



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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**KRRISH REALTECH PRIVATE LIMITED
COMPANY APPEAL (AT) (INSOLVENCY) NOS. 1008, 1009 & 1010 OF 2021
DATE OF NCLAT'S JUDGMENT: 21ST DECEMBER 2021**

Facts of the Case: -

This Appeal was filed under Section 61 of the IBC 2016, for challenging three orders passed by the National Company Law Tribunal, New Delhi (Adjudicating Authority 'AA'). The Appeal raised a limited issue as to whether the AA while considering Application of pre-packaged insolvency 'pre-pack' under Section 54C of the IBC can, before admission of the Application, hear Objectors/ Interveners.

The facts of the case are that the Appellant (Corporate Debtor 'CD') who claimed to be under a debt of Rs.673.00 crore (approx.) instituted an application for pre-pack. Subsequently, the CD issued an e-mail addressed to its stakeholders that it intended to take recourse to pre-pack and in the e-mail indicated that it shall be appointing Resolution Professional 'RP'. Further, the CD claimed that the RP was appointed and approval of FCs to pre-pack was also obtained. Then, the CD filed an application before the AA to initiate pre-pack and when the matter first came up for hearing before the AA, several objectors appeared who opposed the Application. The AA granted one-week time to the objectors to file their objections.

After the Objectors filled their applications and when the matter was again taken up by the AA, it passed the order that the Applicant is directed to file reply to each of the IAs along with a synopsis of the point-wise reply within 2 weeks. Rejoinder, if any, be filed within 1 week thereafter. The Applicant was also directed to file replies to the objections already uploaded on the Data Management System.

Aggrieved by the above order, the Applicant filed this Appeal.

NCLAT's Observations: -

The Appellate Tribunal noticed that cardinal principle of procedure to be followed by the AA is the adherence of Rules of natural justice which is statutorily provided for under Section 424 of the Companies Act, 2013. The time given for objection to the objectors in this case, is in accordance with principle of natural justice which is to be followed by the AA. Further, there is no violation of any



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Regulations or Rules or provisions of the IBC in giving opportunity to objectors to file their objection nor any such violation has been pointed out before us. It is further relevant to notice that all the objectors who have filed different IAs for objection are the persons who are included in list of unrelated FCs as disclosed by the Appellant itself in his Application filed for pre-pack except few objectors who claimed that although they are allottees, but their names have not been shown in the list.

The Appellate Tribunal was of the view that no error has been committed by the AA in giving opportunity to the objectors to file their objections. The Appellant was also given opportunity to file his rejoinder and reply to the objections, hence he cannot claim that any prejudice is cause to him only because objectors have been given time to file objection. The objectors who have appeared before the AA have huge stakes since they are all homebuyers/ allottees and have paid substantial amount to the Appellant running in lakhs and crores. No exception can be taken to their anxiety to ensure that pre-pack is resorted in accordance with the procedure prescribed in law. They have come up before the Court only to protect their claims and point out the Court about the non-compliance of the statutory provisions and it is for the AA to consider the objections and take decision on merit. Further, the Appellate reiterated its observations that any observations made by it in this judgment are only for the purpose of considering as to whether AA has committed any error in granting time to the intervenors/ objectors to file objection. The Appellate made it clear that it has not expressed any opinion on merits of the claim of any of the objectors and it is for the AA to consider and ultimately take a decision as to whether Application under Section 54C deserves to be admitted or rejected.

Order: -

The Appellate Tribunal in view of the above observations did not find any merit in the appeal and did not find any error in the orders passed by the AA. Further it stated that no error has been committed by the AA in granting time to objectors to file their objections within a week.

Case Review: - Appeal Dismissed