



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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**MR. K.N. RAJAKUMAR SUSPENDED DIRECTOR, ARUNA HOTELS LTD. VS. V. NAGARAJAN, RESOLUTION PROFESSIONAL, M/S. ARUNA HOTELS LTD.
COMPANY APPEAL (AT) (CH) (INS) NO.48 OF 2021
DATE OF JUDGMENT: APRIL 30TH, 2021**

“THE ‘RESOLUTION PROFESSIONAL’ HAS NO ‘ADJUDICATORY POWER’ UNDER THE IBC, 2016

Facts of the Case: -

This appeal was filed against the impugned order passed by the Adjudicating Authority (AA) - NCLAT, Chennai. The Learned Counsel for the Appellant pointed out that the AA in the order had directed the ‘RP to convene the meeting of the CoC of the Members, who constituted the CoC originally, soon after the order of admission was passed by this Tribunal’ initiating the CIRP and report to this Tribunal about the decision of the Members of the CoC constituted in the year 2017. The CoC constituted afterwards by the IRP/RP in derogation of the Order passed by the AA shall stand suspended and shall not exercise any of the powers as provide under the Provisions of IBC, 2016.’ It was further submitted that AA should not have directed the Resolution Professional to call for a meeting of the CoC of CD constituting of members, who originally constituted the CoC, soon after the order of admission of CIRP of the CD, without considering the present status of the Financial and Operational Creditors and claims filed to that extent. Further, the AA had not appreciated the fact that most of the Members who initially constituted the CoC, soon after the order of admission of CIRP of the CD, are no longer Creditors of the CD as on the date of Order and hence, had committed an error in directing the RP to convene a CoC including such Members.

NCLAT’s Observations: -

The Appellate Tribunal pointed out that once the CoC is/was formed, the RP cannot alter the same. The RP has no Adjudicatory Power under the IBC. In fact, the CD was admitted into CIRP by the AA. However, the Appellate Tribunal had later set-aside the Order of the AA.



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Later, the Hon'ble Supreme Court of India had set-aside the Judgment of the Appellate Tribunal. Subsequently the Hon'ble Supreme Court in the matter of *N. Subramanian v Aruna Hotels Ltd. & Anr.* (IA 37894/2021) had granted liberty to withdraw the application with liberty to approach the CoC for settlement under Section 12A of the IBC.

The Respondent/RP had demanded action from the Suspended Directors and the Statutory Auditors by sending messages through E-mail and WhatsApp modes, but there was no response. The CIRP is more than three years old. On a careful consideration the NCLAT was of the considered view that the RP has no Adjudicatory Power under the IBC, 2016 and further that when once the Committee of Creditors is/was formed, the RP cannot change the CoC. Suffice it for the Appellate Tribunal to make a pertinent mention that the RP cannot constitute a CoC afresh, in negation of the earlier constituted CoC.

Order: -

In the light of foregoing, and also on going through the Impugned Order passed by the AA, the NCLAT came to a consequent conclusion that the observation made by the AA, that CoC constituted presently by the IRP/RP in derogation of the order passed by it shall stands suspended and shall not exercise any of the powers as provided under the Provisions of IBC, 2016 and the directions issued to the IRP/RP to comply with the directions therein within a period of 10 days from the date of the order and to report before it about the outcome of the CoC meeting required to be called and convened are free from legal infirmities. Consequently, the instant Appeal failed. In fine, the present Company Appeal was dismissed.

Case Review: - Appeal Dismissed.