



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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R. Venkatakrishnan (Liquidator) Vs. GC Logistics India Pvt. Ltd. and Others
IA (IBC)/ 1018 (CHE)/2022 IN CP/759/(IB)/CB/2018
Date of NCLT Judgement: February 19, 2023

Facts of the Case: -

Phoenix ARC Private Ltd. in its capacity of Financial Creditor filed an application under Section 7 of the IBC in the year 2018 to initiate CIRP of St. John Freight Systems Ltd. (hereinafter “CD”). The same was admitted by NCLT Chennai through an order dated December 10, 2018. However, as the CD could not be resolved through a Resolution Plan, the AA issued an order for Liquidation of the company on November 26, 2019.

The promoters of the CD approached NCLAT against the Liquidation. Though the Liquidation order was stayed, the NCLAT finally dismissed the appeal stating that there is no merit in the appeal. Subsequently, the first meeting of Stakeholders Consultation Committee (“SCC”) was held for sale of the CD as a Going Concern. In the meeting discussions were made on three proposals but none of the three proposals could receive required percentage of votes. Consequently, all the three proposals were rejected, and a fresh Expression of Interest (EOI) was published.

The SCC considered the bids received in the second EOI and rejected all of them. Later, an offer letter from Global Corp’s Logistics LLC was received and pursuant to it the SCC filed an application with the AA to approve Swiss Challenge Method with Global Corp’s Logistics LLC offer as base price. After receiving the approval of the AA, the Liquidator conducted the Swiss Challenge, and all the documents were presented before the AA for approval of ‘Sale of the CD Going Concern’.

Mr. Karthikeyan, proprietor of M.S.K. Lorry Booking Office, being Operational Creditor of the CD, objected to the sale of CD as going concern and filed petition under section 60(5) of IBC.

NCLT’s Observations: -

Citing the judgement of the NCLAT in “*M/s Visisth Services Ltd vs. Mr. S.V. Ramani*” the AA held that that the proposal for sale of CD as a Going Concern was in conformity to Regulation 32A of IBBI (Liquidation Process) Regulations, 2016. The AA was of view that considering the business nature, MSME Status and the employees of the CD, it is necessary to pave way for the smooth revival.



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Further, the AA put on record the submission of Liquidator that the proposed sale of CD as a Going Concern represents the best prospect of revival of the CD which will continue to provide gainful employment to 320 direct employees and 220 indirect/ contract/ seasonal employees. The sale of the company as a Going Concern represents the best option for maximization of value as opposed to selling the assets of the CD.

Order/Judgement: AA approved the sale of the CD as a Going Concern and ordered that the CD shall not be dissolved. Besides, the AA ordered that the status of the Corporate Debtor be changed from “in liquidation” to “Active” in records of the Registrar of Companies. Besides, other required reliefs were also granted to the applicant.

Case Review: Application Admitted. Other IAs disposed of.