



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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**DECCAN VALUE INVESTORS L.P VS DINKAR T. VENKATASUBRAMANIAN & ORS.
COMPANY APPEAL (AT)(INSOLVENCY) NO.654 OF 2020
DATE OF JUDGMENT: APRIL 16th, 2021 (NCLAT-DELHI BENCH)**

“THE RESOLUTION PLAN WHICH HAS BEEN APPROVED IN TERMS OF THE ORDER LEAVES NO SCOPE FOR THE APPLICANT TO RESILE FROM AND WRIGGLE OUT OF THE IMPLICATION OF THE OFFER MADE BY HIM i.e., THE RESOLUTION PLAN.”

Facts of the Case: -

The Appellant is aggrieved of the impugned order passed by the AA, whereby the AA inter alia approved the Appellant's Resolution Plan. The impugned order is assailed on the ground that the AA has gone beyond its jurisdiction in concluding that the requirement of the prior written consent of the mortgagee as provided in the Resolution Plan has been rendered infructuous. This conclusion is said to be erroneous as the same is against the agreed terms of the Resolution Plan between the Appellant and COC. It is urged in Appeal that the AA while approving the Resolution Plan cannot re-write the same nor can it waive any condition of the Resolution Plan, that too without the express consent of the Appellant. It is further urged that the execution of the long-term lease was a condition precedent and an integral part of the Resolution Plan and the business of the CD as a going concern is dependent on the availability of this leased land as admitted by Respondents. It is further urged that the AA failed to consider that the parties had agreed that the long-term lease they executed and prior written consent of the mortgagee was to be acquired and orders to be obtained with respect to the same in terms of the Resolution Plan. Further as a consequence of wrong findings recorded by AA, an additional burden has been placed on the Appellant to invest huge sums to furnish the balance Performance Bank Guarantee (PBG).

NCLAT Observations: -

The Appellant is the successful Resolution Applicant whose Resolution Plan in respect of CD came to be approved by the COC with majority. The RP filed IA u/s 30(6) read with 31(1) of IBC for approval of Resolution Plan. Meanwhile, IA was filed by the Appellant before Hon'ble Apex Court seeking withdrawal of its offer came to be dismissed.



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The Hon'ble Apex Court, while rejecting the prayer for withdrawal of the offer, warned the Appellant that if he indulged in such kind of practice, it will be treated as Contempt of Court in view of various orders passed at his instance. Furthermore, the Court stated that any further attempt made by the Appellant to enact a U-turn and try to wriggle out of the obligations under the offer would be treated as contumacious conduct inviting action for Contempt of Court.

In this backdrop, the NCLAT observed that the question for consideration, is whether the issue raised in this Appeal, in the context of prayer sought for setting aside of impugned order, can be looked into when curtain has been drawn on the endeavors of Appellant to seek withdrawal of its offer by declining the same. For determining the issue raised viz. whether the lease could be extended without the prior written consent from mortgagee, it is inevitable to peep into the development during CIRP, which ultimately culminated in approval of Appellant's Resolution Plan for the Corporate Debtor and rejection of various IAs.

In conclusion, the Appellate Tribunal stated that it was of the considered view that the execution of the long-term lease for the Mortgaged property with Acceptable Terms was not a condition precedent in regard to approval of Resolution Plan but only in regard to effective date. The impugned order does not travel beyond the scope of enquiry under Section 31 of I&B Code. The condition in regard to execution of a long term lease for the Mortgaged Property having already been complied with by RP who executed the lease, when the prior lease has expired and lender not having assailed the impugned order for any material irregularity in the insolvency resolution process resulting in prejudice, the Appellant would not be justified in assailing the impugned order which, in effect, is nothing but yet another effort to wriggle out of its obligations and seek withdrawal of Resolution Plan in a different garb.

Order: -

The appeal was disposed of by the Tribunal stating the appeal not only lacks merit but also is frivolous. We, while dismissing the appeal, impose costs to the tune of Rs.1/- Lakh (Rupees One Lakh Only) on the Appellant which shall be deposited in this Appellate Tribunal within 15 days.

Verdict- Appeals Dismissed