



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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**VALLAL RCK VS. M/S SIVA INDUSTRIES AND HOLDINGS LIMITED AND OTHERS.
CIVIL APPEAL NO. 1811-1812 OF 2022
DATE OF SUPREME COURT'S JUDGMENT: 03RD JUNE 2022**

“THE APEX COURT EMPHASIZED THE NEED FOR MINIMAL JUDICIAL INTERFERENCE BY THE NCLAT AND NCLT IN THE FRAMEWORK OF IBC”

Facts of the Case: -

These appeals were filed by appellant against the judgment of the NCLAT-Chennai Bench, whereby it dismissed the appeals filed by the appellant, challenging the two orders passed by the NCLT – Chennai, which rejected the application filed by the Resolution Professional ‘RP’ under Section 12A of IBC, 2016 read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for withdrawal of the application filed under Section 7 of the IBC in view of the settlement plan submitted by the appellant. The appellant also challenged the order passed by the NCLAT whereby the NCLAT had dismissed the appeal of the appellant against the order passed by the NCLT directing initiation of liquidation proceedings in respect of M/s Siva Industries and Holdings Limited (Corporate Debtor ‘CD’).

The facts of the case are that IDBI Bank had filed an application under Section 7 of the IBC seeking initiation of CIRP against the CD. After the CIRP process was initiated, the RP presented a resolution plan before the CoC which was not approved as it did not receive 66% votes and then the RP filed an application for initiating liquidation. Subsequently, the Appellant filed a settlement application under Section 60(5) IBC to offer a one-time settlement plan. Thereafter, the CoC considered and approved the Settlement plan. Consequently, the RP filed an application seeking withdrawal of CIRP. However, the NCLT rejected the said application stating that the Settlement Plan was only a Business Restructuring Plan and initiated the liquidation process.

The main question for consideration in the present appeals was as to whether the NCLT or NCLAT can sit in an appeal over the commercial wisdom of the Committee of Creditors ‘CoC’ or not.



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Supreme Court's Observations: -

The Apex Court referred to Section 12 A of the IBC, 2016, which deals with withdrawal of applications admitted under Section 7, 9 or 10, the Apex Court noted that the provision was inserted by way of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 after much deliberation by the Insolvency Law Committee. The Committee had recommended that an exit should be allowed provided the CoC approves it by 90% voting share.

The Apex Court observed that the recommendation was made as the Committee reckoned that the intent of the IBC is to discourage individual actions for enforcement and settlement. In the light of the same, it had opined that the settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted. Pursuant to the insertion of Section 12A in the IBC, Regulation 30A was added to the Regulations, 2016 which laid down the detailed procedure for withdrawal of application. It further noted that in *Swiss Ribbons Private Limited And Anr. v. Union of India And Ors.*, validity of Section 12A was upheld. Moreover, the Apex Court in its various judgments had already held that commercial wisdom of CoC is not to be interfered with by NCLT and NCLAT.

Further the Court held that, in this case the proceedings of the meetings of CoC clearly showed that there were wide deliberations amongst CoC members while considering the settlement plan as submitted by the appellant and suitable amendments were also made in the same. Subsequently the plan was approved by 94.23% votes.

Order: -

The Apex Court allowed the present appeals and quashed and set aside the impugned judgment and order passed by the learned NCLT and NCLAT. The application filed by RP before NCLT for withdrawal of CIRP was also allowed.

Case Review: - Appeals Allowed.