



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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**AMANAT RANDHAWA HOTELS PVT. LTD. VS. SHASHI KANT NEMANI & ORS.
COMPANY APPEAL (AT) (INSOLVENCY) NO. 701 OF 2021 WITH 785 OF 2021
DATE OF NCLAT JUDGMENT: 07th OCTOBER 2021**

Facts of the Case: -

This Appeal has been filed by Amanat Randhawa Hotels Pvt. Ltd. (Appellant & Unsuccessful Resolution Applicant) against the Orders of the Adjudicating Authority 'AA'. in I.A. 2763 of 2021 and I.A. 2714 of 2021 respectively. In I.A. 2763 of 2021, AA dismissed the Application preferred by the Applicant on the ground that the Application has been filed for consideration after the approval of the Resolution Plan by the CoC.

Whereas in I.A. 2714 of 2021 the RP preferred for approval of the Resolution Plan of Mr. Sarabjit Singh. The AA stated that the Appellant has showed willingness to deposit an amount of Rs. 60 crores. The AA further stated that the Appellant came into existence in the year 2020 and may not be financially sound organization to fulfil its huge offer commitment of the Resolution Plan which is approximately Rs. 121 Crores for the buyout of the Corporate Debtor 'CD'.

The AA passed the order stating that Appellant shall pay Rs. 10 crores to RP of the CD which shall stand forfeited to the credit of RP for the benefit of the CD in the event of dismissal of its appeal preferred before NCLAT and apart from above an amount of Rs. 50 crores shall be paid by AA as a refundable deposit.

As both these Appeals dealt with a common subject matter, they were disposed of by Appellate Tribunal together.

NCLAT's Observations

The Appellate Tribunal was of the view that it was not of dispute that RP invited Expression of Interest 'EoI' making contentions of the Appellant that publicity was not given while inviting EOI unsustainable, as a total of 09 EOI's were received. Subsequently the Resolution Plan submitted



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by Mr. Sarabjit Singh participant which was accepted and approved with 100% majority. Further it was seen that the Appellant sought the indulgence of the RP to place its offer before the CoC for consideration vide emails, but as the last date for submission of EoI expired, the CoC rejected the same as the email was sent after the last date and extended last date for submission of EoI's.

The Appellate Tribunal observed the judgment passed by Hon'ble Supreme Court in '*Ebix Singapore Pvt. Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Ltd. & Anr.'* [2021 SCC OnLine SC 707] where the Apex Court had held that the NCLT and NCLAT should not entertain late unsolicited bids and should strictly adhere to timelines.

Further Appellate Tribunal in '*Chhatisgarh Distilleries Ltd.' Vs. 'Dushyant Dave & Ors.'* Company Appeal (AT) (Insolvency) No. 461 of 2019 had observed that the AA cannot direct the CoC to consider another Resolution Plan when the first Resolution Plan is already accepted by not less than 66% of voting share of the Financial Creditors after considering its feasibility and viability, though the other Resolution Applicant is ready to invest more amount in comparison to the first Resolution Applicant.

Order: -

The Appellate Tribunal dismissed both the appeals in view of the aforementioned decision of the Hon'ble Supreme Court and also taking into consideration, the legislative intent of the statute together with the fact that in the present case the Resolution Plan was accepted by 100% of voting share in the CoC Meeting and having regard to the fact that the Appellant had never participated in the EoI, it was of the view that any reliefs granted contra to the timelines would be ultra vires to the scope and objective of the Code. Further, once the Plan is approved by majority of the CoC as provided for under Section 30 of the Code, then no fresh plans may come in intervention of an already approved Plan.

Case Review: - Appeals Dismissed