



CIVIL

NCLAT's Decision in Phoenix ARC Case: Implications for Secured Creditors' Security Interest in Liquidation

AUTHOR Rahul Sundaram

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On 20 March 2025, the National Company Law Appellate Tribunal (NCLAT) delivered a judgment in the case of Phoenix ARC Private Limited vs. Kuldeep Verma, affirming the decision of the National Company Law Tribunal (NCLT) to include the Haldia property in the liquidation estate of KS Oils Limited. The bench, presided over by Justice Ashok Bhushan and Technical Member Barun Mitra, analysed the legal provisions and the conduct of the parties involved, ultimately dismissing Phoenix ARC's appeal while allowing the successful bidder, Halder Venture Limited, to proceed with the acquisition of the Haldia property.

Table of contents

- [Background of the Case](#)
- [Legal Provisions at Play](#)
- [Contentions of the Parties](#)
- [NCLAT's Analysis and Decision](#)
- [Halder Venture Limited's Application](#)
- [Conclusion](#)

Background of the Case

The dispute arose during the liquidation proceedings of KS Oils Limited, Phoenix ARC Private Limited, a secured creditor with a claim of ₹793.45 Crores, asserted its security interest over the Haldia property, a 12.84-acre industrial unit located in Medinipur, West Bengal. In its Form-D filed on 14 April 2021, Phoenix ARC explicitly stated that it was not relinquishing its security interest in the Haldia property. However, on 14 July 2023, the liquidator, Kuldeep Verma, notified Phoenix ARC that the Haldia property had become part of the liquidation estate under Regulation 21A (3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulation) for non-payment of dues under section 53 within 90 days. Subsequent sale notices issued by the liquidator led to the auction of the Haldia property to Halder Venture Limited for ₹57.10 Crores on 2 February 2024.

Legal Provisions at Play

The judgment hinged on the interpretation and application of key provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and the IBBI (Liquidation Process) Regulations, 2016.

Section 52 of the IBC allows secured creditors to realize their security interest during liquidation, while Section 53 prioritizes the distribution of liquidation proceeds. Regulation 21A of the Liquidation Regulations, introduced in 2019, mandates that secured creditors must either relinquish their security interest or comply with specific obligations, including making payments within 90 days of the liquidation commencement date (proportionate share of the CIRP/Liquidation cost and workman dues as per provision of section 53(1)(a) and 53(1)(b)(i) of the IBC. Failure to comply results in the asset becoming part of the liquidation estate as per provisions of the said Liquidation regulation 21A(3).

Regulation 37 requires secured creditors to notify the liquidator of the proposed sale price of their secured assets. Further if any person is willing to buy the secured asset at a higher price the liquidator must inform the secured creditor within 21 days. Further where the liquidator informs the secured creditor of a person willing to buy the secured asset, the secured creditor should sell such secured asset to such buyer.

Contentions of the Parties

Phoenix ARC contended that it had clearly communicated its intention not to relinquish its security interest in the Haldia property and argued that the liquidator failed to provide an estimate of the required payments under Regulation 21A(2). It also claimed a security interest in an additional 8.02 acres of land, which it asserted should have been handed over to it. Conversely, the liquidator emphasized Phoenix ARC's non-compliance with Regulation 21A(2) and the validity of the auction process, stressing that Phoenix ARC had not fulfilled its obligations under Regulation 37.

NCLAT's Analysis and Decision

The NCLAT upheld the NCLT's decision, finding that Phoenix ARC had failed to comply with Regulation 21A(2). The appellate tribunal noted that Phoenix ARC neither communicated its proposed sale price to the liquidator nor made the required payments within the stipulated timeframe. The court dismissed Phoenix ARC's argument regarding the liquidator's failure to provide an

estimate, highlighting that the second proviso of Regulation 21A(2) obligates secured creditors to pay the liquidator's estimated amount even if the exact liability is uncertain.

The tribunal also addressed Phoenix ARC's claim over the additional 8.02 acres, concluding that the creditor's failure to properly document and communicate this claim within the required timeframe rendered it part of the liquidation estate.

Halder Venture Limited's Application

The NCLAT further allowed Halder Venture Limited, the successful bidder, to deposit the remaining auction consideration of ₹51.39 Crores along with 12% interest within 30 days. The liquidator was directed to proceed with handing over the Haldia property to Halder Venture upon receipt of the balance amount.

Conclusion

The NCLAT's judgment in Phoenix ARC Private Limited vs. Kuldeep Verma emphasises the importance of strict compliance with regulatory obligations by secured creditors during liquidation proceedings. The decision reinforces the principle that failure to adhere to the timelines and requirements of the IBC and associated regulations can result in the loss of security interests. For stakeholders navigating insolvency and liquidation processes, this case serves as a reminder of the need for careful adherence to procedural mandates and timely communication with liquidators. The tribunal's ruling not only validates the liquidator's actions but also ensures that the interests of all creditors are balanced within the framework of the law.

For further details write to contact@indialaw.in