



# 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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**ANAND MURTI VS. SONI INFRATECH PRIVATE LIMITED  
CIVIL APPEAL NOS 7534 OF 2021  
DATE OF SUPREME COURT'S JUDGMENT: 27<sup>TH</sup> APRIL 2022**

### Facts of the Case: -

The Appellant (Anand Murti) filed the present appeal feeling aggrieved and dissatisfied with the impugned order dated 22.11.2021 passed by the National Company Law Appellate Tribunal, New Delhi 'NCLAT' by which the NCLAT dismissed the appeal preferred by the Appellant, which was filed against the order passed by the National Company Law Tribunal - Delhi Bench (Adjudicating Authority 'AA') dated 22.11.2019 according to which an application was filed by respondent number 2 against the Corporate Debtor (M/S Soni Infratech Pvt Ltd) for initiation of CIRP under Section 7 of the IBC, and appointed an IRP. The respondent number 2 had booked a flat in the housing project launched by the Corporate Debtor, subsequently, vide a letter dated 31st July 2018, the booking was cancelled, and respondent number 2 demanded refund of the amount of Rs 32,27,591/- from the Corporate Debtor. The IRP was directed to initiate the CIRP as per the provisions of the IBC.

The Appellant, aggrieved by the NCLT order had filed an appeal before the NCLAT wherein the NCLAT, vide its order dated 19.12.2019, passed an interim order directing the IRP not to constitute the Committee of Creditors (CoC). The Appellant had agreed to settle the matter with the respondent number 2 before the NCLAT, further submitting that the housing project had been completed to the extent of 70-75%, and that the funds/private financier for the same had been arranged as well to complete the project. To this, the NCLAT, vide order dated 31.01.2020, had directed to the Appellant to file proposed settlement terms/plan, which the Appellant filed on 13.02.2020. Meanwhile, the Appellant had also settled the matter with respondent number 2. Despite this, the NCLAT, vide order 26.02.2020, modified the interim order dated 19.12.2019, and directed the IRP to constitute the CoC on the ground that the settlement occurred only between the Appellant and the respondent number 2 sans all the allottees. The Appellant, thereafter, approached the Apex Court, and the Court vide order dated 05.03.2020 permitted the Appellant to approach the NCLAT for modification of the 26.02.2020 to present the settlement plan covering all the allottees.



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In pursuance to the directions issued by the NCLAT dated 29.09.2021, a meeting of various stakeholders was conducted on 23.10.2021 in which the “Modified Resolution Plan” was submitted by the Promoter of the Corporate Debtor, who had also filed an undertaking on an affidavit. Yet, the NCLAT vide the impugned order 22.11.2021 rejected the modification claim on the grounds that there was no settlement with all the home-buyers, and that there was trust deficit amongst the home-buyers, and passed the order.

## **Supreme Court’s Observations: -**

The Apex Court taking into consideration the undertaking filed by the Promoter, and also the fact that there were 7 out of the 452 home-buyers, who had opposed the Settlement Plan, held that it would be in the interest of the home-buyers if the Appellant/Promoter will be permitted to complete the project, and that he has agreed, firstly, that the cost of the flat would not be escalated, secondly, that the project would be completed within a stipulated timeline. The Appellant also undertook to refund the amount paid by the seven objectors. The Apex Court also held that there could be a possibility that if the CIRP is permitted, the home-buyers will have to pay a much higher cost, inasmuch as the offer made by the resolution applicants could be after taking into consideration the price of escalation.

## **Order: -**

The Apex Court in view of the above observations quashed the NCLAT order dated 22.11.2021, and treated the affidavit filed by appellant to be an undertaking. The Appellant has been permitted to complete the project, and the modification application before the NCLAT accordingly stands allowed.

Accordingly, the pending applications shall stand disposed of, and that there shall be no orders as to costs.

**Case Review: - Appeal Allowed.**