

Adjudicating beyond the Curve: NCLT's Power to Determine Questions of Title of Assets

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Introduction

The very next issue of consideration after establishing any judicial or quasi-judicial body is to ascertain its jurisdiction within the limit of which such judicial or quasi-judicial body exercises its authority. When even after four years of establishment, the jurisdiction of any tribunal is still in dispute it has every possibility to create deadlock on the maintainability of certain claims. Recently on a similar note the jurisdiction of the National Company Law Tribunal ("NCLT") was in dispute in the case of **M/s Dynepro Private Limited v. Mr. V. Nagarajan** ("Dynepro") where the tribunal was called upon to answer whether it can adjudicate to determine the question of title or ownership of assets held by the corporate debtor.

It is well established that NCLT does not have the jurisdiction to entertain matters wherein the civil court enjoys jurisdiction. It is limited to exercise only such powers that are within the contours of the jurisdiction prescribed by the statute. Though the issue of ownership and title of assets fall within the civil jurisdiction of the courts, such questions have been frequently raised before the NCLT and therefore it becomes pivotal to ponder upon such question.

Understanding the Law

Section 280 of the Companies Act, 2013 ("CA 2013") confers jurisdiction upon the NCLT to adjudicate any proceedings, claims, or any question of law or fact including those relating to assets or entitlements in cases of winding up of companies. Furthermore section 430 of CA 2013 read with section 63 of the Insolvency and Bankruptcy code 2016 ("**code**") bars civil court to exercise jurisdiction in respect to any suit or proceeding in respect of any matter which the NCLT is empowered to determine.

Since winding up of a company has a different connotation compared to that of insolvency proceedings as envisaged under Part II of the Code, unlike the winding-up proceedings, the authority of NCLT to determine the question of title or ownership of assets in insolvency proceedings has a specific set of ambit regarding maintainability of such claims.

Section 60(5) of the Code similar to section 280 of CA 2013 provides impetus to certain claims which were previously dealt only by the civil courts. It includes application or proceeding or any claim by or against the corporate debtor or any question of priorities or any question of law or facts. Questions relating to title and ownership forms a pivotal aspect while dealing with insolvency proceedings. The ownership of assets between the creditor and debtor which would be used in the resolution is a prime concern. It must be remembered that as per the explanation under Section 18(1) of the Code, the term 'assets' does not include assets owned by a third party in possession of the corporate debtor held under contractual arrangements including bailment. Thus, any question under section 60(5) with regards to assets must be between the creditor and the debtor.

Prima facie it may seem that under section 60(5) NCLT can determine the claim of ascertaining the

ownership or title of the asset but in a peculiar situation like Dynepro case where the dispute was to determine the ownership of the asset that technically is not owned by the corporate debtor but is merely in its possession, additionally providing an inter-se claim, the jurisdiction of NCLT is excluded as such claims are not directed against the debtor.

Judicial Affirmations

The nature of proceedings before the NCLT cannot be equated with a money claim or a suit. In **Binani Industries Limited v. Bank of Baroda & Anr.** it was held that the Adjudicating Authority cannot decide the disputed question of fact including claim and counterclaim made by one or other party qua. Moreover, reiterating such view in the matter of ***Dynepro*** the NCLAT held that Adjudicating authority cannot decide the *inter se* claims concerning the ownership of similar assets between the parties since the claim was not directed against the corporate debtor. Due to such limited powers of the adjudicating authority it is tough to assert whether it can adjudicate an ownership claim of the assets between the creditor and the debtor. However, since such claims are directed against the corporate debtor, it can well be depicted as the corollary of the established precedents.

The Apex court in **Shashi Prakash Khemka (Dead) through LRs. and Another Vs. NEPC Micon and Others** has clarified that matters in which powers has been conferred on NCLT, the jurisdiction of civil court is completely barred, the question pertaining to title of shares was relegated to the NCLT in view of the widely worded section 430 of CA 2013. Though using such precedents as an analogy for title of tangible assets does not seem to be plausible but taking into account the wide powers of the adjudicating authority under Section 60(5) of the Code such analogy seems arguable. Section 60(5) empowers the NCLT to entertain disputes which are generally raised in a suit or litigation. Such powers are limited by the fact that the concerned disputes arise out or relate to the resolution process.

It can be deduced that there exists an ambiguity in respect to the powers granted to the adjudicating authority under section 60(5) to determine title claims between the creditor and the corporate debtor. Moreover, stretching the extent of powers under section 60(5) may render absurd results creating jurisdictional issues between the NCLT and the civil court.

Adjudicating title of assets between the corporate debtor and the creditor

In Dynepro apart from the Appellants, other parties had also made ownership claims to the same asset. The Tribunal observed that since the claim is not against the Corporate Debtor or its subsidiaries but an inter-se claim for the same asset, such dispute cannot be decided by the Adjudicating Authority under section 60(5) of the code. It is pertinent to note that such a bar on maintainability of claim is incumbent on the fact that the claim is not against the corporate debtor. It is pertinent to note that Dynepro explicitly provided that 'as the claim is not directed against the corporate debtor' the adjudicating authority does not have jurisdiction to entertain such claims, hinting towards the fact that the corollary can be true when the claim is made against the corporate debtor. When ownership claims arise between the corporate debtor and the creditor and claims are directed against the corporate debtor, the adjudicating authority can be argued to exercise jurisdiction. Moreover, unlike inter se claims, the title claims between the debtor and the creditor may arise out of or relate to the resolution process. It would then be rendered within the ambit of section 60(5) of the code.

Adjudication under Section 60(5) though does not explicitly seem to determine the questions of ownership but it has included determining claims about the transfer of assets in possession of the corporate debtor. The explanation to section 18(1) excludes assets belonging to third parties, premising its observation on such provisions the adjudicating authority in Whether makers Pvt ltd v. Parabolic drugs ltd resorted to contractual provisions explaining ownership of assets to transfer the possession to the creditor even though such actions seems to be barred by section 14 after the commencement of the CIRP. Thus determining ownership in the context of the contractual provisions.

Extending Jurisdiction under Section 60(5)

The NCLT has been determining questions of possession of tangible assets and title of intangible assets such as shares. Adjudication of such claims under section 60(5) of the code seems to be justified in the context of the wide discretion afforded by the provision. Although the plenary powers granted to the adjudicating authority under the provision seems to discretionary, it cannot be interpreted to include all questions of facts or law under the sky and cannot be stretched so far as to bring absurd results. Although section 63 which bars to the jurisdiction of civil courts in matters where NCLT exercises jurisdiction. Such exclusion provides an impetus to the exclusive jurisdiction of NCLT in several matters. The wide jurisdiction under section 60(5) read with section 63 has the potential to render matters within the jurisdiction of NCLT which were previously dealt with by the civil courts. The only factor demarcating the jurisdiction of NCLT and civil courts would be whether the question relates to or arises out of the insolvency proceedings. Thus, it is imperative that both provisions have to be reconciled to reduce jurisdictional issues that might arise.

Additionally, in ***Eureka Forbes Limited v. Allahabad Bank***[1] it was observed that the notion *Forum Shopping* or multiple jurisdictions cannot be made available in matters pertaining to the code as it would introduce manipulations to frustrate the resolution process Thus mandating a need for a demarcation between the extended jurisdiction under section 60(5) and jurisdiction of civil courts.

Although section 60(5) has included claims for investigation of an allegation of frauds and other relevant disputes. It cannot be stretched to render absurd results but with little clarity on the demarcation with the questions dealt by the civil courts. Nevertheless, the inclusion of questions relating ownership in an insolvency dispute could be fair as it would render speedy resolution of assets without pondering over protracted litigation in the civil courts.

Conclusion

Even after four years of enactment, the Code is still at a nascent stage which is continuously evolving through judicial interpretations. The comprehensive nature of the code has rendered clashes between other jurisdictions. It is clear that the scope of section 60(5) cannot be misused to include every question of fact or law, it has to be limited to claims which are relevant at the stage of insolvency. Ownership disputes seem to be significant during the resolution of assets but the lack of explicit precedents has brought ambiguity with regards to its maintainable. Thus, it pertinent that jurisdiction of such claims has to be harmonized with the extended jurisdiction under section 60(5) taking into account the non-intervention in matters enjoyed by civil courts.

Reference

[1] (2010) 6 SCC 193

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