



# 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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**E S KRISHNAMURTHY & ORS. VS. M/S BHARATH HI TECH BUILDERS PVT. LTD.  
CIVIL APPEAL NO 3325 OF 2020**

**DATE OF SUPREME COURTS JUDGMENT: 14<sup>TH</sup> DECEMBER 2021**

**“WHILE ADJUDICATING AUTHORITY AND APPELLATE AUTHORITY CAN ENCOURAGE SETTLEMENTS, THEY CANNOT DIRECT THEM TO SETTLE BY ACTING AS COURTS OF EQUITY.”**

### **Facts of the Case: -**

The present appeal has been filed under Section 62 of the IBC 2016, which arised from the judgment of the National Company Law Appellate Tribunal, which upheld the order of the National Company Law Tribunal-Bengaluru Bench (Adjudicating Authority 'AA'). The facts of the case are that a petition under Section 7 of IBC was instituted by the appellants for initiating the CIRP in respect of the respondent, the NCLT declined to admit the petition and instead directed the respondent to settle the claims within three months, which was upheld by NCLAT.

The AA had decided to dispose the petition based on following, Firstly, the respondent's efforts to settle the dispute were bona fide, as they had already settled with majority investors, including few petitioners, Secondly, the settlement process was underway with other petitioners, Thirdly the procedure under the IBC was summary in nature, and could not be used to individually manage the case of each of the petitioners before it and Fourthly, initiation of CIRP in respect of the respondent would put in jeopardy the interests of home buyers and creditors, who have invested in the respondent's project, which was in advanced stages of completion.

The NCLAT upheld the AA's order based on the following facts, Firstly, the AA decided to dismiss the petition at the 'pre-admission stage' as the settlement process was underway, Secondly, the AA protected the rights of petitioners by setting a time-frame for settlement and leaving the option of approaching it in case their claims remained unsettled, Thirdly, the respondent was shown leniency even if the timeframe had passed due to the effects of pandemic and Fourthly, in disputes of this nature, the claims of the home buyers are priority and liquidation should be last resort.



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The Apex Court stated that the main issue of the case was whether in terms of the provisions of the IBC, the AA can without applying its mind to the merits of the petition under Section 7, simply dismiss the petition on the basis that the corporate debtor has initiated the process of settlement with the financial creditors.

## **Supreme Court's Observations: -**

The Apex Court stated that in the present case, the AA noted that it had listed the petition for admission on diverse dates and had adjourned it, to allow the parties to explore the possibility of a settlement and no settlement was arrived. Further, AA did not entertain the petition on the ground that the procedure under the IBC is summary, and it cannot manage or decide upon each claim of the individual home buyers. Further, the AA held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it disposed of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time frame and the same was upheld by NCLAT.

The Apex court stated the AA has clearly acted outside the terms of its jurisdiction under Section 7(5) of the IBC. The AA is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the AA must then either admit or reject an application respectively. These are the only two courses of action which are open to the AA in accordance with Section 7(5). The AA cannot compel a party to the proceedings before it to settle a dispute.

The Court further referred its Judgment in *Pratap Technocrats and Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.* stating that the IBC is a complete code in itself. The AA and Appellate are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelizes and circumscribes the ambit of such jurisdiction. Thus, while they can encourage settlements, they cannot direct them by acting as courts of equity.

## **Order: -**

The Apex Court keeping the above in view allowed the present appeal and set aside the impugned judgment of the NCLAT and NCLT and the petition under Section 7 of the IBC was accordingly restored to the NCLT for disposal afresh.

**Case Review: - Appeal Allowed**