

Securities and Exchange Board of India: Disclosure obligations to be followed by listed entities in relation to Related Party Transactions

Securities and Exchange Board of India: Introduction of Special Situation Funds as a sub-category under Category-I AIF

Case Summary: Samruddhi Co-operative Housing Society Limited Vs. Mumbai Mahalaxmi Construction Private Limited (Civil Appeal No. 4000 of 2019)

Case Summary: Vineet Khosla vs. Edelweiss Asset Reconstruction Company Limited and Ors. (Company Appeal (AT) (Ins) No. 1124-1125)

Case Summary: Anmol Steel Processors Private Limited Vs. Colour Roof (India) Limited (Commercial Appeal No. 574 of 2019)

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Securities and Exchange Board of India

The Securities and Exchange Board of India (“SEBI”) in exercise of its powers conferred upon it by Section 11(1) of the Securities and Exchange Board Act, 1992 read with Regulation 101 of the Listing and Disclosure Requirements, 2015 (“LODR, 2015”) issued a Circular dated January 07, 2022 (“Circular”) which shall come into force with immediate effect, wherein it has provided the disclosures to be made by high value debt listed entities in relation to related party transactions.

SEBI vide its notification dated September 07, 2021 had introduced Regulation 15 (1A) of LODR, 2015 according to which Regulations 15 to 27 (corporate governance provisions) were applicable to high value debt listed entities on ‘comply or explain’ basis.

Further, vide its amendment dated November 09, 2021, Regulation 23 of the LODR, 2015 on related party transactions were amended mandating listed entities that have listed specified securities to submit to the stock exchanges disclosure of Related Party Transactions (“RPTs”) in the format specified by the Board from time to time.

Vide its circular dated November 22, 2021, SEBI specified following disclosure obligations of listed entities in relation to RPTs in respect to specified securities mentioned below:

- Information to be reviewed by Audit Committee for approval of RPTs;
- Information to be provided to shareholders for consideration of RPTs; and
- Format for reporting of RPTs to the Stock Exchange.

Since, the provisions of Regulation 23 of the LODR, 2015 will be applicable to high value debt listed companies also, it has been decided to make provisions of the aforesaid circular dated November 22, 2021 applicable to high value debt listed entities.



Securities and Exchange Board of India

Securities and Exchange Board of India (“SEBI”) in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 issued a circular dated January 27, 2022 (“Circular”) under SEBI (Alternative Investment Funds) Regulations 2012 (“AIF Regulations, 2012”) which shall come into force with immediate effect. The AIF Regulations, 2012 were amended and notified on January 24, 2022 to introduce Special Situation Funds (“SSF”) as a sub-category under Category I of the aforesaid regulations which shall invest in “special situation assets”. As per the Circular January 2022, certain things are specified which are as follows:

- i. Each scheme of SSF shall have a corpus of at least one (1) hundred crore rupees.
- ii. SSF shall accept an investment of value of not less than rupees ten (10) crores from an investor. In case of an accredited investor the investment value shall not be less than rupees five (5) crores. Further in case of investors who are employees or directors of the SSF or who are employees or directors of the managers of the SSF the minimum value of investment shall be twenty-five (25) lakh rupees.
- iii. SSF who intend to act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016 shall ensure with the eligibility requirement therein.

Further, in terms of SSF acquiring stressed loan in terms of Clause 58 of Master Direction- Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 (“RBI Master Direction”) the following are specified:

- i. SSF may acquire stressed loan in terms of Clause 58 of the RBI Master direction upon inclusion of the SSF in the respective annex of the RBI Master Direction.
- ii. Stressed loan acquired in terms of Clause 58 of RBI Master Direction shall be subject to a minimum lock-in period of six (6) months. The lock-in period shall not be applicable in case of recovery of the stressed loan from the borrower.
- iii. SSF acquiring stressed loans in terms of RBI Master Direction shall comply with the same initial and continuous due diligence requirements for its investors as those mandated by the Reserve Bank of India for investors in Asset Reconstruction Companies.



CASE SUMMARY

Case Name : *Civil Appeal No. 4000 of 2019 in the matter of Samruddhi Co-operative Housing Society Limited vs. Mumbai Mahalaxmi Construction Private Limited*

Court Name : Supreme Court of India

Order Dated : January 11, 2022.

Facts of the Case:

1. “The “**Respondent**” i.e. Mumbai Mahalaxmi Construction Private Limited constructed Wings ‘A’ and ‘B’ of Samruddhi Co-operative Housing Society Limited (“**Appellant**”) and entered into agreements with individual purchasers to sell the flats in accordance with Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (“**MOFA Act, 1963**”).
2. The flat purchasers were granted possession of the flats in 1997 however due to Respondent’s failure to obtain the occupation certificate from the municipal authorities in time, the flat owners were not eligible for electricity and water connections. It was only after numerous efforts of the Appellant that they were granted temporary water and electricity connections but they had to pay the property tax and water charges at a rate higher than the normal rates.
3. Due to such reasons the Appellant filed a consumer complaint in the State Consumer Dispute Redressal Commission (“**SCDR**C”) in Mumbai on July 08, 1998 seeking direction to the Respondent to obtain the occupation certificate. To which the Respondent offered a one-time settlement which was refused by the Appellant for the reason being that settlement amount was allegedly lower than the amount owed by the Respondent. SCDRC vide its order dated August 20, 2014 (“**SCDR**C Order”) directed the Respondent to obtain occupancy certificate within four (4) months and pay Rs. 1,00,000/- (Rupees One Lakh Only) to the Appellant as reimbursement of extra water charges paid.
4. On Respondent’s failure to comply with Appellant’s demand to pay the outstanding dues, the Appellant filed an application for execution of the SCDRC Order before the National Consumer Dispute Redressal Commission (“**NCDRC**”) seeking refund of excess charges and tax paid by the members of the Appellant due to deficiency in service of the Respondent. However,



NCDRC vide its order dated December 03, 2018 (“**NCDRC Order**”) dismissed the complaint of the Appellant on the grounds that it was barred by limitation as the complaint should have been filed within two (2) years of the accrual of the cause of action and was not maintainable since it was in nature of a recovery proceeding and not a consumer dispute.

5. Hence, the present appeal.

Held by the Hon’ble Supreme Court of India:

1. In light of relevant provisions of the MOFA Act, 1963 and past judgements of the Hon’ble Supreme Court of India in the matters of ***Balakrishna Savalram Pujari Waghmare Vs. Shree Dhyaneshwar Maharaj Sansthan AIR 1959 SC 798 , CWT Vs. Suresh Seth (1981) 2 SCC 790 and M. Siddiq Vs. Suresh Das (2020) 1 SCC 1***, the Hon’ble Supreme Court of India observed that there was an obligation on the Respondent to provide the occupancy certificate and pay for relevant charges namely ground rent, municipal taxes, water charges and electricity charges till the certificate has been provided.
2. In view of the same, Hon’ble Supreme Court of India held that the continuous failure on Respondent’s side to obtain the occupancy certificate is a breach of the obligations imposed on the Respondent under the MOFA Act, 1963 which amounts to continuing wrong to response to which the Appellant has taken appropriate action by filing a complaint before the consumer forum and is well within its rights as consumers to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from this continuous wrong.
3. Further, the Hon’ble Supreme Court of India on the grounds of Section 22 of the Limitation Act, 1963 held that in case of continuing breach of a contract a fresh period of limitation begins to run at every moment of time during which the breach continues and therefore the complaint of the Appellant was not barred by limitation.
4. For the above reasons the Hon’ble Supreme Court of India set aside NCDRC’s Order and held that the Appellant’s complaint is maintainable. It directed NCDRC to decide the merits of the dispute based on the above observations and dispose the complaint within a period of three (3) months from the date of judgement in this matter.



CASE SUMMARY

Case Name : *Company Appeal (AT) (Ins) No. 1124-1125 in the matter of Vineet Khosla vs. Edelweiss Asset Reconstruction Company Limited and Ors.*

Court Name : National Company Law Appellate Tribunal

Order : January 7, 2022.

Dated

Facts of the Case:

1. The **Respondent** i.e. Edelweiss Asset Reconstruction Company Limited, the ("**Financial Creditor**") filed an application before the National Company Law Tribunal ("**Adjudicating Authority**")/ "**NCLT**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC, 2016**") to invoke Corporate Insolvency Resolution Process ("**CIRP**") against Margra Industries Limited ("**Corporate Debtor**"). The said application was admitted by Adjudicating Authority vide its impugned order dated March 15, 2019 ("**Impugned Order**").
2. The **Appellant** i.e. suspended director of the Corporate Debtor challenged the Impugned Order of the Adjudicating Authority before National Company Law Appellate Tribunal ("**NCLAT**") but the appeal for the same was dismissed.
3. On numerous failed attempts to finalize a resolution plan which was compliant to the requirements of the request for resolution plan and provisions of the Insolvency and Bankruptcy Code, 2016 ("**IBC, 2016**"), Committee of Creditors ("**COC**") in its ninth meeting resolved to liquidate the Corporate Debtor. Subsequently, Resolution Professional ("**RP**") filed an application under Section 33 (1) for issuance of direction of liquidation of the Corporate Debtor which was accepted on October 15, 2020.
4. Further, the Appellant filed an application seeking recall of the Impugned Order on the grounds of limitation however, the same was dismissed by the Adjudicating Authority vide its order dated November 10, 2020 stating that limitation is a question of law and fact and it must be raised at the time of admission of appeal and not when it is pending for completion of liquidation.
5. Therefore, being aggrieved with the order of liquidation and on dismissal of the application for recall of admission order the Appellant filed the present appeal.



Held by Hon'ble NCLAT:

1. In light of the Hon'ble Supreme Court of India's judgement in the matter of **AV Papayya Sastry Vs. Government of A.P. AIR 2007 SC 1546** Hon'ble NCLAT observed as follows:

"It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order - by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings" Thus, as no false document was filed by the respondent in support of the petition."

2. Therefore, Hon'ble NCLAT in light of the Hon'ble Supreme Court of India's judgements in the matters of **AV Papayya Sastry Vs. Government of A.P. AIR 2007 SC 1546** and **United India Insurance Co. Ltd. vs. Rajendra Singh and Ors. AIR 2000 SC 1165**, observed that every court/tribunal has power to recall its order which is obtained by practicing fraud.
3. However, in the present case the Hon'ble NCLAT held that the Respondent neither filed any false document nor has committed any act of deliberate deception with the intention of securing any undue benefit or advantage. Therefore, it was held by the Hon'ble NCLAT that the Adjudicating Authority does not have jurisdiction to recall the Impugned Order as it was not obtained by practising fraud and neither it suffers with any material irregularity.



CASE SUMMARY

Case Name : **Commercial Appeal No. 574 of 2019 in the matter of Anmol Steel Processors Private Limited Vs. Colour Roof (India) Limited.**

Court Name : **Hon'ble High Court of Bombay**

Order Dated : **January 19, 2022.**

Sections Cited : Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act, 1881**"); Section 433 of Companies Act, 1956 ("**CA, 1956**"); Section 434 of CA, 1956; Section 34 of Arbitration & Conciliation Act, 1996 ("**A&C Act, 1996**"); Section 37 of A&C Act, 1996; Section 60 of Indian Contract Act, 1872 ("**ICA, 1872**"); Section 18 of Limitation Act, 1963 ("**LA, 1963**"); Section 19 of LA, 1963

Facts of the Case:

1. Pursuant to offer sent by Anmol Steel Processors Private Limited ("**Claimant**" / "**Appellant**"), the Claimant supplied steel material to Colour Roof (India) Limited ("**Respondent**") as per the various purchase orders and as per the said offer. According to the Appellant, the material supplied as per the purchase order to the Respondent was amounting to approximately Rs.25,00,00,000/- (Rupees Twenty Five Crores Only).
2. It is the case of the Claimant that during the period between 2013-14, the Respondent paid an amount of Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only) instalments which was appropriate against old invoices on First In First Out ("**FIFO**") basis.
3. The Respondent had issued a cheque amounting to Rs.50,00,000/- (Rupees Fifty Lakhs Only) by way of part consideration for steel material supplied. However, the cheque returned dishonored due to insufficient funds. Thereafter, the Claimant issued a notice to the Respondent and its directors. The Appellant also filed a criminal complaint under Section 138 of NI Act, 1881. But, the criminal complaint was withdrawn by the Appellant as the Respondent paid Rs.50,00,000/- (Rupees Fifty Lakhs Only) against the dishonored cheque.
4. In 2015, the Appellant issued a statutory notice under Section 433 of CA, 1956 and Section 434 of CA, 1956 calling upon the respondent to pay an amount of Rs.7,01,17,241.72/- (Rupees Seven Crores One Lakh Seventeen Thousand Two Hundred Forty One and Seventy Two Paise Only). Thereafter, the Claimant filed a Company Petition No. 465 of 2015 before Hon'ble Bombay High Court *inter alia* seeking winding up of Respondent company.



5. With the consent of the parties, the entire dispute was referred to arbitration by Hon'ble Bombay High Court. The arbitrator passed the arbitral award dated June 09, 2018 rejecting the claims made by the Appellant on the ground of limitation except the sum of Rs.3,68,005/- (Rupees Three Lakhs Sixty Eight Thousand Five Only) along with interest from the date of award till payment and/or realization. The Appellant being aggrieved by the award filed a commercial arbitration petition no. 987 of 2018 under Section 34 of A&C Act, 1996.
6. On September 5, 2019 the Learned Single Judge of the Hon'ble Bombay High Court dismissed the said commercial arbitration petition. The Respondent had also filed a commercial arbitration petition no. 1081 of 2018 for different reliefs which petition was not pressed by the Claimant before the Ld. Single Judge of Hon'ble Bombay High Court and thus, the same was dismissed as withdrawn. The Appellant was aggrieved by the judgement of the Learned Single Judge. Hence, the present appeal.

Held by the Hon'ble Bombay High Court:

1. The question raised before the Hon'ble Bombay High was whether the Claimant having exercised the option under section 60 of ICA, 1872 by adjusting the payment of Rs.50,00,000/- (Rupees Fifty Lakhs Only) towards four (4) earlier invoices, three (3) invoices fully adjusted and one invoice partly adjusted and not having made the claim in respect of those three fully paid invoices is estopped from raising the plea that the cheque of Rs.50,00,000/- (Rupees Fifty Lakhs Only) issued by the Respondent towards part payment having been dishonored, would amount to acknowledgment of liability in respect of all the outstanding invoices on the date of commencement of the arbitral proceedings or not.
2. By referring to Respondent's witness statement, the Hon'ble Bombay High Court observed that the Claimant did not appropriate / adjust any payment received from the Respondent towards the thirty seven (37) invoices and the Learned Arbitrator held that the payments made by the Respondent from time to time did not extend the period of limitation of the thirty seven (37) invoices under Section 19 of LA, 1963.
3. The Hon'ble Bombay High Court observed that the last invoice was raised on June 02, 2011 and the alleged part payment of Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) was made on May 28, 2015 and the same would not extend the period of limitation. Thus, the entire claim of the claimant had become barred by law of limitation prior to July 28, 2015 and was not



legally enforceable debt as on July 28, 2015.

4. The division bench of the Hon'ble Bombay High Court observed that the learned Single Judge has rightly held that the supplies were payable respectively at the expiry of forty five (45) days of each individual invoice. The arbitration agreement was arrived at between the parties on November 22, 2016 and accordingly, the terminus ad quem in respect of the claim in the arbitration was November 22, 2016.
5. Acknowledgment if any has to be prior to expiration of time prescribed for filing the suit. Since the limitation for filing a suit or arbitration proceedings for recovery of the outstanding invoices had already expired much prior to the said period of three (3) years prior to commencement of arbitration, limitation under Section 18 of LA, 1963 would not revive even if there is part payment or acknowledgement of liability. Fresh limitation would arise only during the subsistence of the claim.
6. As in this case, the claim was for recovery of the price of the goods sold to be paid after expiry of the period of credit, Article 15 of Part-II of LA, 1963 is applicable which provides for the period of three years when the period of credit expires. In this case the Respondent was granted forty five (45) days credit period for making payment of each invoice. In this case, admittedly the Respondent did not intimate the Claimant that the said sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) was made towards any particular invoice or was by way of part payment towards all the outstanding invoices on the date of such part payment.
7. By referring to Section 60 of ICA, 1872, the Hon'ble Bombay High Court was of the view that when the debtor omits to intimate and there are not settled circumstances, the creditor may apply at his discretion to any lawful debt actually due and payable to him from the creditor whether regular or is not barred by law in force for the time being as to the limits of the suit. It is clear that the Respondent did not intimate the Claimant regarding the payment of Rs.50,00,000/- (Rupees Fifty Lakhs Only). Also, Section 61 of ICA, 1872 was referred. However, Section 61 of ICA, 1872 cannot be invoked, since the Claimant invoked Section 60 of ICA, 1872.
8. The Hon'ble Bombay High Court referred to judgment in ***Atmaram Kirtikar v. Lalji Lakhamsi & Ors.- Civil Revision Application No. 241 of 1939*** and observed that there would be separate cause of action in respect of each invoice commencing after expiry of forty-five (45) days from the date of invoice.



9. The Hon'ble Bombay High Court also relied upon a judgment of Hon'ble Supreme Court in ***MMTC Limited v. Vedanta Limited (2019) 4 SCC 163***, observed that power under Section 37 of A&C, 1996 are narrower than powers under Section 34 of A&C Act, 1996 which are already narrower.
 10. The Hon'ble Bombay High Court pronounced that once a payment has been applied as per creditor's discretion under Section 60 of ICA, 1872 to a few of the pending invoices instead of all, and the period of limitation has expired regarding all of them, the creditor then cannot take the plea that cheque payment getting dishonoured will extend the period of limitation on all pending invoices. As no case was made out and there was no requirement to interfere with the impugned award and the judgement pronounced by the learned Single Judge.
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