



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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**SHARAVAN KUMAR VISHNOI VS. UPMA JAISWAL & ORS. (COMP. APP. (AT) (INS.) NO. 371 OF 2022)
KUMARI DURGA MEMORIAL SANSTHAN VS. SHRAVAN KUMAR VISHNOI & ORS. (COMP. APP. (AT) (INS.)
NO.374 OF 2022)**

DATE OF NCLAT'S JUDGMENT: 05TH APRIL 2022

Facts of the Case: -

These two Appeals have been filed against the same order dated 02.03.2022 passed by the NCLT – Allahabad Bench (Adjudicating Authority 'AA') in IA No. 59 of 2022. It was filed by Ms. Upma Jaiswal seeking a direction to the Resolution Professional to place the Resolution Plan submitted by the Appellant before the Committee of Creditors 'CoC' whereby the AA after hearing the parties stated that when these provisions are read together along with the relevant judgement of the Supreme Court, what appears is that the RP is a facilitator and not a gatekeeper. The AA further noticed that in these circumstances, the ends of justice would be met if we direct the RP to place all Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law before the CoC which should take a considered view in the matter, if not already done.

The Appeal being Company Appeal (AT) (Ins.) No.371 of 2022 was filed by the Resolution Professional challenging the order. The RP submitted that according to his opinion, the plan submitted by Ms. Upma Jaiswal was not eligible as per Section 29A of the IBC and that due to the said difficulty, he was unable to place the plan before the CoC for approval.

In Company Appeal (AT) (Ins.) No.374 of 2022, it was contended that the plan submitted by the Appellant was considered by the CoC. The CoC asked the Appellant to increase its plan value, which was done. It was submitted that at this stage, the AA ought not to have directed the plan of Ms. Upma Jaiswal to be considered by the CoC.

The Resolution Applicant- Ms. Upma Jaiswal refuted the submissions of the Appellants and contended that the question as to whether the plan submitted by her is to be rejected or approved is a question which need to be decided by the CoC. The RP at best can give his opinion with regard to eligibility of the Resolution Applicant whether it conforms to Section 29A and other provisions of the Code or not. Further the RP of its own cannot withhold any plan and refuse to submit the same before the CoC.



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NCLAT's Observations: -

The Appellate Tribunal took note of the judgement passed by the Hon'ble Supreme Court in the matter of "*ArcelorMittal India Private Limited vs. Satish Kumar Gupta- (2019)*" whereby it had stated that the RP is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the RP to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not, the RP can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not.

Further, in the impugned order, the AA noticed that the direction issued to the RP to place all the Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law. The aforesaid direction clearly indicates that the RP is free to submit his opinion with regard to contravention or otherwise of the various provisions of law. The aforesaid observations took care of the duties and responsibilities of the RP. The RP can give his opinion with regard to each Resolution Applicant and further steps are to be taken by the CoC as per the direction issued by the AA.

Order: -

The AA in view of the above observations dismissed both the appeals and was of the view that various issues regarding ineligibility or eligibility need not be gone into in this Appeal. It is only after the CoC's decision if any question arise regarding eligibility that can be gone into before the AA in accordance with the law.

Case Review: - *Appeals Dismissed.*

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