Indian Institute of Insolvency Professionals of ICAI
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Case Snippets

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MAHARASTHRA SEAMLESS LIMITED VS.PADMANABHAN VENKATESH & ORS. (22nd Jan, 2020) (Supreme Court)

In the present case the total debt of the corporate debtor was Rs. 1897 crores, out of which Rs.1652 crores comprised of term loans from two entities of Deutsche Bank. There was also debt on account of working capital borrowing of Rs. 245 crores from another bank, being Indian Bank. Said Indian Bank is the initiator of the CIRP, who filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code). The Adjudicating Authority,(NCLT) by an order passed on 21st January, 2019 approved the resolution plan submitted by MSL in an application filed by the Resolution Professional. This resolution plan included an upfront payment of Rs.477 crores. Ancillary directions were issued by the Adjudicating Authority while giving approval to the said resolution plan with the finding that the said plan met all the requirements of Section 30(2) of the Code.

The Resolution Professional received four Resolution Plans altogether. Out of which the Resolution Plan submitted by Maharashtra Seamless Limited was approved by majority of the CoC by 87.10% of voting share and the Indian Bank/Financial Creditor (having voting share 12.90%) dissented with the Resolution plan of Maharashtra Seamless Limited.

The arguments of Learned Counsel appearing on behalf of the appellant essentially hinged on the liquidation value. The Counsel contended that the liquidation value submitted by the Resolution Professional and accepted by the CoC for approval of the Resolution Plan was Rs. 597.54 Crores. Therefore, there could be no reason to release property valued at Rs.597.54 crores to MSL for Rs.477 crores. Furthermore, strengthening their submission on this point the appellants made a reference to the other Resolution Applicant whose bid was for Rs.490 crores (which was more than the amount offered by the MSL)

Issues before Hon'ble Supreme Court :-

Issue 1: **Whether the scheme of the Code contemplates that the sum forming part of the resolution plan should match the liquidation value or not?**

Issue 2**: Whether Section 12-A is the applicable route through which a successful Resolution Applicant can retreat?**

Issue 1: **Whether the scheme of the Code contemplates that the sum forming part of the resolution plan should match the liquidation value or not?**

Hon'ble Supreme Court held that no provision in the Code or Regulations has been brought to notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. The Appellate Authority has proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel, the relevant passage (para 54). The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront.

Issue 2**: Whether Section 12-A is the applicable route through which a successful Resolution Applicant can retreat?**

Hon'ble Supreme Court held that MSL cannot withdraw from the proceeding in the manner they have approached this Court. The exit route prescribed in Section 12A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking Sections 7, 9 and 10 of the code. In this case, having appealed against the NCLAT order with the object of implementing the resolution plan, MSL cannot be permitted to take a contrary stand in an application filed in connection with the very same appeal. Moreover, MSL has raised the funds upon mortgaging the assets of the corporate debtor only. In such circumstances, we are not engaging in the judicial exercise of determining the question as to whether after having been sucessful in a CIRP, an applicant altogether forfeits their right to withdraw from such process or not.

The Supreme Court has held that there is no requirement under the Insolvency and Bankruptcy Code that the resolution plan should match the liquidation value of the corporate debtor.