

## **Supreme Court bars litigation on resolution plans before submission to NCLT**

*Appeals over approved RPs will go directly to NCLAT, may land up in SC only after NCLAT decision on the case*

In the course of its order on Essar Steel, which is undergoing the insolvency proceedings, the Supreme Court on Thursday forbade litigations from any stakeholder over a resolution plan before it is approved by the Committee of Creditors (CoC) and the National Company Law Tribunal (NCLT).

Moreover, appeals over an approved resolution plan will go directly to the National Company Appellate Law Tribunal (NCLAT) and may eventually land up in the Supreme Court only after NCLAT has decided on the case.

“Once approved by the Committee of Creditors, the resolution plan is to be submitted to the Adjudicating Authority under Section 31 of the Code. It is at this stage that a judicial mind is applied by the Adjudicating Authority to the resolution plan so submitted, who then, after being satisfied that the plan meets (or does not meet) the requirements mentioned in Section 30, may either approve or reject such plan,” the Supreme Court’s order on the Essar Steel case stated.

“If a resolution plan has been approved by the Committee of Creditors, and has passed muster before the Adjudicating Authority, this determination can be challenged before the Appellate Authority under Section 61, and may further be challenged before the Supreme Court under Section 62, if there is a question of law arising out of such order, within the time specified in Section 62,” it further stated.

Section 61 of the IBC gives rights to stakeholders to appeal to NCLAT if the person feels aggrieved by the decision of the NCLT while Section 62 empowers a stakeholder to file a petition in the Supreme Court if the person is not satisfied with the outcome in the Appellate Tribunal.

However, in case a resolution plan is disapproved by the CoC on grounds of violating any legal provision or eligibility under Section 29(A) of the IBC, the NCLT has powers to determine the claims and conclude upon the same after hearing from the applicant and the CoC.

The country’s apex court added that Section 60(5) of the IBC, which empowers the NCLT’s jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person, “does not invest the NCLT with the jurisdiction to interfere at an applicant’s behest at a stage before the quasi-judicial determination made by the Adjudicating Authority”.

According to R F Nariman, who passed this order, the non-obstante clause in Section 60(5) is designed to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by IBC, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.

While observing that timelines as stipulated in IBC are sacrosanct and must be adhered to in the resolution process, Nariman, in his order, noted that the litigation period involved in a case ought to be excluded from the 270-day timeframe under IBC but both NCLT and NCLAT cannot inordinately delay a case.

“This is not to say that the NCLT and NCLAT will be tardy in decision making. This is only to say that in the event of the NCLT, or the NCLAT, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers,” Nariman said in the order.

Nearly all major insolvency resolution processes, including Essar Steel, Bhushan Power & Steel, Binani Cement, Assam Company and several others have been marred by prolonged litigations and counter-litigations even before the CoC had narrowed down on a successful bid and submitted the same to NCLT.

*(Business Standard)*