



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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Jindal Stainless Ltd. Vs Mr. Shailendra Ajmera, RP of Mittal Corp Ltd. & Ors.

Comp. App. (AT) (Ins.) No. 1058 of 2022

Date of NCLAT's Judgements: January 18, 2023

Facts of the Case: -

CIRP was initiated against Mittal Corp Limited and an RP was appointed by the AA via order dated 10.11.21. The RP received six resolution plans including the plans submitted by the Jindal Stainless Ltd. (hereinafter as “Appellant”) and by Shyam Sel and Power Ltd (hereinafter as “Respondent”). The CoC in 12th meeting held on 04.07.2022 decided to undertake a Challenge Process to give an opportunity to the Resolution Applicants to improve their plans. After receipt of the unconditional acceptance, Challenge Process was conducted in the 13th CoC meeting wherein all the Resolution Applicants were notified that the signed and compliance Resolution Plan must be submitted by 18.07.2022. Overall, four plans (including plans of the Appellant and Respondent) were submitted by the due date. On 19.07.2022, the Respondent sent an e-mail to the RP stating that it is willing to submit the entire NPV offered as upfront payment within 30 days. On 29.07.2022, Respondent sent another e-mail further improving his offer.

The CoC in the 17th meeting held on 03.08.2022 resolved to put all four plans to vote. Voting was to commence from 05.08.2022 till 26.08.2022, meanwhile the Respondent filed an Interlocutory Application before the AA seeking a direction that RP should consider its offer dated 29.07.2022 and place the same before the CoC. The AA allowed the appeal and directed CoC to consider the revised resolution plan of the respondent. The RP in pursuance of the order passed by the AA stopped the voting process.

The Appellant submitted that AA committed error in issuing the impugned direction. The adoption of Challenge Process by the CoC is in accordance with Regulation 39(1A)(b) and after going through the Challenge Process, the Respondent cannot be permitted to revise its plan. The Appellant contended that the CIRP has to be completed in the timeline and any interdiction by the AA, as has been done by the impugned order, is bound to delay the completion of the process which is not object and purpose of the IBC.

The Respondent submitted that the object of the Code is maximisation of the assets of the CD and the AA has rightly issued direction to the RP to place the revised offer. Further, the Respondent submitted that Regulation 39 (1A) is only directory and the CoC has full jurisdiction to permit the resolution applicants to further revise the resolution plan.

The question raised before the Appellate Tribunal is that whether direction given to COC by AA regarding acceptance of revised resolution plan after the completion of Challenge Process is accepted or not?



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NCLAT Observations:

The Appellate Authority citing the judgment of the Supreme Court in “*Ngaitlang Dhar vs. Panna Pragati Infrastructure Private Limited & Ors.*” held that after the adoption of the Challenge Method, a Resolution Applicant cannot be allowed to submit a revised plan.

The timeline in the IBC has its salutary value and it is the wisdom of the CoC to vote on the Resolution Plan after completion of Challenge Process and not to consider any negotiation or further modification of the plan.

The Appellate Authority held that the AA should not have been interfered with the voting on the resolution plan without any valid reason. As result of the order of the AA the process of voting which was already commenced on 07.08.2022 was abandoned by the RP.

Order/Judgement: The Appellate Authority set aside the order passed by the AA dated 11.08.2022. Further, the RP is directed to initiate fresh voting process on the resolution plans received in the process. The CIRP is extended till 28.02.2023 by which date the RP may file an appropriate application before the AA bringing relevant facts and development in the CIRP on record.

Case Review: The Appeal is disposed of with parties bearing their own cost.