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MONTHLY NEWSLETTER

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PRIORITY OF INTER-SE SECURED CREDITORS UNDER THE WATERFALL MECHANISM DURING LIQUIDATION

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INTRODUCTION

The distribution of assets of a company under liquidation is governed by Section 53 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), and is colloquially termed as the "*waterfall mechanism*" [1]. The waterfall mechanism sets out the list of stakeholders in a sequential manner. The sequential placement denotes priority in receiving payments from the liquidation estate.

Under the IBC, any agreement or understanding which disturbs the waterfall mechanism is liable to be disregarded. However, the statute is silent on the priority of *inter se* secured creditors who have relinquished their security interest. The question that arises for consideration is whether the sanctity and *inter se* priority rights amongst creditors on the basis of security interest under the Transfer of Property Act, 1882 ("**TPA**") would still be applicable under liquidation proceedings.

In a recent judgment, the National Company Law Appellate Tribunal ("**NCLAT**") in Technology Development Board v. Anil Goel and Others [2] ("**TDB v. Anil**"), held that the sub-classification of *inter-se* secured creditors in the distribution mechanism adopted in a Resolution Plan of the Corporate Debtor are rendered nugatory as soon as the secured creditors relinquish their security interest. This judgment has considerable ramifications on secured creditors overall. This piece analyses the law under IBC with respect to the position of *inter se* creditors under the waterfall mechanism.

DOCTRINE OF PRIORITY

The "*doctrine of priority*" is one of the cardinal principles of property law. As per this principle, earlier interests created in a property always take precedence over interest created later in time[3]. It is trite law that where conflicting, but equal interests have been created in favour of multiple persons, the

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priority must be determined based on the Latin maxim "*qui prior est tempore potior est jure*", which translates to "*he who is earlier in time is stronger in law*" [4]. This principle has been embodied under Section 48 of the TPA, which provides that each later created right, in an immovable property, shall be subject to the rights previously created in such property[5].

SECURED CREDITORS UNDER THE WATERFALL MECHANISM

A secured creditor is one in whose favour a "*security interest*" has been created by the corporate debtor[6]. Under Section 52 of the IBC, every secured creditor can opt for either of these two options:

- realise its security interest on its own, or
- relinquish its security interest to the liquidation estate[7].

Each secured creditor has to inform the liquidator of its decision to either relinquish its security interest or to realise its security interest itself. If the secured creditor fails to inform the liquidator of its intention within 30 days from the commencement of the liquidation process, the security interest held by such secured creditor is deemed to be relinquished[8].

If a secured creditor opts to relinquish its security interest, it has to stake its claim to the liquidation estate, i.e., the entire pool of the proceeds of the sale of the liquidation assets. Under the waterfall mechanism, such a relinquishing secured creditor is among the stakeholders with the highest priority, second only to claims of insolvency resolution process costs and liquidation costs, and at par with workmen's dues[9].

APPLICATION OF DOCTRINE OF PRIORITY UNDER THE WATERFALL MECHANISM

Pre-IBC

It is possible for multiple charges to be created on a single asset. The Supreme Court in ICICI Bank v. Sidco Leathers Ltd. and Others[10] ("**ICICI v. Sidco**") was dealing with the issue of priority under Sections 529 and 529A of the Companies Act, 1956, which deal with ranking of claims of creditors of a company under liquidation. The Supreme Court in this case relied on Section 48 of the TPA and held that the claims of the first-charge holder would prevail over those of the second-charge holder. The Supreme Court observed that there was a lack of legislative clarity on this subject and that if the legislature would have intended to curtail a right as crucial as the right of priority, it would have specifically provided such clarity in the statute.

Post-IBC

Even after the IBC came into force, there has been no clarity on this subject. Explanation (i) to Section 53 of the IBC provides that "*at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full.*"[11] Thus, the IBC envisages the distribution of liquidation proceeds among the same class of stakeholders in a pari passu manner, or on an equal footing. Section 53(2) of the IBC explicitly provides that any agreement which disturbs the priority order under Section 53 of the IBC must be disregarded [12]. However, the IBC is specifically silent on the issue of priority of inter-se secured creditors who have relinquished their security interest, since they fall under the same class of stakeholders under the waterfall mechanism.

Insolvency Law Committee Report, 2018

The Insolvency Law Committee ("**ILC**") dealt with this issue in its report dated 26.03.2018. The ILC relied on the principles enumerated in the ICICI v. Sidco and concluded that "*valid inter-creditor and subordination provisions are required to be respected in the liquidation waterfall under section 53 of the Code*". Such jurisprudence was also observed to be consistent with the understanding of liquidation under the Companies Act, 1956 and Companies Act, 2013.

Law laid down in TDB v. Anil

The NCLAT in TDB v. Anil has however taken a different view from the ILC report. In this case, the liquidator had distributed the liquidation proceeds among two secured creditors as first security charge holders, and no amounts were distributed to Technology Development Board ("**TDB**"), who was the second charge holder.

TDB challenged such distribution before the National Company Law Tribunal ("**NCLT**"), claiming that the distribution of the liquidation proceeds by the liquidator was not in consonance with the waterfall mechanism, since TDB's claim had been acknowledged by the liquidator.

On the other hand, the liquidator argued that it had distributed the liquidation proceeds to the first-charge holders, and TDB, being the second charge holder, was not entitled to receive any money from the liquidation proceeds. The liquidator relied on the Insolvency Law Committee Report, 2018 in this regard. The NCLT herein held that the *inter-se* priorities amongst the secured creditors would remain valid and prevail in the distribution of assets in liquidation, and upheld the distribution of assets by the liquidator.

However, the NCLAT observed that whether a secured creditor holds a first charge or second charge, is material only if said secured creditor elects to realise its security interest. Once a secured creditor opts to relinquish its security interest, the distribution of assets would be governed by Section 53(1)(b)(ii) whereunder all secured creditors having relinquished security interest rank equally.

Accordingly, the NCLAT held that since TDB, along with the other two secured creditors had relinquished their security interest, the aforementioned three parties would stand on an equal footing for the distribution of assets.

Given that the other two secured creditors had relinquished their security interest to the liquidation estate, the NCLAT held that the sale proceeds would have to be distributed equitably amongst the secured creditors who rank equally, irrespective of any charge they were holding prior to relinquishment of security interest.

The NCLAT also held that the *non-obstante* clause in Section 53 of the IBC would override the TPA and that the *ICICI v. Sidco* judgment is inapplicable since it was passed in the pre-IBC era.

Effect of TDB v. Anil

This decision has massive ramifications for secured creditors who have to decide between relinquishing of their security interest or otherwise. As a result of this judgment, secured creditors are at risk of losing any contractually promised priority they have over other similarly placed secured creditors, should they relinquish their security interest. Not only would this mean that the various members of a consortium of

lenders would be treated on an equal footing (irrespective of their respective loan amounts), but such lenders would be treated *pari passu* with all the other secured creditors who have relinquished their security interest.

This judgment has been criticised for its possible negative effects on the availability of credit since creditors having distinct credit risk elements would be placed on the same pedestal. The judgement also seeks to place secured creditors, who are on different footing, at the same level in a water fall mechanism in contravention with the doctrine of priority. Such an interpretation would also result in creditors being hesitant to relinquish their secured interest, something that the IBC sought to encourage by specifically placing secured creditors, who have relinquished their security, at a higher pedestal than other creditors. Therefore, the interpretation of the NCLAT regarding the position of *inter se* secured creditors in respect of their debt under the waterfall mechanism requires further review.

CONCLUSION

In *ICICI v. Sidco*, the Supreme Court had held that the priority rights as contained under Section 48 of the TPA would be applicable since there is a lack of legislative clarity on the application of the doctrine of priority in the liquidation waterfall mechanism. Even after the enactment of IBC, there is nothing in the IBC that expressly deals with this issue. Moreover, Section 53(2) of the IBC only bars those agreements which disturb the order of priority under the waterfall mechanism. There is no explanation on the issue of priority of *inter se* secured creditors who have relinquished their security interest. Therefore, it is apparent that there still exists a lack of legislative clarity on this subject.

While it is pertinent to note that the IBC, shall have an overriding effect over other laws[13], the application of the doctrine of priority must not be ignored as such an interpretation would be detrimental to creditors. It is however arguable that any priority rights attached to a security interest remains linked to the security interest, and once such security interest is relinquished, it stands to reason that such priority rights attached to the security interest also perish.

Therefore, the NCLAT's decision in *TDB v. Anil* requires further review. It would not be out of place to mention here that the decision of the NCLAT at present has been appealed before the Supreme Court and the operation of the judgement been stayed. The Supreme Court's decision in this regard will have wide ramifications on the treatment of secured creditors in respect of debts owed to them under the waterfall mechanism.

REFERENCES

[1] Insolvency and Bankruptcy Code, 2016, Section 53.

[2] Company Appeal (AT) (Insolvency) No.731 of 2020.

[3] Duraiswami Reddi v. Angappa Reddi and Others, AIR 1946 Mad 140.

[4] K.J. Nathan v. S.V. Maruty Reddy and Others, AIR 1965 SC 430.

[5] Transfer of Property Act, 1882, Section 48.

[6] Insolvency and Bankruptcy Code, 2016, Section 3(30).

[7] Insolvency and Bankruptcy Code, 2016, Section 52(1).

[8] Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 21A.

[9] Insolvency and Bankruptcy Code, 2016, Section 53(1)(b)(ii).

[10] (2006) 10 SCC 452.

[11] Insolvency and Bankruptcy Code, 2016, Explanation (i) to Section 53.

[12] Insolvency and Bankruptcy Code, 2016, Section 53(2).

[13] Insolvency and Bankruptcy Code, 2016, Section 238.

NEWS AND UPDATES

DOMESTIC ARBITRATION

ORDER UNDER SECTION 17(2) OF THE ARBITRATION AND CONCILIATION ACT, 1996 ("ARBITRATION ACT") ENFORCING EMERGENCY ARBITRATOR'S AWARD NOT APPEALABLE UNDER SECTION 37 OF THE ARBITRATION ACT:

The Supreme Court of India ("SCI") in Amazon.com NV Investment Holdings LLC v. Future Retail Limited has held that an order of enforcement of an emergency arbitrator's order made under Section 17(2) of the Arbitration Act is not appealable under Section 37 of the Arbitration Act. The SCI observed that Section 37 of the Arbitration Act is a complete code so far as appeals from orders and awards made under the Arbitration Act are concerned. The SCI also observed herein that there is nothing in the Arbitration Act that prohibits contracting parties from agreeing to a provision providing for an award being made by an emergency arbitrator. The SCI thus held that after a party participates in an emergency award proceeding, having regard to institutional rules made in that regard, such party thereafter will be bound by the emergency arbitrator's ruling.

COURT CANNOT MODIFY ARBITRAL AWARD UNDER SECTION 34 OF THE ARBITRATION ACT:

The SCI in Project Director, National Highways v. M. Hakeem and Another has held that a court, under Section 34 of the Arbitration Act, cannot modify an award, and can merely set aside or remand the same. The SCI held that the 'limited remedy' under Section 34 of the Arbitration Act is co-terminus with the 'limited right', namely, either to set aside an award or remand the matter under the circumstances mentioned under Section 34 of the Arbitration Act. The SCI further noted that the Parliament has very clearly intended that there should be no power of modification of an award under Section 34 of the Arbitration Act.

FOREIGN AWARD CAN BE BINDING ON NON-SIGNATORIES TO ARBITRATION AGREEMENT:

The SCI in Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd. and Another has held that a foreign award can be binding on non-signatories to the arbitration

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agreement and can be thus enforced against them and cannot be resisted on the sole ground that it has passed against a non-signatory to the arbitration agreement. The court referred to Section 46 of the Arbitration Act which deals with the circumstances under which a foreign award is binding, and noted that the provision speaks of "persons as between whom it was made" (and not parties to the agreement), which can include non-signatories to the agreement.

ARBITRATION AWARD WHICH IGNORES VITAL EVIDENCE OR REWRITES THE CONTRACT IS LIABLE TO BE SET ASIDE:

The SCI in PSA Sical Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin has held that an arbitration award which ignores vital evidence in arriving at its decision or rewrites a contract is liable to be set aside under Section 34 of the Arbitration Act on the ground of patent illegality. The SCI observed that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse. The SCI further observed that re-writing a contract for the parties would be breach of fundamental principles of justice. The SCI reiterated that the role of the arbitrator is to arbitrate within the terms of the contract, and that he/she has no power apart from what the parties have given him/her under the contract. The SCI held that if the arbitrator has travelled beyond the contract, he/she would be acting without jurisdiction.

SECTION 9 OF THE ARBITRATION ACT WILL APPLY TO FOREIGN ARBITRATION UNLESS EXPRESSLY EXCLUDED BY PARTIES IN ARBITRATION AGREEMENT:

The High Court at Calcutta ("CHC") in Medima LLC v. Balasore Alloys Limited has held that choosing foreign law to govern an arbitration would not in itself exclude the application of Section 9 of the Arbitration Act, unless parties specifically exclude its application in the arbitration agreement. The CHC noted that the proviso to Section 2(2) of the Arbitration Act stipulates inter-alia that Section 9 under Part I of the Arbitration Act, which ordinarily applies if the place of arbitration is in India, would also apply to international commercial arbitration, even if the place of arbitration is outside India, unless there is "an agreement to the contrary." The CHC observed that an 'agreement to the contrary' as mentioned under Section 2(2) of the Arbitration Act must be express and not implied.

INTERNATIONAL ARBITRATION

NO DEFENCE OF SOVEREIGN IMMUNITY WILL BE AVAILABLE TO A STATE SEEKING TO RESIST RECOGNITION OF AN ICSID AWARD:

In Kingdom of Spain v. Infrastructure Services Luxembourg, the Full Federal Court of Australia ("FCA") allowed an appeal in relation to the application of the Foreign States Immunities Act 1985 (Cth) ("FSIA") to ICSID awards rendered against contracting States to the ICSID Convention. In doing so, FCA laid down clear principles for the recognition of awards made under the ICSID Convention. The FCA distinguished between "recognition" and "enforcement" of the awards, noting that the orders to which the applicant was entitled were those that reflected the outcome of a recognition proceeding, not one of enforcement. The FCA thus held that sovereign immunity did not prevent parties from seeking recognition of an ICSID award, but made no decision as to the defence of sovereign immunity from enforcement proceedings.

IBC

MONEY DECREE/CERTIFICATE OF RECOVERY IN FAVOUR OF FINANCIAL CREDITOR GIVES FRESH CAUSE OF ACTION TO INITIATE INSOLVENCY PROCEEDINGS:

The SCI in Dena Bank v. C. Shivakumar Reddy has held that a judgment and/or decree for money in favour of the financial creditor, or the issuance of a certificate of recovery in its favour, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") for initiation of the corporate insolvency resolution process ("CIRP"). The SCI observed that such judgment/decree may be passed by the Debt Recovery Tribunal, or any other tribunal or court, and in such cases insolvency resolution process can be initiated, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, or any part thereof remained unpaid.

APPLICATION FOR INITIATING CIRP HAS TO BE REJECTED ONLY IF A DISPUTE TRULY EXISTS IN FACT:

The SCI in Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Private Limited has held that the adjudicating authority has to reject an application seeking initiation of CIRP under Section 9 of IBC only if a dispute truly exists in fact and is not spurious, hypothetical or illusory. The SCI observed that, at this stage, the authority is not required to be satisfied as to whether the defence is likely to succeed or not and it cannot go into the merits of the dispute. The SCI held that the adjudicating authority is required to see whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence.

LENDER WHO ADVANCED INTEREST FREE LOANS TO CORPORATE BODY CAN INITIATE CIRP:

The SCI in Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd. has held that a lender who advanced interest free loans to finance the business operations of a corporate body is a financial creditor and competent to initiate the CIRP under Section 7 of the IBC. The SCI observed that there is no discernible reason, why a term loan to meet the financial requirements of a corporate debtor for its operation, which obviously has the commercial effect of borrowing, should be excluded from the purview of a financial debt. It was also observed that financial debt would include interest free loans advanced to finance the business operations of a corporate body.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA ("IBBI") (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (SECOND AMENDMENT) REGULATIONS, 2021:

IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been amended. The new regulations provide that an interim resolution professional or a resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as the interim resolution professional or resolution professional, as the case may be, in a CIRP, if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any other stakeholder in that CIRP.

CORPORATE UPDATES

SECURITIES AND EXCHANGE BOARD OF INDIA ("SEBI") HAS POWER TO REGULATE WINDING-UP OF MUTUAL FUND SCHEMES TO PROTECT INVESTORS:

The SCI in Franklin Templeton Trustee Services Private Limited v. Amruta Garg has held that SEBI has the power to intervene in case of violations and incorrect decisions taken by trustees to wind-up schemes, as well as to prevent any intermediary from behaving in a manner that may be detrimental to investors. Citing Section 11 of the SEBI Act, the SCI held that the functions prescribed for SEBI allow it to protect the interests of investors in securities, and to promote the development of the securities market, and therefore, SEBI is empowered to take measures in this regard as it deems fit. It was also observed that SEBI may, by an order in writing in the interest of the investors or securities market, take the measures stipulated thereunder either pending investigation or inquiry or upon completion of investigation or inquiry.

COMPANIES (REGISTRATION OF FOREIGN COMPANIES) AMENDMENT RULES, 2021:

The Ministry of Corporate Affairs has amended the Companies (Registration of Foreign Companies) Rules, 2014. As per the amendment, as far as the definition of 'electronic mode' is concerned, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under Section 18 of the Special Economic Zones Act, 2005 shall not be construed as 'electronic mode' for the purpose of Section 2(42) of the Companies Act, 2013.

CENTRE NEED NOT BE MAJORITY SHAREHOLDER IN NATIONAL INSURANCE COMPANIES:

The Lok Sabha has passed the General Insurance Business (Nationalization) Amendment Bill, 2021, which removes the condition that the Central Government should hold 51% shareholding in state-owned general insurance companies. The proviso to Section 10B of the General Insurance Business (Nationalization) Act, 1972 requires that the shareholding of the Central Government in the specified insurance companies must be at least 51%.

The amendment bill proposes to omit the proviso to Section 10B of the General Insurance Business (Nationalization) Act, 1972. Furthermore, Section 24B proposed to be added in the General Insurance Business (Nationalization) Act, 1972 provides for cessation of application of the statute to such specified insurer on and from the date on which the Central Government ceases to have control over it.

COMPANIES (INCORPORATION) FIFTH AMENDMENT RULES, 2021:

The Central Government has amended the Companies (Incorporation) Rules, 2014, which shall come into force from 1 September 2021. A new Rule 33A has been inserted into the Companies (Incorporation) Rules, 2014, which provides that in case a company fails to change its name in accordance with the direction issued under Section 16(1) of the Companies Act, 2013 within a period of three months from the date of issue of such direction, the letters "ORDNC" (Order of Regional Director Not Complied), the year of passing of the

direction, the serial number and the existing Corporate Identity Number of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No. INC-11C.

OTHER UPDATES

SECOND APPEAL CANNOT BE DISPOSED OF SUMMARILY POST ADMISSION:

The SCI in Ramdas Waydhan Gadlinge (Since Deceased) v. Gyanchand Nanuram Kriplani (Dead) has held that a second appeal, after its admission with formulation of substantial question of law, cannot be disposed of summarily. It was observed that once a second appeal is admitted, on the High Court being satisfied that a substantial question of law is involved in the case and with formulation of that question, the appeal is required to be heard in terms of Order XLII of Code of Civil Procedure, 1908 ("CPC"). The SCI also held that it has further power to hear the appeal on any other substantial question of law if not formulated earlier for reasons to be recorded.

CROSS OBJECTION NOT NECESSARY TO CHALLENGE ADVERSE FINDINGS UNDER ORDER XLI, RULE 22 OF THE CPC:

The SCI in Saurav Jain v. A. B. P. Design has held that a party in whose favour a court has decreed the suit can challenge an adverse finding before the appellate court without a cross objection. The SCI observed that it is not necessary that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection. The SCI also observed that it can entertain new grounds raised for the first time in an appeal under Article 136 of the Constitution if it involves a question of law which does not require adducing additional evidence. It was held that the principle stipulated in Order XLI, Rule 22 of CPC can be applied to petitions under Article 136 of the Constitution because of the SCI's wide powers to do justice under Article 142 of the Constitution.

NO SCOPE FOR CONSIDERING TERRITORIAL JURISDICTION ISSUE IN A TRANSFER PETITION:

The SCI in Naivedya Associates v. Kriti Nutrients Ltd. has held that that there is not much scope of going into the question of 'territorial jurisdiction' of a court in a transfer petition under Section 25 of the CPC. Section 25 of the CPC empowers the SC, if satisfied that an order is expedient for the ends of justice, to direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State. The SCI clarified that this point of lack of jurisdiction can be agitated before the court in which the suit has been instituted.

DEFENDANT PRESENT BEFORE ISSUING SUMMONS OR WITHOUT FILING CAVEAT CAN BE HEARD ON REJECTION OF PLAINT:

The DHC in Tajunissa and Another v. Mr. Vishal Sharma and Others has held that there is no bar in hearing a defendant, who is neither served summons nor appearing on caveat, at the pre-summons stage in a suit on the points for rejection of plaint under Order VII, Rule 11 of the CPC. Since the court is empowered to examine the grounds for rejection of plaint under Order VII, Rule 11 of the CPC at the pre-summons stage, it was observed that the court can hear a defendant who is physically present in

the court even though no summons has been served on him or he has not filed caveat under Section 148A of the CPC.

ABSENCE OF REGISTRATION AT THE TIME OF FILING OF A SUIT BY A PARTNERSHIP FIRM WOULD MAKE SUCH A SUIT DEFECTIVE:

The DHC in M/S. Shanti Nath Enterprises v. M/S. AA Enterprises has held that the absence of registration at the time of filing of a suit by a partnership firm would make such a suit defective. It was observed that this defect can be overcome, not in the same suit by way of amendment, but by withdrawing the suit as having a 'formal defect' and seeking permission to file a fresh suit on the same cause of action. The DHC held that it was incorrect to say that if a partnership firm once files a suit at the time it is not registered, then, irrespective of limitation, it would be barred forever from filing a suit on the same cause of action.

BANKS CANNOT FORCE MANDATORY CLAIM PERIOD OF 1 YEAR FOR BANK GUARANTEES:

The DHC in Larsen and Toubro Ltd. and Another v. Punjab National Bank and Another has interpreted Exception 3 to Section 28 of the Indian Contract Act, 1872 to hold that it does not deal with 'claim period' under bank guarantees. The DHC held that this provision deals with the curtailment of the period for the creditor to approach the court or tribunal to enforce the rights under the bank guarantee. "Claim period" is a time period contractually agreed upon between the creditor and principal debtor, which provides a grace period beyond the validity period of the guarantee to make a demand on the bank for a default, which occurred during the validity period. The consequence of this interpretation is that banks cannot insist that the claim period in bank guarantees should be a minimum of 12 months.

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INDIVIDUAL CONTRACTS CANNOT CURTAIL JURISDICTION OF STATUTORY FORUMS:

The CHC in Ajit Hembram and Others v. Sergeant of Co-operative Housing Society Limited and Others has held that parties are precluded from drawing up individual contracts that curtail the jurisdiction of statutory forums or overrule statutory requirements. The CHC observed that although there might be a provision in the contract for unilateral termination by the opposite parties in the event of certain incidents happening, mere agreement cannot confer jurisdiction and/or curtail jurisdiction of a statutory forum, and such contracts are ex-facie barred. The CHC held that the curtailment of the jurisdiction of courts and/or tribunals or other forums by agreement is not valid in the eye of law.

AWARDS & RECOGNITIONS

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