



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

Volume 04 | Number 27

(July 09, 2021)

DWARKADHISH SAKHAR KARKHANA LTD. VS. PANKAJ JOSHI  
COMPANY APPEAL (AT)(INSOLVENCY) NO. 233 & 333 OF 2021  
DATE OF JUDGMENT: JUNE 28<sup>TH</sup> 2021

**“IT IS EXPECTED FROM A RESOLUTION PROFESSIONAL THAT HE MUST ACT IN A FAIR AND BALANCED MANNER WITHOUT GETTING INFLUENCED BY THE CONFLICTING INTEREST OF THE PARTIES.”**

### Facts of the Case: -

In the present appeal the Adjudicating Authority ‘AA’ by its impugned order allowed the Application of Gangamai Industries and Constructions Ltd. (GIACL) whereby the decision of CoC accepting the Expression of Interest (EOI) of Dwarkadhish Sakhar Karkhana Ltd. (DSKL) ‘Appellant’ after due date, was set aside and deprecated the conduct of Resolution Professional (RP). Therefore, the appellant have filed these Appeals assailing the order. The facts of the case are that a CIRP was initiated against Corporate Debtor ‘KGS Sugar and Infra Corporation Ltd’. Accordingly, the same was admitted, moratorium was declared, and an IRP was appointed who was subsequently appointed as RP by the CoC in its first meeting. RP published the invitation of expression stating the last date for submission of EOI and for submission of Resolution Plan.

Pursuant to the EOI, DSKL who met the eligibility criteria submitted its EOI to RP but RP informed that EOI was received after last date of submissions, therefore, it cannot be considered. Thereafter, DSKL requested the CoC Members to allow DSKL to submit EOI but the CoC in its meeting rejected the request of DSKL. Further the AA at recommendation of the CoC, replaced RP. Aggrieved by the decision of CoC, DSKL sent an Application to newly appointed RP. The new RP sent an email to DSKL requesting to submit EOI within 10 days from the date of receipt of the communication. In next CoC meeting the RP placed the EOI submitted by DSKL and canvassed before the CoC that, for maximization of value of asset of the CD, it is appropriate to permit DSKL to file EOI which was approved by CoC. Thereafter, GIACL who had already filed EOI and was in the list of Prospective Resolution Applicant, being aggrieved with the decision of the CoC, filed an appeal against the new



## INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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



RP before the AA. The AA allowed the Application and resultantly the CoC decision in accepting the EOI of DSKL after due date and including it in the list of Prospective Resolution Applicants was set aside and the list of Prospective Resolution Applicants prepared by old RP was held to be valid. Further the AA strongly deprecated the conduct of new RP. Thus the Present Appeal.

### **NCLAT's Observations**

The Appellate Tribunal stated that in the light of the facts and circumstances, it was of the considered view that the new RP failed to explain that his actions were bonafide. It is expected from a Resolution Professional that he must act in a fair and balanced manner without getting influenced by the conflicting interest of the parties. In the present case, the new RP suppressed material facts and misguided the members of CoC to achieve the desired decision in favour of DSKL. Therefore, the Appellate Tribunal was of the considered view that the adverse remarks and observations made in the impugned order are not baseless and uncalled for and on the other hand, for appreciating the materials on record and to decide the matter, such observations are necessary.

### **Order: -**

The Appellate Tribunal dismissed the appeals stating that the appeals had no merit in them.

**Case Review: - Appeals Dismissed.**