



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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(March 14, 2022)

AMIT KATYAL VS. MEERA AHUJA AND ORS.

CIVIL APPEAL NO. 3778 OF 2020 WITH IA NO. 105732/2021 AND 18679/2022

DATE OF SUPREME COURT'S JUDGMENT: 03RD MARCH 2022

Facts of the Case: -

This Appeal was filed by Appellant (Promoter/Majority Shareholder of Jasmine Buildmart Pvt. Ltd. (Corporate Debtor 'CD')) feeling aggrieved and dissatisfied with the impugned order passed by the NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No. 1380 of 2019, by which the NCLAT dismissed the above appeal preferred by the Appellant and confirmed the order passed by the NCLT, New Delhi (Adjudicating Authority 'AA') in admitting the petition under Section 7 of the IBC, 2016.

The facts of the case are that CD had come out with housing project (Krrish Provence Estate) which it could not complete even after a period of eight years, resulting in Section 7 application being filed before AA by respondent nos. 1 to 3 (Original applicants and Home buyers). The original applicants sought refund of an amount of Rs. 7 crores approx. due to delay in the completion of project and failure to handover possession within the stipulated time. The Appellant challenged the order of AA before the NCLAT and during the hearing tried to settle the matter with the original applicants, however, the settlement did not go through. The NCLAT by the impugned order dismissed the appeal and upheld the admission order and directed commencement of CIRP.

Subsequently, the appellant preferred the present appeal and the Apex Court by its order stayed the operation and implementation of the impugned order, subject to the Appellant depositing the amount of Rs.2,75,55,186/- and interest @ 6% per annum within two weeks from the order, which was deposited by the same. However the present appeal was adjourned from time to time on the ground that the dispute between the appellant and original applicants was being settled and the CD was prepared to complete the project within a period of nine months, if the home buyers make payments, as scheduled. (Para 2.3 and 2.4)

Further, the respective parties (Appellant & 82 Homebuyers) settled the dispute with the CD under which, it was agreed that the CD shall complete the entire project and hand over the possession to the home buyers (who want the possession), within a period of one year. The Appellant agreed to refund the amount of Rs.3,36,02,000/- with applicable/accrued interest to the original applicants. Hence it was requested under



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Article 142 of the Constitution of India read with Rules 11 and 12 of the NCLT Rules, 2016 to record the settlement and permit the original applicants to withdraw CIRP proceedings pending before the AA and dismiss all matters pending between the appellant and original applicants.

Supreme Court's Observations: -

The Apex court stated the matter of *Swiss Ribbons Private Limited and Another v. Union of India* whereby it had held that at any stage before a COC is constituted, a party can approach AA directly and AA may in exercise of its powers, allow or disallow an application for withdrawal or settlement. Hence, in the present case, although the COC was constituted on 23.11.2020, there was a stay on CIRP proceedings on 3.12.2020 and no proceedings took place before the COC. Further the COC comprises of 91 members, of which 70% were the members of the Flat Buyers Association who are willing for the CIRP proceedings being set aside, subject to Appellant and CD honouring its undertaking.

The Apex court in view of the above stated that when the withdrawal of the CIRP proceedings initiated by the original applicants is allowable by the NCLT and instead of relegating the original applicants to approach the AA by moving an application under Section 12A of the IBC, Apex Court was of the opinion that this is a fit case to exercise powers under Article 142 of the Constitution of India as the settlement arrived at between the home buyers and the appellant and CD shall be in the larger interest of the home buyers as out of 128 home buyers, 82 home buyers are likely to get possession within a period of one year, for which they are waiting since last more than eight years after they have invested their hard earned money. This shall be in furtherance of the object and purpose of IBC.

Order: -

The Apex Court in view of the above observations allowed the appeals and directed the Appellant and CD to abide by the settlement plan and to submit 05 separate undertakings which included that they shall complete the entire project within one year from 01.03.2022 and offer the possession to the respective home buyers, to complete the entire project including all the apartments, common areas, amenities, etc. as specified in the ABA, to be filed within a period of one week from the date of order.

Case Review: - Appeal Allowed.

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