



## **Volume 04, Number 03 (January 21, 2021)**

### **Prakash Shankar Mishra & Ors. Vs. Ashok Kriplani & Anr. (No. 34) With Sampoorana Owners Welfare Association Vs. Ashok Kriplani & Anr. (No. 166)**

### **Company Appeal (AT) (Insolvency) No. 34 & 166 of 2020 (NCLAT)**

**Date of order: 13<sup>th</sup> January 2021**

**Adjudicating Authority has no power to impose Resolution Professional & Authorized Representative (AR) of its choice and has to respect the CoC decision.**

#### **Facts of the case: -**

In CIRP of M/s. Dreamz Infra India Ltd, the CoC with 90% voting approved the Mr. Konduru Prasanth Raju as RP and Mr. Hari T. Devadiga as AR. However, the NCLT Bengaluru Bench, Adjudicating Authority (AA) vide its order December 17, 2019, set aside the decision of CoC and appointed other professionals (Respondents 1 & 2) as RP and AR. For CoC, the order of AA was in complete violation of Section 22 of the IBC.

#### **NCLAT observations: -**

The NCLAT observed that the AA was required to strictly follow the procedure provided under IBC and cannot appoint RP as per its choice. NCLAT holds that under Section 22 of IBC discretion lies with CoC to confirm or reject the appointment of IRP. If CoC decides to replace the IRP, it has to file an application before AA to appoint the proposed RP. In such a situation, AA shall forward the name of RP to IBBI (Board) for confirmation and such appointment will be made after the confirmation by the Board. However, in case the Board does not confirm the name of the proposed RP within 10 days, AA can only direct the IRP to continue, till confirmation.

Further, section 21(6-A) of the IBC read with Regulation 16A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that resolution passed by CoC with respect to the appointment of AR should be respected by AA.

The order of AA was set aside.





**Amit Bharana Vs. Gian Chand Narang (No. 274) With  
Nitin Sharma & Ors. Vs. Gian Chand Narang (No. 291)  
Company Appeal (AT) (Insolvency) No. 274 & 291 of 2020  
(NCLT)**

**Date of order: 12<sup>th</sup> January 2021**

**The CoC is empowered to decide to liquidate the Corporate Debtor at any time before confirmation of the Resolution Plan, including any time before the preparation of Information Memorandum. Neither AA has power to reverse the commercial decision of CoC nor erstwhile directors have locus to question the decision of CoC.**

**Facts of the case:-**

The CoC summarily rejected the resolution plan and passed a resolution for liquidation of the Corporate Debtor (CD) with requisite majority. Subsequently, AA (NCLT, New Delhi, Principal Bench) vide its order on January 09, 2021 allowed the liquidation of the CD. The erstwhile Director of CD appealed against liquidation.

**NCLT Observation: -**

The NCLAT observed that by an amendment in Section 33 of the Code, explanation has been added to sub-section (2) of Section 33. The amendment empowers the CoC to decide to liquidate the CD any time before the confirmation of the Resolution Plan, including any time before the preparation of Information Memorandum.

Further from the facts of the case, NCLAT observed that CoC noticed the Resolution Plans were not feasible and viable and are being non-compliant which Section 30 of the Code read with Regulation 37 of CIRP Regulation. Therefore, after a deliberate discussion on the proposed Resolution Plans, the CoC took a commercial decision with required vote share and approved liquidation of the CD. Also, the NCLAT notes that the legislature has not endowed the AA with the jurisdiction or authority to evaluate the commercial decision of the CoC, under IBC.

The order of AA was upheld.

