



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Volume 06 | Number 29

(July 17, 2023)

**Harish Sharma Vs. M/s. C & C Constructions Ltd. , & Ors.  
Company Appeal (AT) (INS) NO. 368 of 2023  
Date of NCLAT Judgement: July 05, 2023**

### Facts of the Case: -

The Present Appeal is filed by Mr. Harish Sharma in the capacity of Operational Creditor (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 08.02.23 passed by the AA.

The Appellant became the operational Creditor of M/s C.C Construction Ltd. (hereinafter referred as 'CD'), by virtue of two distinct Assignment Agreements dated 15.12.22 executed with KM contractors and SNI Infratech. Upon the agreement the Appellant became eligible under section 230 of the companies Act, 2013 to submit a scheme of compromise and arrangements. The Appellant also became the power of attorney holder of Gulshan Investment Company Ltd. and Montage Enterprises Pvt. Ltd. and Anantjeet Nutriment LLP with whom it has formed a consortium for the ostensible reason of proposing a scheme of compromise and arrangements with respect to the CD.

The CD was entered into CIRP but due to lack of proper resolution proposal, the CD was sent for Liquidation and official Liquidator was appointed. The liquidator issued an invitation for the submission of a scheme of arrangement under section 230 of Companies Act, 2013, thereafter the Appellant made a request to the liquidator for granting the access to the Virtual data Room (VDR) and also submitted the supported document for the same but his request could not be completed within 90 days limit and therefore an IA dated 07.01.23 was filed by the Appellant for seeking extension of timeline regarding submission of Scheme. The said IA was rejected by the AA by the impugned order.

The Appellant further claims that he had finalized a scheme of arrangement but did not submit it due to the lack of an extension of the deadline requested through IA dated 07.01.23.



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## NCLAT Observations:-

The Appellate Tribunal while placing its reliance on judgment delivered by the Apex Court and the Appellate Tribunal in '*Arun Kumar Jagatramka v. Jindal Steel & Power Ltd. 2021*' and '*Y. Shivaram Prasad v. S. Dhanpal & Ors, 2019*' held that the amendment dated 25.07.19 made to the Liquidation Process Regulation, 2016 by the IBBI recognizes a process envisaged u/s 230 of the companies Act, 2013 as a valid method of revival of CD during liquidation. Further, regulation 2-B clearly stipulates that submission of compromise and arrangement should be completed with-in 90 days from the order of Liquidation and clause 2 of 2-B clearly says that time taken for compromise or arrangement not be included in the Liquidation period.

The Appellate Tribunal further stated that the Appellant failed to provide proof of a formulated and ready scheme of compromise or arrangement, as well as the consent of 75% of the secured creditors of CD in support of such scheme. Merely requesting an extension of the timeline without demonstrating sincere and serious efforts in preparing and formulating the scheme indicates a lack of concrete action. The 90-day timeline prescribed under Regulation 2-B of the Liquidation Process Regulations, 2016 expired on 04.01.23 with no evidence of the scheme's readiness presented.

**Order/Judgement:** The AA has not committed any error in passing the impugned order. No merit found in the appeal.

**Case Review:** Appeal is dismissed. No order as to costs.