Creditors under sub-section (4) of Section 30 and if the same meets the requirements as referred to in sub-section (2) of Section 30, then it is not only binding on the Corporate Debtor, but also on its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan, including the Personal Guarantor.

Issue

Whether a financial creditor can proceed against the assets of the personal guarantor while the corporate debtor is undergoing corporate insolvency resolution process and moratorium is not yet over.

NCLAT's Decision

The decision of the Veasons is contrary to the earlier judgements passed by NCLAT in Alpha & Omega Diagnostics (India) Ltd. Vs. Asset Reconstruction Company of India & Ors and Schweitzer Systemtek India Private Limited v. Phoenix ARC Private Limited. The issue involved in both the cases were similar with regards to the treatment of properties of the guarantors during a moratorium under section 14 of the Code. In both the cases, Court concluded that the moratorium shall be declared for prohibiting any action to recover or enforce any security interest created by the Corporate Debtor in respect of its property, then the moratorium can be applied only to the assets of the corporate debtor and not on any assets, movable or immovable of a third party like a director or any other.

The rationale for the judgments of NCLAT in these two cases was that the moratorium according to section 14 of IBC can only prohibit, amongst other things, any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of "its" property and the word "its" has been interpreted to mean only the property of the corporate debtor and not of any third party.

In conclusion, it is fair to say that the entire concept of 'Moratorium' and its applicability in terms of its outreaching protection to the properties in question of personal guarantors and corporate creditor is contrary because the current judgment in question has been contradicted and is in dissent with the two recent judgments. Although, the moratorium applies against the corporate debtor, however, it is not applicable to the properties beyond the ownership of the corporate debtor.

For a better understanding, you may read the attached judgment.

Regards,

KM Team