



# 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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**ABHISHEK SINGH Vs. HUHTAMAKI PPL LTD. & ANR.**  
**SLP (Civil) No.6452 of 2021**  
**Date of Supreme Court Judgements: March 28, 2023**

### Facts of the Case: -

The Appeal is filed by Mr. Abhishek Singh (hereinafter referred as 'Appellant'), a Suspended director of the Manpasand Beverages Ltd. (hereinafter referred as "CD") after being aggrieved by the AA's order dated 13.04.2021.

The CD was in the business of manufacturing and distribution of fruit beverages. Huhtamaki PPL Ltd. (hereinafter referred as "Respondent"), used to supply packaging material to the CD. Later, The Respondent filed a petition under Section 9 of IBC, seeking initiation of CIRP of the CD, over a default of Rs.1,31,00,825/-. The AA admitted the petition against the CD by order dated 01.03.2021. Two days after initiation of CIRP, the parties entered into settlement even before the CoC could be constituted. As per settlement terms, the CD paid Rs. 95.72 Lakhs to the respondent and the IRP filed an application before AA seeking withdrawal of CIRP against the CD.

Meanwhile an appeal was preferred before the Appellate Tribunal against the admission order of AA dated 01.03.2021 on the ground that Section 9 of IBC was not maintainable as there was a pre-existing dispute. Later, the appeal was withdrawn with liberty to revive the appeal in case the settlement failed. The Appellate authority also granted stay on formation of CoC.

The AA observed that (i) Appellant had violated the moratorium directions contained in admission order dated 01.03.2021, (ii) 35 creditors have filed their claims during the pendency of the CIRP application and withdrawal of the proceeding would adversely affect their rights, and (iii) Regulation 30A of IBBI Regulations was not binding upon it and such provision would not be of any help to the CD or Appellant. Therefore, the AA by its order dated 13.04.2021 rejected the settlement application and fixed the matter for disposal of the application under Regulation 30A after hearing all creditors.



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## Supreme Court Observations:

The Supreme Court referring to the judgements in *Swiss Ribbons Pvt. Ltd. & Anr. Vs UOI & Ors. (2019)* and *Kamal K. Singh v. Dinesh Gupta & Anr. (2021)* held that section 12A of IBC permits withdrawal of applications admitted under section 7,9 or 10 of IBC and does not debar entertaining applications for withdrawal even before constitution of CoC. The substituted Regulation 30A ( as it stands today after the judgement of Swiss Ribbon) clearly provides for withdrawal applications being entertained before constitution of CoC.

The Supreme Court further stated that the AA committed an error in holding that Regulation 30A would have no binding effect as this would amount to defeating the very purpose of substituting Regulation 30A in IBBI Regulations.

The Apex Court further held that large number of creditors filed their claim due to the delay on the part of AA in disposing of applications under Section 12A of IBC and Regulation 30A of CIRP Regulations.

**Order/Judgement:** The impugned order of the AA cannot be sustained. The application filed under Regulation 30A of IBBI Regulations deserves to be allowed and the impugned order of NCLT is set aside.

**Case Review:** Appeal is allowed and pending applications, if any, are disposed of.