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Rajnish Jain Vs Anupam Tiwari & Anr. Company Appeal (AT) (Insolvency) No. 519 of 2020 (NCLAT)

Date of order: 18 December 2020

An IP is not entitled to suo-motto review or change the status of a creditor from Financial to Operational Creditor.

The 'Committee of Creditors' has no role in deciding the status of a creditor either as 'Financial' or 'Operational'.

Facts of the case: -

The Appeal emanates from the order of the Adjudicating Authority, whereby the Adjudicating Authority had rejected the application filed by Appellant under Section 60(5) of the IBC (hereinafter referred as "the Code") and declared that M/s BVN Traders 'Respondent No.3', as a 'Financial Creditor'. The Appellant challenged the impugned order on the ground that the Adjudicating Authority has erred in facts and law and the finding was mainly based on decision of the Committee of Creditors.

NCLAT observations: -

The Hon'ble NCLAT held that the 'Committee of Creditors' has no role in deciding the status of a creditor either as 'financial' or 'operational' creditor and such a decision of 'Committee of Creditors' can never be treated as an exercise under its commercial wisdom. In the opinion of the NCLAT, in a situation where there is a requirement of application of IBC, and in such situation if factor is left to CoC, there would be a serious conflict of interest. Whether a person or entity is "Financial Creditor" as defined in Section 5(7) or "Operational Creditor" as defined in Section 5(20) is a matter of applying the law to the facts of the case. It cannot be a matter of voting, and choice as discretion is not relevant.

Further, the NCLAT stated that during the CIRP, the IRP collates the Claim, and after that, the 'Committee of Creditors' is formed under Section 18 of the Code. After the formation of the 'Committee of Creditors', only the aggrieved person can agitate the same and that too, only before the Adjudicating Authority.





NCLAT also clarified that the Resolution Professional may add to existing claims of claimants already received or admit or reject further claims and update list of Creditors. But after categorization of a claim by the IRP/Resolution Professional, he is not entitled to suo-moto review or change the status of a creditor from Financial to Operational Creditor. Updating list and review are different acts. For example, if the Resolution Professional has accepted a claim as a Financial Debt and Creditor as a Financial Creditor, then he/she cannot review or change that position in the name of updation of Claim.

In conclusion the NCLAT held that the decision of the Adjudicating Authority to treat BVN Traders as a 'Financial Creditor' needs no interference. The NCLT find that the Committee of Creditors has no adjudicatory power to decide as such whether a creditor who files its Claim is a 'Financial' or 'Operational' Creditor.

Hence, the appeal was disposed of.

