



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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**M/S MOHAN GEMS & JEWELS PRIVATE LIMITED VS. VIJAY VERMA AND INSOLVENCY AND
BANKRUPTCY BOARD OF INDIA (IBBI)
COMPANY APPEAL (INSOLVENCY) NO. 849 OF 2020
DATE OF NCLAT JUDGMENT: AUGUST 24, 2021**

**“Legality and Propriety of any Regulation/Notification/Rules/Act cannot
be looked into by NCLT or NCLAT”**

Facts of the Case: -

This appeal was filed by the Corporate Debtor (CD) *M/S Mohan Gems & Jewels Private Ltd.* (Appellant) through its Liquidator seeking closure of the Liquidation Process as per Regulation 45(3)(a) of IBBI Liquidation Process Regulations, 2016, as the ‘Corporate Debtor’ was being sold as a Going Concern (GC) through an e-auction in which Mr. Vijay Verma (Respondent No. 1) was the highest bidder at a bid price of Rs. 4.52 crore.

The Adjudicating Authority (AA) had in the impugned order rejected the request for closure of liquidation process and stated that it could not find any merit in the IBBI’s CIRP Regulations and Liquidation Process Regulations which are set up as foundation to say that by virtue of liquidation Regulation 45 (3), dissolution shall be dispensed with for closure of liquidation. Three legal questions had emerged in the impugned order of the AA:

- Whether the Liquidator sell the CD as a GC in pursuant to Regulation 32 of IBBI (Liquidation Process) Regulation 2016.
- Whether the AA was correct in concluding that Regulations 39C of CIRP Regulations and 32A, 45(3) of the Liquidation Process Regulations are inconsistent with Section 54 of the Code.
- Whether the interpretation by the AA of the provisions of the IBC and ‘Liquidation Process Regulations’ in the Order impugned is contrary to the scope and spirit of the IBC.



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NCLAT's Observations: -

The Court while referring to a catena of landmark judgements of the Supreme Court like *Arcellor Mittal India Pvt. Ltd.* (supra), *Swiss Ribbons Pvt. Ltd.* (supra) and *M/s. Innoventive Industries Ltd.' Vs. 'ICICI Bank and Anr.*, observed that that 'Liquidation' should be the last resort only if the Resolution Plan submitted is not up to the mark and even in Liquidation, the Liquidator can sell the business of the 'Corporate Debtor' as a 'going concern'.

Asserting that the Regulations referred by the AA were in conformity to the IBC, NCLAT observed that it is a well settled proposition that the legality and propriety of any Regulation/Notification/Rules/Act cannot be looked into by NCLT or NCLAT. The Tribunal can only ascertain whether the procedures provided for under the IBC, 2016 and Companies Act, 2013 are being followed or not. AA cannot go beyond this. NCLAT also mentioned that the NCLT had overstepped its jurisdiction.

Order: -

NCLAT overruled the decision of the AA and set aside the order of NCLT stating that keeping in view the scope and spirit of the IBC, read with Section 54 of the IBC, Regulation 39C of CIRP Regulations, Regulations 32(e)&(f), 32A and 45(3) of the Liquidation Process Regulations, we are of the view that the sale of the 'CD' was carried out by the Liquidator in accordance with the Regulations.

Case Review: - Appeal Allowed.