



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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JAYPEE KENSINGTON BOULEVARD APARTMENTS WELFARE ASSO.& ORS. Vs. NBCC (INDIA) LTD. & ORS.
CIVIL APPEAL NO. 3395 OF 2020
DATE OF ORDER: MARCH 24, 2021

If the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and expounded by the judgments.

Facts of the Case:-

NCLAT in an interim order in the case of CIRP of Jaypee Infratech Limited (JIL) dated 22nd April 2020 said that the approved resolution plan may be implemented subject to the outcome of appeal but at the same time, also provided that IRP may constitute an 'Interim Monitoring Committee' comprising of the successful resolution applicant (NBCC) and three major institutional financial creditors, who were the members of CoC. Against the order, six associations of homebuyers in the real estate development projects of the corporate debtor and a few individual homebuyers approached the Supreme Court seeking permission to maintain their appeals under Section 62 of the IBC. Subsequently, some more aggrieved stakeholders filed petitions seeking various reliefs.

Supreme Court's Observations:-

In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval. The powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code.

It is noteworthy that there has not been any prohibition in the scheme of IBC and CIRP Regulations that CoC could not simultaneously consider and vote upon more than one resolution plan at the same time for electing one of the available options.



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The payment envisaged by Section 30(2) (b) read with Section 53 of the Code has to be in monetary terms and not in any other mode.

The allottees, like the homebuyers of JIL, falling within clause (f) of sub-section (8) of Section 5, do carry the status of financial creditors but they would be falling in a class collectively; and the voting share of that class would be in terms of the financial debt owed to that class as a whole.

To put it in more clear terms qua the homebuyers, the operation of sub-section (3A) of Section 25A of the Code is that their authorised representative is required to vote on the resolution plan in accordance with the decision taken by a vote of more than 50% of the voting share of the homebuyers; and this 50% is counted with reference to the voting share of such homebuyers who choose to cast their vote for arriving at the particular decision. Once this process is carried out and the authorised representative has been handed down a particular decision by the requisite majority of voting share, he shall vote accordingly and his vote shall bind all the homebuyers, being of the single class he represents. The homebuyers as a class shall be deemed to have voted in favour of approval of the resolution plan of NBCC; and once having voted so, any particular constituent of that class cannot be heard in opposition to the plan by way of objection or appeal.

Order:-

The suggestions of that in carrying out the requisite modifications by the Adjudicating Authority, the basic structure of the resolution plan is not altered do not merit acceptance, particularly because the terms taken up for modification by the Adjudicating Authority belong to the thick of commercial aspects of the resolution plan; and any alteration thereof goes to the very root of the financial model propounded by the plan.

Having regard to the circumstances, we deem it just and proper to provide further time of 45 days from the date of this judgment for submission of the modified/fresh resolution plans by the resolution applicants, for their consideration by CoC and for submission of report by IRP to the Adjudicating Authority. The IRP was directed to complete the CIRP within the extended time of 45 days from the date of judgment. However, this extension shall not be treated as a precedent.

The amount of INR 750 crores, which was deposited by JAL pursuant to the orders passed by this Court, and accrued interest thereupon, is the property of JAL; and stipulation in the resolution plan concerning its usage by the resolution applicant of JIL cannot be approved. The part of the impugned order of AA dated 03.03.2020 placing this amount in the asset pool of JIL is set aside.

Case Review: The NCLAT order is set aside and all the petitions disposed of.