

NCLT cannot assume the power to declare any provision of the Insolvency and Bankruptcy Code, 2016 as illegal or ultra vires

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Introduction

The Hon'ble Delhi High Court ("Delhi HC") in *Insolvency and Bankruptcy Board of India vs State Bank of India & Ors.* (2022) [ibclaw.in 280 HC](#) has held that the National Company Law Tribunal ("NCLT") cannot assume to itself the power of declaring any provision of the Insolvency and Bankruptcy Code, 2016 ("IBC") or the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") as illegal or *ultra vires*.

Facts

In the case of *State Bank of India vs. Su Kam Power Systems Ltd.* (2018) [ibclaw.in 58 NCLT](#), an application by State Bank of India requesting an extension of 90 days, for the corporate insolvency resolution process ("CIRP") from the NCLT because no resolution plans were received after inviting expressions of interest. Accordingly, a writ petition was filed by the Insolvency and Bankruptcy Board of India ("IBBI") before the Delhi HC challenging the NCLT Order.

The Respondent No. 1, State Bank of India, submitted an application under section 12(2) to the NCLT requesting a 90-day extension for the completion of the CIRP. During the proceedings of the application, the NCLT observed that an invitation for expressions of interest was made, but no resolution proposals were submitted in response to this invitation. The division of the CIRP into two stages, namely the solicitation of expressions of interest and the subsequent pursuit of resolution plans, as outlined in regulation 36A, was the focal point of the challenged order.

The Petitioner has presented a challenge to the aforementioned order before this Court, citing many grounds, one of which is the contention that the NCLT has the jurisdiction and authority to determine the legitimacy and legality of Regulations.

The primary concern in this case was dividing the CIRP process into two phases; first inviting expressions of interest and second soliciting resolution plans. The NCLT determined that Regulation 36A of the CIRP Regulations contradicted Section 240(1) of the IBC. This ruling prompted a challenge by the Insolvency and Bankruptcy Board of India ("IBBI").

On September 26, 2018, the Delhi High Court clarified in an order that the NCLTs decision would not apply to cases where an 'expression of interest' had already been issued. Following this clarification, the IBBI appealed to the Division Bench of the Delhi HC temporarily suspended

enforcement of the NCLT Order.

The case was still under consideration at the Delhi HC. On May 4, 2022, the panel of judges concluded the Division Bench Case. They confirmed that the Division Bench Order is valid and requested the judge, at the Delhi HC, to address and resolve the writ petition during a hearing.

Issue

Whether is it within the jurisdiction of the NCLT to assert authority in declaring any provisions of the IBC or CIRP Regulations as unlawful or beyond their legal scope?

NCLT

The NCLT determined that Regulation 36A was in violation of section 240(1) since it hindered the expeditious resolution process, even though there was no specific challenge against the regulation.

Submission on behalf of Appellant

The authority of the Petitioner IBBI can be taken from Section 196(1)(t) and Section 240 of the IBC. The significance of Section 25(2)(h) of IBC in relation to Regulation 36A should also be appreciated.

The appellant argues that the NCLT lacks the authority to adjudicate on the validity of any Regulations. He further refers to the reliance placed on the judgement of the NCLAT, which has explicitly stated that NCLT does not have the authority to determine the validity and propriety of a Regulation.

Judgement and Analysis

The recent decision made by the Delhi High Court has implications for the authority of NCLT concerning IBC and its associated regulations. The ruling clearly states that the NCLT does not have the jurisdiction to declare any provisions of the IBC or its regulations as illegal or beyond their authority.

In essence the court emphasized that since the NCLT is a body established by the IBC itself it cannot exceed its limits by claiming authority to declare any part of the IBC or its regulations as unlawful or outside their scope. This ruling is in line with a decision from the NCLAT which highlighted the importance of judicial interference from both NCLT and NCLAT to uphold key principles of the IBC.

In the current scenario, a comprehensive analysis of the provisions of the IBC unequivocally demonstrates that NCLT serves as the designated adjudicating body within the framework of the IBC. The categories of instances that are eligible for adjudication have been explicitly listed in section 60(5). The NCLT does not possess the authority to address the legitimacy and constitutionality of the Regulations established under the IBC. Due to its status as a creation of the IBC, the NCLT lacks the authority to unilaterally declare any parts of the IBC or its associated

Regulations as unlawful or beyond its jurisdiction.

It's worth noting that the High Court made it clear that they weren't considering the merits of the regulation. Instead, their focus was on whether the NCLT had the authority to issue such a declaration.

While recognizing the authority of the NCLT to handle cases, within its jurisdiction and make decisions on factual matters arising from insolvency and liquidation proceedings the court made it clear that this power does not extend to declaring a regulation as beyond the scope of its authority. Additionally, the court emphasized that both rules and regulations whether established by the Central Government or the IBBI are subject to scrutiny by Parliament as required by Section 241 of the IBC.

The court's ruling emphasized that Regulation 36A had followed procedures for amendment and had received proper approval from the IBBI in accordance with the law. As a result, it was not within the authority of the NCLT to declare it as, beyond its jurisdiction. This judgment serves as a reminder of the importance of adhering to established processes. Highlights the limitations of NCLT's jurisdiction particularly regarding matters related to IBC and its associated regulations.

The ruling confirms that the NCLT, as an entity established by the IBC itself, should not overstep its bounds by making such determinations. This interpretation aligns with the principle of minimizing judicial interference and emphasizes the importance of adhering to established legal procedures.

At first glance, it seems that section 60(5)(c) encompasses both legal and factual inquiries. Upon further examination of the aforementioned rule, it becomes evident that inquiries pertaining to matters of law or facts should specifically pertain to the procedures that are now under consideration by the NCLT. Moreover, it is imperative that these inquiries are directly derived from or associated with the settlement or liquidation proceedings. The court's perspective, the power to proclaim a Regulation as *supra vires* cannot be encompassed within this.

Based on the preceding discourse, it is important to note that regulation 36A has undergone amendment and legal approval by the IBBI. Consequently, the NCLT lacks the authority to declare it as *ultra vires* solely based on the argument that its two-stage process, which involves soliciting expressions of interest followed by financial bids, contradicts the objective of expediting the IRP.

The case also underscores the significance of regulatory frameworks being subject to parliamentary scrutiny, as mandated by Section 241 of the IBC. This parliamentary oversight ensures transparency and accountability in the development and implementation of rules and regulations related to insolvency proceedings.

Furthermore, the fact that the High Court did not assess the merits of Regulation 36A but rather focused on the NCLT's jurisdiction highlights a critical point. It emphasizes that the legal process and adherence to established procedures are of paramount importance. The NCLT's authority to handle cases within its jurisdiction and make determinations on factual matters arising from insolvency proceedings is recognized. However, this authority does not extend to declaring

regulations as beyond their intended scope.

Conclusion

The order dated September 5, 2018, issued by the NCLT, which declared CIRP Regulation 36A as beyond its legal authority, has been reversed. However, it's worth noting that there haven't been any substantial challenges brought before this court questioning the legitimacy or legality of Regulation 36A.

To sum it up, this comment provides a brief yet insightful analysis of the Delhi High Court's decision. It emphasizes essential principles such as the separation of powers, parliamentary oversight, adherence to legal processes, and the maintenance of a well-balanced legal system. This judgment reaffirms the fundamental tenets of the IBC and contributes to greater legal clarity within India's insolvency framework. It highlights the significance of a legal system that is both strong and equitable, ensuring that all parties involved can trust the fairness of insolvency proceedings.