



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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**DR. PERIASAMY PALANI GOUNDER VS. MR RADHAKRISHNAN DHARMARAJAN. & ORS.
COMPANY APPEALS (AT) (CH)(INSOLVENCY) NO.164, 176, 218 & 219 OF 2021
DATE OF NCLAT'S JUDGMENT: 17TH FEBRUARY 2022**

"A VALUATION CONSISTING OF MERE NAKED VALUES WITHOUT A DETAILED REPORT IS NOT VALID. IT IS A SETTLED PROPOSITION THAT THE VALUATION EXERCISE IS CONDUCTED TO FACILITATE THE COC'S DECISION-MAKING PROCESS."

Facts of the Case: -

These Appeals were filed against a common impugned order passed by the NCLT-Chennai Bench (Adjudicating Authority 'AA') whereby the AA approved the Resolution Plan for the revival of the Appu Hotels Limited (Corporate Debtor 'CD'). The Appellant is the Promoter and erstwhile Director of the CD. The CIRP was initiated by a Financial Creditor whereby Respondent No. 01, was appointed as the Resolution Professional 'RP'.

The Appellant also initiated the measures under Section 12A of the IBC for withdrawal of CIRP. However, the proposal of the Appellant was not placed before the CoC, leaving the proposal unconsidered. Further, the Appellant filed an application before the AA for fair Valuation and objected that the Valuation of the CD was done in violation of the statutory mandates, as a result of which, CoC was deceived into approving the Resolution Plan submitted by Respondent No. 2, i.e. M.K. Rajagopalan, thereby allowing him to acquire the assets of the CD for a price less than 25% of the actual market value.

The Appellant stated that there was a violation of section 88 of the Indian Trust Act, 1882 and it can be seen from the final list of prospective Resolution Applicants that Respondent no. 02 is the founder and Managing Trustee of Sri Balaji Vidyapeeth whose resolution plan was approved and who is ineligible on the ground that it is a charitable trust and it cannot run a profit making entity.

The Appellant stated that the estimate of the Fair Value and Liquidation Value of the CD was computed without physical verification of the CD's assets and the Resolution Applicant is disqualified under Section 164 (2) (b) of the Companies Act 2013 hence ineligible under Section 29 A (e) of the IBC to submit a Resolution Plan.



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NCLAT's Observations: -

The main issue before the Appellate Tribunal was that whether the approved Resolution Plan contravenes Section 30 (2) and Sec 61(3) of the IBC, 2016?. The Appellate Tribunal stated that a valuation consisting of mere naked values without a detailed report is not valid. It is a settled proposition that the valuation exercise is conducted to facilitate the CoC's decision-making process. Therefore, the existence of a valid and accurate valuation report is a sine qua non for the CoC to exercise its commercial wisdom. Further the observations of AA, that a statutory provision regulating a matter of practice or procedure will generally be read as a directory and not mandatory is erroneous. Compliance with statutory requirements in regulating a matter of practice and procedure are mandatory. The AA is a creature of statute, and by interpretation, it cannot dilute the statutory compliances.

The Appellate Tribunal further stated that as the Prospective Resolution Applicant, 'Sri Balaji Vidyapeeth' was ineligible as the 2nd Respondent, cannot permitted to act as its alter ego in implementing the Resolution Plan and attain any financial advantage or gain, which is barred by Section 88 of the Indian Trusts Act. NCLAT also stated that the revised Resolution Plan was not approved by CoC. It was further modified, and the final Revised Resolution Plan was never laid before the CoC for approval. Thus, the approval of the Resolution Plan by the AA cannot be treated as valid under Sec. 31(1) of the IBC, 2016.

Order: -

The Appellate Tribunal in view of the above observations allowed the appeals and stated that the approved Resolution Plan is in contravention of Section 30 (2) of the IBC, 2016. Further it set aside the resolution plan approved by AA and directed RP to proceed with the CIRP from the publication stage of Form 'G' for inviting Expression of Interest afresh as per CIRP Regulations and also directed to put up the Appellants Settlement proposal for consideration before the CoC.

NCLAT directed the RP to call the CoC within 15 days from the date of order and settlement proposal should be put to the vote and if approved with 90% vote share of the CoC, then proceeding for withdrawal of the CIRP under Section 12 A read with Regulation 30A of CIRP Regulation.

Case Review: - Appeals Allowed.

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