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SUPREME COURT OF INDIA

Registered Trade Union Can File Insolvency Petition as an Operational Creditor on Behalf of Its Members

~Avani Sinha, Associate

A division bench of the Apex Court recently in the case of *JK Jute Mill Mazdoor Morcha V. Juggilal Kamlapat Jute Mills Company Ltd.*[1] held that a registered trade union can maintain a petition as an operational creditor on behalf of its members.

In the present case, JK Jute Mill Mazdoor Morcha issued a demand notice on behalf of about 3000 workers under Section 8 of the Insolvency and Bankruptcy Code for outstanding dues of workers. The National Company Law Tribunal (NCLT) dismissed their application observing that a trade union is not covered as an operational creditor. Upholding the NCLT order, the NCLAT observed that stating that each worker may file an individual application before the NCLT.

The Respondent on the other hand contended that as no services are rendered by a trade union to the corporate Debtor to claim any dues which can be termed as debts, trade unions will not come within the definition of Operational Creditors. Each claim of each workman is a separate cause of action in law and therefore a separate claim for which a separate dates of default or each debt.

Apex Court referring to various provision under the Trade Unions Act, 1926, Sec 2, 8, 13 and 15 that a trade union in certainly an entity established under the Trade Unions Act and would therefore fall within the definition of

[1] Civil Appeal No.20978 of 2017, decided on April 20, 2019

"person" under section 3(23) of the IBC, 2016. Thus a claim could certainly be made by a person duly authorized to make such claim on behalf of a workman.

Setting aside the Tribunals' view, the Hon'ble Court remanded the matter to NCLAT to decide the application on merits and said: *"What is clear is that the trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union. Equally, to state that for each workman there will be a separate cause of action, a separate claim, and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with authority from several workmen to one of them to file such petition on behalf of all."*

- **A Sigh of Relief to the Insurance Companies - Concealment of pre-existing policies in a Proposal form a valid ground for Repudiation of Claim by the Insurance Company**

~Simran Tandon, Associate

Supreme Court in Reliance Life Insurance Co. *Ltd & Anr. vs Rekhaben Nareshbhai Rathod*[2] recently decided on 24th April, 2019, allowed the appeal filed by the insurer and held that suppression of pre-existing policies in a proposal form is considered to be a material fact and the same would be the sufficient ground for repudiation of the claim by the Insurance Company.

The District Forum dismissed the complaint on the ground that there was non-disclosure of the fact that the insured had held a previous policy in the proposal form filled up by the proposer. However, the appeal filed by the insured before the State Consumer Disputes Redressal Commission was allowed. This decision was upheld in revision by the National Consumer Disputes Redressal Commission.

Later the SLP (c) No. 14312 of 2015 was filed by the insurer in the Supreme Court in which the leave was granted and thus in a Civil Appeal division bench allowed the appeal of the Insurance Company.

The Apex Court observed that repudiation of the claim by the Insurance Company was well within the period of two years from the commencement of the insurance cover. Thus, the insurer's right to repudiate the claim was untrammelled and was not subjected to conditions which would have applied beyond two years. The Apex Court observed that the proposal forms are a significant part of the disclosure procedure and warrant accuracy of the statement. The Apex Court also took reference of the Regulation 2(d) & 4(3) of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations 2002. Also with respect to non-disclosure of a material fact on the part of the insured that he held a prior insurance policy, the Hon'ble Supreme Court observed that the fundamental principle of insurance is governed by the of the doctrine of *uberrima Fidei* which means that there must be a complete good faith on the part of the insured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed.

The Apex Court also observed that the mere submission of the policyholder that he was unaware of the contents of the proposal form and the same was filled up by the third party such as agent and that the signature of the assured were taken without explaining the

[2] Civil Appeal No. 4261 of 2019 decided on April 24, 2019

details cannot be accepted. Thus, the appeal filed by the Insurance Company was allowed and it was held that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

- **Whether the Negotiable Instruments Act ordering Court for payment of interim compensation to Complainant has retrospective application or not?**

~ Adithya Reddy, Associate

Section 143A was inserted by the Negotiable Instruments (Amendment) Act dated July 23rd 2018 wherein the Court trying an offence under Section 138 has the power to order the drawer of the cheque to pay interim compensation to the Complainant. According to the provisions of the newly inserted Section, interim compensation upto 20% can be ordered to be paid in case the accused does not plead guilty and has to be paid within 60 days of the Order. The recovery of compensation can be made through the process of recovery of fine as given under Section 421 of CPC. Also, the compensation is to be recovered from the complainant with interest according to the bank rates prescribed by RBI, in the case the accused is acquitted.

A Special Leave Petition was filed in the Supreme Court, *GJ Raja vs Tejraj Surana*[3] after which a Notice was issued by the Supreme Court to decide the probability of Section 143-A in the Negotiable Instruments Act, 1881 having retrospective application. In the particular case, the Fast Track Court-II, Metropolitan Magistrate, Egmore, Chennai the accused was ordered to pay 20% of the amount of the cheque as interim compensation to the complainant, and the issue of retrospective application of Section 143-A has not been addressed either in Magistrate's order nor in the direction of the High Court upholding the Order passed by the Magistrate. The Special Leave Petition has been filed against the order of the High Court and the matter has been now posted on 01.07.2019 after issuing of the Notice. The Bench of the Supreme Court hearing on the matter directed the Petitioner to deposit 15% of the cheque amount in he II Fast Track Court – Metropolitan Magistrate, Egmore at Allikulam, Chennai as interim measure and ordered to deposit the same within 3 weeks of the Order. In a decision rendered by the Punjab & Haryana High Court, it was held that Section 143A of the NI Act has no retrospective effect and on the other hand Section 148 will be made applicable to pending appeals pending on date of enforcement of this provision. Now it happens to be seen what the Supreme Court thinks of this and on what grounds it makes a ruling on the matter.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION "NCDRC")

- **No Bar by RERA on homebuyer's Complaint under Consumer Protection Act, 1986**

~Ritika Khatua, Associate

The NCDRC of New Delhi on 15.04.2019 in the case of *Ajay Nagpal vs. Today Homes & Infrastructure Pvt. Ltd.*[4], held that an aggrieved homebuyer may approach either RERA Authorities or file Complaint under the Consumer Protection Act, 1986. Neither Real Estate (Regulation and Development) Act, 2016 nor does the Consumer Protection Act, bar the Jurisdiction of the other.

A batch of Complaints were filed before the bench headed by Justice R K Agarwal by homebuyers for compensation from Homes & Infrastructure Pvt. Ltd. (Respondent) for failure of delivery of possession of flats within the agreed

[3] Petition for Special Leave to Appeal (Crl.) No.3342/2019

[4] Consumer Case No. 1764 of 2017 decided on April 15, 2019

time. The Respondent through the preliminary objections raised objections against the maintainability of complaints contending that the Section 79 of RERA bars the jurisdiction of Civil Courts and also the Arbitration clause in the agreements with buyers excludes the jurisdiction of Consumer Forum.

The National Commission interpreted the Section 79 of RERA, 2016 and held that Consumer Fora are not Civil Courts. The provision of Section 79 bars the jurisdiction of Civil Courts only and hence, will not be applicable in the present scenario. The NCDRC quoted that both RERA, 2016 and Consumer Protection Act, 1986 are supplemental to each other and the Consumer Protection Act does not have any provision which is inconsistent with RERA, 2016. The NCDRC mentioned that a consumer cannot pursue two remedies for the same cause of action, i.e., if a Consumer has already approached the RERA Authorities with his grievance, he cannot simultaneously file any complaint under the Consumer Protection Act. Mere availability of a right to redress the grievance in a particular Statute will not debar the Complainant/ Consumer from approaching the Consumer Fora under the Act. It has been stated that even though RERA through its Sections 14, 15, 18 and 19 has framed various provisions highlighting the rights and duties of Developers and Allottees to be followed by them, the Act cannot restrict the Allottees to only approach the RERA Authorities. Allottees can definitely approach the Consumer Fora under the Consumer Protection Act. Moreover, Section 71 of RERA, providing the power to adjudicate does not bar any Consumer from invoking the provisions of the Consumer Protection Act. Rather, the section has set liberty to a Consumer to withdraw a Complaint pending before the Consumer Fora and file it before the RERA Authorities.

Reliance has been placed on the precedent of *Emaar MGF Land Ltd. vs. Aftab Singh*[5] wherein, it was held that the fact that Arbitration can be proceeded under the Arbitration and Conciliation Act, 1996 is not a ground to restrain the Consumer Fora from proceeding with the Complaints.

The NCDRC through the judgment broadened the remedies of Consumer disputes available to the aggrieved homebuyers which has catalysed and smoothened the dispute resolution process to a better extent.

HIGH COURT

Insurance Company not bound to Indemnify the Insured; if Cheque towards Premium Dishonoured

- Richa K Gaurav, Associate

The Aurangabad Bench of Hon'ble High Court of Bombay in its judgement dated 15th April, 2019 in the matter of *SBI Insurance Company Versus Madhubala & Anr.*[6] has held that in case the cheque towards premium gets dishonoured; the Insurance Company is not liable to indemnify the owner of the offending vehicle (insured) as the same amounts to 'breach of promise' under the insurance agreement.

The ruling was outcome of the First Appeal preferred by the insurer namely SBI Insurance Company Ltd. against the orders dated 7th March, 2018 passed by Learned Motor Accident Claims Tribunal, Latur in MACP No. 307/2015 wherein the Tribunal was pleased to award compensation of Rs.11,93,200/- to the claimants and joint and several liability was saddled on the owner, driver and insurer of the offending bus. The appeal was preferred on the sole ground "*because the policies of insurance issued by the*

[5] I (2019) CPJ 5 (SC)

[6] First Appeal No. 1839 of 2018 decided on April 15, 2019

insurer of the offending vehicle were cancelled by the Insurance Company after the occurrence of the incident on account of bouncing of the cheques issued towards the premium, the Insurance Company is not liable to indemnify the owner of the offending vehicle. Therefore, the Insurance Company has right to recover the compensation from the owner of the offending vehicle, paid to claimants, towards the satisfaction of the award passed by the Tribunal"

The insurance policy was effective on date of accident, however, the cheque towards premium of insurance policy issued by the owner of the offending vehicle involved in the accident got dishonoured on account of insufficiency of funds, resultantly, the Insurance Company cancelled the insurance policy and conveyed the same to the insured, however, the same was done after the accident.

The Hon'ble Bench in light of the facts and circumstances relied upon the doctrine of 'public interest' evolved by the Hon'ble Supreme Court and held that the Insurance Company was liable to indemnify the Third party in respect of liability covered under policy but as the contract of insurance is based on reciprocal promises and dishonouring of the cheque towards premium leads to breach of promise resultantly, the Insurance Company has right to recover the paid amount from the owner of the offending vehicle.

Policy Update

Insurers to provide claim tracking mechanism

~Rajan Kumar, Associate

Insurance Regulatory and Development Authority of India (IRDAI) recently came out with a circular which had new rules regarding insurance claims, as per the circular insurance companies will have to inform about the claim settlement status to policyholders both about the life and general insurance at various stages of processing from 1 July, 2019. The Insurance Regulatory and Development Authority of India (IRDAI) has directed all the insurers to send the communications relating to issuance and servicing of insurance policies in the form of a letter, email, SMS or any other electronic mode. The circular issued by the Insurance Regulatory and Development Authority of India (IRDAI) is consumer –centric, the reason behind the issuance of IRDAI circular is the increased amount of complaints due to non-clarity of claims rejections and services.

Key-Takeaways

1. To ensure the transparency in the insurance industry, the insurers are bound to notify about the claim's status at various stages of its processing.

2. Directions have been issued to all the insurers and intermediaries that the communications should be made in easy and simple language to the policy holder, wherever required in vernacular language then the insurer is bound to provide the status in that language.

3. Claims reference number to the policy holders to be provided, so that policy holder can track the claims status through a portal, website, or any authorised electronic means.

4. Insurers to enhance the insurance awareness among the consumers by sending them the brief messages, along with making them aware to not to fall in the trap of fake call/offers etc.

5. All insurers are required to send all communication relating to issuance and servicing of insurance policies such as proposal registration, policy acceptance/rejection, renewal/lapse intimations/premium reminders wherever sent, bonus accrued in life insurance participating policies, value of ULIP policies, and all other information that has a bearing effect on servicing of insurance policy, either in the

form of a letter, e-mail, SMS or any other electronic form approved by the Authority

6. The third party administrator (TPAs) who are engaged for rendering the health services, are directed to ensure that all related communications such as the issuance of ID cards are sent either by the TPA or shall be carried out by the insurers on their own.

7. It is important to remember that the policyholder have the discretion that whether they want to share their numbers or email id's, to the insurer or not.