



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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**EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED VS. PETER BECK AND PETER VERMOEGENSVERWALTUNG LIMITED.
COMPANY APPEAL NO 161 OF 2021
DATE OF NCLAT JUDGMENT: 5th JANUARY 2022**

“THE SUCCESSFUL RESOLUTION APPLICANT HAS CLAIMED TO BE UNSECURED FINANCIAL CREDITOR OF THE CD, AND THEREFORE HAS INTEREST IN MAINTAINING THE CORPORATE DEBTOR AS A GOING CONCERN.”

Facts of the Case: -

The present appeal arises from the impugned order of the NCLT in the matter of Edelweiss Asset Reconstruction Company Ltd. (Edelweiss) Vs. Peter Beck and Peter Vermoegensverwaltung Ltd. and Anr. (Peter Group) and Company Appeal AT 169 of 2021 filed by the State Bank of India, authorized by other financial creditors to file the appeal on their behalf, against the Peter Group.

The appeal was filed against the order of the AA, providing an extra period of two weeks to Peter Group, the successful Resolution Applicant (Respondent No. 1) to deposit Rs. 10 crores.

In this matter, AA vide an order 28 February 2018 approved the Resolution Plan of Peter Group (Respondent No. 1) to takeover Sharon Biomedicine Ltd. (Corporate Debtor). This was also approved by the Supreme Court. Alleging failure of the Peter Group to implement the Resolution Plan as per its provisions, the Appellant approached AA demanding that CIRP should be re-initiated along with reinstating the previous Resolution Professional and 90 days of extra period should be given to invite Expressions of Interest (EOI) for resolution plans. However, the Peter Group claimed to issue four bank guarantees. It also submitted that Appellants are arm twisting the Successful Resolution Applicant for appropriation of cash Corporate Debtor and sharing of profits generated by the Corporate Debtor, which is completely outside the terms and conditions of the Approved Resolution Plan and contrary to law.



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The Counsel for the State Bank of India stated that when asked to renew the Bank Guarantee, Peter Group sent an e-mail on November 18, 2019, to the monitoring agency claiming that Rs. 10 crores, which was deposited in Abhyudaya Cooperative Bank Limited, was in respect of share application money and sought its return as per applicable laws in respect of the share application money.

NCLAT's Observations: -

The NCLAT considered two issues arising in the appeal, firstly, whether the default of Respondent No. 1 in implementing the successful resolution plan is justified due to pending appeals, and secondly, whether any more time could be granted as prayed by the Appellants.

NCLAT relied on the submission of the Peter Group that the CoC agreed to infusion of funds amounting to Rs. 10 crores in the Corporate Debtor in the lieu of bank guarantee and based on this agreement it infused Rs. 10 crores in the Corporate Debtor before the expiry of the bank guarantee and honor its commitment and this amount remains with the Corporate Debtor till date. The Successful Resolution Applicant has claimed to be unsecured Financial Creditor of the Corporate Debtor, and therefore has interest in maintaining the Corporate Debtor as a going concern.

NCLAT stated that the main hindrance in implementation of the approved resolution plan was submission of a proper bank guarantee of Rs. 10 crores and other payments and actions that had to be taken from zero date in accordance with the approved resolution plan. Thus, the NCLAT was of the opinion that it would serve the interests of justice if the Corporate Debtor was not sent into liquidation, but its insolvency was resolved so that it continued to be a going concern as that would be in the interest of the Corporate Debtor's stakeholders and creditors.

Order: - The Appellate Authority partially modified the order of the AA and directed that an enforceable bank guarantee of Rs. 10 crores should be submitted by the Successful Resolution Applicant within 30 days of this order. All the payments which are overdue should be done by the Successful Resolution Applicant within two months of this order. If the bank guarantee of Rs. 10 crores have already been deposited, the amount will be either adjusted against the pending amounts or refunded within a period of 30 days.

Case Review: - Appeal Disposed Off.