W.P. No. 672 of 2017
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Akshay Jhunjhunwala & Anr.
Vs.
Union of India through the Ministry of Corporate Affairs & Ors.

For the Petitioners : Mr. S.N. Mukherjee, Sr. Advocate.
Mr. Ratnanko Banerjee, Sr. Advocate
Mr. Shounak Mitra, Advocate
Mr. A. Chowdhury, Advocate
Mr. Sambhik Chowdhury, Advocate
Mr. D. Majumder, Advocate

For the Respondent No. 2 : Mr. Gyanendra Kumar, Advocate
Ms. Rituparna Chatterjee, Advocate

For the Respondent Nos. 1 and 3 : Mr. Kaushik Chandra, Addl. Solicitor General
Mr. Jatinder Singh Dhatt, Advocate

Hearing concluded on : December 15, 2017
Judgment on : February 2, 2018

DEBANGSU BASAK, J.:-

The petitioners have assailed the vires of Sections 7, 8 and 9 of the Insolvency and Bankruptcy Code, 2016.

Learned Senior Advocate appearing for the petitioners has submitted that, the second respondent is a corporate debtor in respect of whom a proceeding under the Code of 2016, is pending adjudication before the National Company Law Tribunal (NCLT), Kolkata. The Code of 2016, according to him, makes a distinction between a financial creditor

and an operational creditor in respect of a corporate debtor which does not have a rational and intelligible basis. The differentiation between the two categories of creditors being unintelligible and irrational, the provisions of Sections 7, 8 and 9 of the Code of 2016 should be struck down. He has submitted that, undue preference has been given to a financial creditor. A financial creditor has a right to be in the Committee of Creditors (COC) of a corporate debtor in an insolvency proceeding. An operational creditor, although such creditor may have a claim far in excess than that of the financial creditor, will have no say in the Committee of Creditors. In a given situation, a corporate debtor may have only one financial creditor. Such financial creditor will constitute COC, without any participation from any other category of creditors of a corporate debtor including that of an operational creditor, although such operational creditor in a given case may have a claim in excess of the financial creditor and the number of operational creditors may exceed the number of financial creditors. Such a distinction between two categories of creditors in respect of the same financial debtor is unjust, unfair, impracticable, irrational and ought not to be countenanced by a Court. The distinctions sought to be introduced by the Code of 2016 in respect of a financial and an operational creditor for corporate debtor has been highlighted by the learned Senior Advocate for the petitioners.

He has referred to Sections 3(6), (10), (11), (12), Section 5(6), (7), (8), (20) (21), Section 6, Section 7, Section 8 and Section 9 of the Code of 2016 in this regard.

Learned Senior Advocate for the petitioners has submitted that, the Code of 2016 does not empower the adjudicating authority to look into the validity and sufficiency of a claim lodged by a financial creditor whereas a deeper and a better scrutiny is sought to be introduced in respect of an operational creditor. In both the events, learned Senior Advocate for the petitioners has submitted that, the scope of enquiry as contemplated under the Code of 2016 or at least as the learned Presiding Officers of NCLTs seek to enforce, are within such extreme limited parameters that, justice so far as a corporate debtor is concerned stands affected. He has submitted that, a corporate debtor does not have a platform on which the corporate debtor can get on board along with its creditors to face and challenge the validity, sufficiency, legality and the quantum of the claim leveled against it by any category of creditor, be it the financial or the operational one. In case of an operational creditor, however, the Code envisages a slightly better position for a corporate debtor although such so-called better position is also insufficient. According to him, Section 7 of the Code of 2016 as it stands today does not permit a corporate debtor to claim either set off or make a counter

claim, a valid defence against the financial creditor. A corporate debtor does not have a platform to contend that, it has a valid ground so as to deny the liability towards the financial creditor. He has given few examples where the Code of 2016 is lacking. He has submitted that, by reason of Section 231 and 238 of the Code of 2016, the corporate debtor and in fact, no stake holder connected or concerned with the corporate debtor, can approach any other forum for the purpose of obtaining an injunction against a proceeding pending before a Tribunal under the Code of 2016.

Learned Senior Advocate for the petitioners has submitted that, the distinction sought to be introduced by the Code of 2016 between a financial creditor and an operational one is without any basis. The claim of the operational creditor and its money value would, in a given case, be of the same quality and value than that of the financial creditor. The financial creditor should also be visited with the same rigours as visited in case of an operational creditor. Therefore, the difference introduced by the Code of 2016 is not on an intelligible criterion. Drastic consequences of the Code of 2016 aggravate the unequalness amongst the creditors. He has referred to ***2017 Volume 203 Company Cases page 442 (Sree Metaliks Ltd. & Anr. v. Union of India & Anr.)***, ***2017 Supreme Court Cases Online (SC) page 1025 (M/S. Innoventive Industries Ltd.***

v. ICICI Bank & Anr.), ***2017 Supreme Court Cases Online (SC) page 1154 (Mobilox Innovations Private Limited v. Kirusa Software Private Limited)*** in support of his contentions.

Learned Senior Advocate for the petitioners has highlighted the proceedings under the Code of 2016. He has submitted that, the post admission stage of an insolvency petition commences upon the insolvency application being admitted by NCLT. He has referred to Sections 21, 30, 31 and 53 of the Code of 2016 as well as Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in support of his contentions. According to him, the differentiation introduced in the Code of 2016 in respect of financial and operational creditors should be held to be a differentiation without any intelligible basis and struck down.

The petition has been opposed by respondents. Learned Advocate appearing for the second respondent has submitted that, there is a paradigm shift in the conception of insolvency and bankruptcy proceedings in respect of a legal entity as well as a natural person. According to him, previously the secured creditors used to get preference in the insolvency proceedings. Preference was also given to the claims of workers as also to the statutory dues. Under the Code of 2016, there is

an innovative and paradigm shift in the priorities of creditors. It was felt that, the Companies Act, 1956, the Sick Industrial Companies (Special Provisions) Act, 1985, Provisional Insolvency Act, 1920 and other laws relating to Insolvency, did not end in the desired level of success as an over emphasis was given to secured creditors, statutory creditors and workers. He has submitted that, the Court should be slow in striking down an Act of a legislature, duly empowered to pass the legislation, if it is in fiscal or economic domain. In the present case, the competence of the parliament in passing the impugned legislation is not under challenge. The impugned legislation is in the economic field. The Courts have recognized that, in fiscal or tax statutes, a greater latitude is given than other statutes. He has relied upon ***2000 Volume 5 Supreme Court Cases page 471 (Bhavesh D. Parish & Ors. v. Union of India)*** and ***2008 Volume 4 Supreme Court Cases page 720 (Government of Andhra Pradesh & Ors. v. P. Laxmi Devi)*** in support of his contentions.

Learned Advocate for the second respondent has highlighted the background in which the Code of 2016 had come into being. He has referred to the report of the Bankruptcy Committee chaired by Dr. T.K. Viswanathan. He has highlighted some of the findings in such report. He has placed the passages where the committee considers the distinctions

in the treatment of financial creditors and operational creditors. He has submitted that, the committee in such report had found that, there was a distinction in the nature of a debt of an operational creditor with that of the financial creditor. Experience has shown that, claim of a financial creditor is more or less uncontested while a claim of an operational creditor may have various angles which may require further adjudication. A claim of an operational creditor can be disputed. He has referred to ***Innoventive Industries Limited (supra)*** and has submitted that, the Supreme Court had considered the Code of 2016 and did not find anything wrong with the distinction between a financial and an operational creditor. He has referred to the various provisions of the Code of 2016 and has submitted that, the Code of 2016 requires the adjudicating authority to look into a valid dispute raised. ***Innoventive Industries Limited (supra)*** has recognized that, a valid dispute is to be looked at by the adjudicating authority in the manner as noted therein.

So far as participation in COC is concerned, according to the learned Advocate for the second respondent, the Code of 2016 recognizes the right of an operational creditor to participate in a meeting of COC without the right to vote if such operational creditor has a claim in excess of 10% of the total liability of the corporate debtor. According to him, the threshold of 10% prescribed under the Code of 2016 seeks to

remove fringe players. Fringe players if taken on board are likely to create difficulties in the expeditious resolution of an insolvency situation. The Code of 2016 seeks to keep the legal entity alive while trying to resolve the insolvency issue of such legal entity as expeditiously as possible. It prescribes time limit for doing things specified under the Code of 2016. Although, the time limit prescribed under the Code of 2016 can be held to be directory rather than mandatory, then also, by reason of requirement on the adjudicating authority or the insolvency professional or any other designated authority to come up with a plan for insolvency resolution at the earliest, the Code of 2016 in its essence seeks to address an insolvency issue of a legal entity as expeditiously as possible so as to permit it to survive. In the event, the insolvency issue cannot be resolved as contemplated under the Code of 2016 then such legal entity is sent into liquidation. It is unlike the Companies Act, 1956. Under the Companies Act, 1956, a company would be put to liquidation once the winding up petition presented was admitted. Learned Advocate for the second respondent has relied upon Section 30 of the Code of 2016 and Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to contend that, the interest of operational creditors are fully protected.

So far as the principles of natural justice are concerned, learned Advocate for the second respondent has submitted that, the Code of 2016 contemplates a notice to be given to the corporate debtor under Rule 4(3) in respect of operational creditors under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Therefore, even prior to the presentation of a petition of insolvency, a corporate debtor has adequate notice of the default so as to permit the corporate debtor to resolve the insolvency situation. The entire emphasis under the Code of 2016 is to resolve an insolvency situation of a legal entity as expeditiously as possible. Therefore, the corporate debtor is having an opportunity to resolve the insolvency issue even prior to a petition for insolvency being presented against it before the NCLT. In the event of an insolvency petition being presented against the corporate debtor under Sections 7 or 9 of the Code of 2016, as the situation may require, the adjudicating authority has to admit or reject such application within 14 days from the date of presentation. Neither of the two sections excludes the applications on principles of natural justice. Principles of natural justice can be read into a statue unless expressly excluded. On such principle, it cannot be contended that, Sections 7 and 8 obviates the requirement of adherence to the principles of natural justice. He has also relied upon ***Sree Metaliks Limited & Anr. (supra)***

in support of his contentions. Learned Advocate for the second respondent has submitted that, unlike the previous statutes, the "divine right" of promoters or shareholders of a company to control and manage a company are no longer held at a high pedestal. Such right is recognized till such time the legal entity is in a position to discharge its liability. Once an element of insolvency creeps into the functions of the company, the right of the shareholders to manage the company is kept in suspended animation till such time the insolvency issue is resolved. Once the insolvency issue is resolved, the right of the shareholders to manage the company revives. The Code of 2016 seeks to send a message to the shareholders of the company that, so long as the company is discharging its liabilities, the shareholder will continue to have a right of management. The shareholders will have their right to manage the company suspended when there is an insolvency issue till the insolvency problem is resolved. The Code of 2016 provides a time frame for the resolution of the insolvency issues as expeditiously as possible. He has referred to the various passages of ***Innoventive Industries Limited (supra)*** in support of his contentions. He has contended that, no relief should be granted to the petitioners.

Learned Additional Solicitor General appearing for the Union of India has submitted that, Code of 2016 cannot be struck down to be

ultra vires as sought to be contended on behalf of the petitioners. He has relied upon ***2016 Volume 2 Supreme Court Cases page 226 (Director General of Foreign Trade v. Kanak Exports & Anr.)*** and has submitted that, experimentation is permissible in economic matters. The Code of 2016 has introduced new ideas and course corrections with regard to resolution of insolvency of legal entities and natural persons. Legislature is entitled to undertake such experimentations. The Court should be slow in striking down legislations with regard to an economic matter. Referring to ***1981 Volume 4 Supreme Court Cases page 675 (R.K. Garg v. Union of India)*** he has submitted that, possibility of an abuse of a piece of legislation is no ground for it being struck down as ultra vires the Constitution of India. Referring to ***2012 Volume 6 Supreme Court Cases page 312 (State of Madhya Pradesh v. Rakesh Kohli & Anr.)*** learned Additional Solicitor General has submitted that, unless the Court is shown that, there is a flagrant violation of the Constitution of India by a provision of a statue, the Court should not intervene. The Court should presume the constitutionality of a statute. Referring to ***2009 Volume 12 Supreme Court Cases page 491 (Satish Kumar Batra & Ors. v. State of Haryana)*** learned Additional Solicitor General has submitted that, abuse of an enactment is no ground to declare it ultra vires the Constitution of India.

Consequently, he has submitted that, the petitioners are not entitled to any relief.

The parties have referred to the following provisions of the Code of 2016 for consideration:-

> *"**3. Definitions.**- In this code, unless the context otherwise requires, -*
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> *(1).....*
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> *(2).....*
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> *(3).....*
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> *(4).....*
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> *(5).....*
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> *(6) "claim" means –*
>
> > *(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*
> >
> > *(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*
>
> *(7).....*
>
> *(8).....*
>
> *(9).....*
>
> *(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, creditor and a decree-holder;*

(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;
……"

*"**5. Definitions.-** In this Part, unless the context otherwise requires,—*

(1)……

(2)……

(3)……

(4)……

(5)……

(6) "dispute" includes a suit or arbitration proceedings relating to —

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;

(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes —

(a) money borrowed against the payment of interest;
(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

(9)……..

(10)……..

(11)……

(12)……..

(13)……

(14)……

(15)……

(16)……

(17)……

(18)……

(19)……

(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;……"

*"**6. Persons who may initiate corporate insolvency resolution process.**- Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.*

***7. Initiation of Corporation insolvency process by financial creditor.**- (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish —

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (

b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that-

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate —

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor,

within seven days of admission or rejection of such application, as the case may be.

8. Insolvency resolution by operational creditor.- *(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor —

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

9. Application for initiation of corporation insolvency resolution process by operational creditor.- *(1) After the expiry of the period of ten days from the date of*

delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish —

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(d) such other information as may be specified.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order —

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if —

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section."

The Code of 2016 deals with insolvency of legal entities as well as natural persons. Although some of the provisions of the Code of 2016

had come into effect from May 28, 2016, the provisions of the Code of 2016 under challenge in the writ petition have come into effect from December 1, 2016. Prior thereto, the Companies Act, 2013 and even prior thereto the Companies Act, 1956 dealt with the insolvency issues of a Company incorporated or existing under such Act.

A company has various stakeholders. Creditors of a company are one of the stakeholders. Prior to the concepts of financial and operational creditors being introduced through the Code of 2016, a creditor of a company was classified broadly under three categories, namely, secured creditor, unsecured creditor and statutory creditor.

The Code of 2016 segregates creditors of a company into two broad categories of financial and operational creditor. In addition to the three classifications of creditors existing prior to the Code of 2016, it now seeks to introduce financial and operational creditors. The definition of financial creditor appears in Section 5(7) which is to be read along with Section 5(8) and Section 3(10) of the Code of 2016. Essentially a financial creditor means a creditor whose claim arises out of a transaction in liquidity entered into by such creditor with the company. A financial creditor can be either a secured creditor or an unsecured creditor. An operational creditor on the other hand is a creditor whose

claim arises out of a normal business transaction that such creditor may have had with the legal entity. It would include money receivable by an employee or a worker of the company as wages or salary. It would also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute. The classification of a creditor of a company as secured, unsecured and statutory creditor stands to be replaced by financial or operational creditor of a company in the initiation of an insolvency proceeding of a Company under the Code of 2016. The three categories of secured, unsecured and statutory creditors, however, have their say also in specified circumstances under the Code of 2016. A secured or unsecured or statutory creditor is reclassified as financial or an operational creditor under the Code of 2016. A creditor of a Company when involved in an insolvency proceeding of a company under the Code of 2016 does not lose the character of being either a secured or unsecured or statutory creditor, of such company as the case may be. However, in the insolvency proceedings, under the Code of 2016, a creditor is also classified as a financial or an operational creditor to deal with the insolvency proceeding of a company. The Code of 2016 seeks to classify the creditors of a company in the two broad categories as noted above. The distinctions of secured, unsecured and statutory creditor are not

obviated in its entirety. These concepts apply at a given stage of the insolvency proceeding. The Code of 2016 while recognizing a creditor as a secured or unsecured or statutory creditor shifts the emphasis of a creditor to being a financial or operational creditor at specified stages of the insolvency proceeding of a Company.

Classification amongst similarly situated persons is permissible if the classification is based on reasonable differentia. If the classification is on reasonable differentia it does not offend the principle of equality. Consequently, creditors of a company can be classified, provided the classification is on reasonable differentia. Financial and operational creditors are defined in the Code of 2016. The definitions of a financial and an operational creditor as obtaining in the Code of 2016 can be said to have certainty and exactitude. The classification made by the Code of 2016 amongst the creditors of a company is on reasonable differentia. The differentia introduced by the Code of 2016 in respect of a creditor of a company does not offend any provisions of the Constitution of India. At least the same is not the argument of the parties before Court. What has been argued is that, the differentiation between the two creditors is such that, one of the classified creditors, that is to say, the financial creditor takes precedence over the operational creditor. Whether the treatment of a financial creditor on pedestal higher than an operational

creditor and bestowing a higher or better right, so to speak, to a financial creditor is just and proper or whether the same offends any provisions of the Constitution of India requires consideration.

The insolvency process prior to the coming into effect of the Code of 2016 was found to be inadequate to deal with the issues of insolvency of both legal entities and that of natural persons. The existing framework for insolvency and bankruptcy resolution was found to be ineffective and causing undue delay. Few committees and commissions had made recommendations for consolidating the insolvency and bankruptcy laws. The Bankruptcy Law Reforms Committee recommended the Insolvency and Bankruptcy Code. The issue of composition of the committee of creditor for insolvency resolution of a company was considered by the Bankruptcy Committee chaired by Dr. T.K. Viswanathan. The report explains the reasoning behind the composition of the Committee of creditors by the financial creditor and a preference being given to the financial creditors against the operational creditors:-

> *"The Committee deliberated on who should be on the creditors committee, given the power of the credits committee to ultimately keep the entity as a going concern or liquidate it. The Committee reasoned that members of the creditors committee have to be creditors both with the capability to access viability, as well as to be willing to modify terms of existing liabilities in negotiations. Typically, operational creditors are neither able to decide on matters regarding the insolvency of the entity, nor*

willing to take the risk of postponing payments for better future prospects for the entity. The Committee concluded that, for the process to be rapid and efficient, the Code will provide that the creditors committee should be restricted to only the financial creditors."

An operational creditor is not ousted in its entirety from coming into the committee of creditors. An operational creditor does not have a voting right in the event it is in the committee of creditors.

The Code of 2016 is in the economic sphere. In ***Bhavesh D. Parish & Ors. (supra)*** the Supreme Court has expressed the view that, the Court should be slow in staying the applicability of a piece of legislation particularly in the economic spheres even if arguable points are raised unless such provisions are manifestly unjust or glaringly unconstitutional. In ***P. Laxmi Devi (supra)*** the Supreme Court has held that, the Courts while dealing with legislations particularly in economic matters should presume in favour of the constitutionality of a statute. It has held in paragraph 73 as follows:-

*"**73.** All decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated, this inevitably entails special treatment for special situations. The State must therefore be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the court should not, unless compelled by the statute or by the Constitution, encroach into this field, or invalidate such law."*

The Bankruptcy Committee gives a rationale to the financial creditors being treated in a particular way vis-à-vis an operational creditor in an insolvency proceeding with regard to a company. The rationale is a plausible view taken for an expeditious resolution of an insolvency issue of a company. Courts are not required to adjudge a legislation on the basis of possible misuse or the crudities or inequalities that may be perceived to be embedded in a legislation. The rationale of giving a particular treatment to a financial creditor in the process of insolvency of a company under the Code of 2016 cannot be said to offend any provisions of the Constitution of India. ***Sree Metaliks Limited & Anr. (supra)***, ***Innoventive Industries Limited (supra)*** and ***Mobilox Innovations Private Limited (supra)*** did not decide the issues of vires of the provisions of the Code of 2016 as sought to be urged in the present petition.

Kanak Exports & Anr. (supra) has held that, experimentation in economic matters is permissible. ***R.K. Garg (supra)*** has held that, the possibility of abuse of a piece of legislation is no ground for it to be struck down. ***Rakesh Kohli & Anr. (supra)*** has held that, unless the Court is of the view that, there is a flagrant violation of the Constitution of India, it should not be struck down a piece of statute as

unconstitutional. The Court should presume the constitutional validity of a statute as has been held in ***Satish Kumar Batra & Ors. (supra)***.

The contentions of breach of principles of natural justice were raised and considered in ***Sree Metaliks Limited & Anr. (supra)*** and ***Innoventive Industries Limited (supra)***. Such contentions were found to be misplaced. Nothing is placed on record that, a different view should be taken on the ground of breach of principles of natural justice in a proceeding under the Code of 2016.

In such circumstances, W.P. No. 672 of 2017 fails. The same is dismissed. No order as to costs.

[DEBANGSU BASAK, J.]