



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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**BIMALESH BHARDWAJ & ORS. VS. VALUE INFRATECH INDIA PVT LTD & ORS.
COMPANY APPEAL (AT) (INS) NO. 112 OF 2021
DATE OF NCLAT JUDGMENT: 29TH NOVEMBER 2021**

Facts of the Case: -

The present appeal has been filed by the Appellants aggrieved by the order of the Adjudicating Authority 'AA' (NCLT, New Delhi) for liquidation of the Corporate Debtor 'CD' (Value Infratech India Pvt. Ltd. 'Respondent No. 1') under Section 61 of the IBC, 2016. (P.1)

The facts of the case are that Appellants are homebuyers in the project 'SKYWALK RNE' being developed by CD have stated that the Resolution Professional 'RP' has clubbed the claims of Respondent No.1 to 3 amounting to Rs.30.70 crores along with compound interest @ 24%, thereby giving Respondent No. 4 (Capri Global Capital Limited) undue advantage of much higher voting share than was permissible, in the constitution of CoC. Further, the CoC in its second meeting had decided for liquidation of CD, despite objection put forth by Authorized Representative 'AR' of the homebuyers. Further, the RP showed undue favor to Respondent No. 4 by adding up all the loans provided by Respondent No. 4 to Respondent No. 1 to 3, thereby giving advantage of inflated voting share. (P. 2)

The Appellants further claimed that RP did not follow the procedure prescribed in the IBC for inviting Expression of Interest for submission of Resolution Plan. In accordance with the wish of Respondent No. 4, and in undue haste, the RP submitted a proposal for liquidation of CD before the CoC in its second meeting and as it was given highly inflated voting rights, the resolution for liquidation of the CD was approved in the COC meeting. Hence, the Appellants have claimed this decision illegal on two pertinent issues, Firstly Whether the CoC was constituted by the Resolution Professional in accordance with IBC provisions? and Secondly, Whether the recommendation for liquidation of CD was taken by the CoC in contravention of IBC provisions? (P. 2 and 4)

NCLAT's Observations: -

The Appellate Tribunal was of the view in the present case, that the information memorandum was not prepared with full and correct details of assets and liabilities of the CD. The RP also did not pursue



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the application filed u/s 19(2). As a result, the CoC decided to abandon the step of inviting of EOI for Resolution Plan. Thereafter in undue haste, the CoC decided to go for liquidation of the CD. The decisions of CoC were a blotted one, since it was taken in the CoC, in which Respondent No. 4 was given voting right much in excess of its real and correct share. Further it found surprising as to how RP could prepare an information memorandum without getting access to the records and documents of the CD. It found that the CoC was not constituted in accordance with the provisions of IBC and the CIRP was not pursued with fairness and due diligence by the RP and the resolution for liquidation of the CD was taken in a meeting with an improper voting share and taken in unseemly haste.

Order: -

The NCLAT in view of the above directed as follows in the Present Appeal: -

- The CoC as constituted in the CIRP of the CD was not in accordance with provisions of IBC, therefore its constitution is quashed.
- The claims of various FCs including home buyers should be appropriately fixed, keeping in view the order of this Tribunal in CA (AT) (Ins) 29 of 2020.
- The IA for exclusion of time spent in pursuing the application before the AA under sections 19(2) and 21-A of the IBC should be preferred before the AA for appropriate order.

Further, it directed AA to replace the RP with a suitable one, as the action of the RP in this matter caused prejudice to homebuyers and directed IBBI to investigate the conduct of the RP in observing various provisions of IBC and take appropriate action.

Case Review: - Appeal Disposed