

## INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

### Delhi High Court Judgement:

**High Court expounds discharge of the corporate debtor from a debt by insolvency proceedings does not absolve the guarantor of its liability since it arises out of an independent contract.**

*Sanjay Sarin Vs. The Authorised Officer, Canara Bank & Ors.,*

Justice Sanjeev Narula observed that discharge of the corporate debtor from a debt owed by it to its creditors, by way of an involuntary process such as insolvency proceedings, does not absolve the guarantor of its liability since it arises out of an independent contract. Lender has the right to proceed against the collateral securities for recovery of its dues which are independent of the resolution plan approved by the NCLT.

Relying on Lalit Kumar Jain Vs. Union of India, it was also noted that discharge of the corporate debtor from a debt owed by it to its creditors, by way of an involuntary process such as insolvency proceedings, does not absolve the guarantor of its liability since it arises out of an independent contract. Thus, the passing of a resolution plan does not ipso facto discharge the personal guarantor.

### NCLAT Judgement:

**The provision of the Insolvency Bankruptcy Code is not intended to be a substitute to be a recovery forum.**

*Sh. Anshdeep Chaddha Promoter/Shareholder Chowdhry Rubbers & Chemicals Private Limited. Vs. S.E. Power Limited.,*

The NCLAT held that Section 9(5) of the Code specifically makes it clear that if there is a dispute, it is not the job of the 'Adjudicating Authority' or the 'Appellate Authority' to assess the dispute whether they will get the claim or not, but on certain perception of judicial assessment if it looks that the claim of dispute is genuine and the Operational Creditor has no other purpose except to put the CD into doldrum and to collapse its business then naturally it is not accepted from either provision of the Code or law laid on the subject to initiate CIRP.

In view of the facts and circumstances of the case as also law laid down on the subject, the Appellate Authority set-aside the impugned order passed by the Adjudicating Authority. In the result, 'Corporate Debtor' was released from the rigor of the 'Corporate Insolvency Resolution Process'. All actions taken by the 'Interim Resolution Professional'/'Resolution Professional' and 'Committee of Creditors', if any, were declared illegal and set-aside. The Resolution Professional was directed to handover the records and assets of the 'Corporate Debtor' to the Director of the 'Corporate Debtor' immediately.

The matter was remitted back to the Adjudicating Authority to decide the fee and cost of the 'Corporate Insolvency Resolution Process' as incurred by the 'Interim Resolution Professional, which was to be borne and paid by the Operational Creditor.