



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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Anil Kumar, Vs Jayesh Sanghrajaka. & Ors.

Company Appeal (AT) (Insolvency) No. 513 of 202, No. 753 of 2023 & IA No.1666 of 2023

Date of NCLAT Judgement: August 03, 2023

Facts of the Case: -

Both the present appeals are filed by Mr. Anil Kumar, suspended director of SK Elite Industries (hereinafter referred as 'Appellant') after being aggrieved by the orders-dated 06.03.23 and 15.05.23 passed by the Adjudicating Authority.

M/s SK Elite Industries ('Corporate Debtor') entered in to the CIRP which led to the formation of the Committee of Creditors/CoC and appointment of RP (hereinafter referred as "Respondent no. 2" and Respondent no. 1, respectfully). The Respondent no. 2 set forth criteria for Potential Resolution Applicants (PRA's) and issued Expression of Interest forms. However, due to a limited response, the CoC extended the deadline for EoI submission. In light of this, a fresh Form G was issued, according more time for interested parties to express their interest.

Despite the extended timeline, no initial resolution plans were received from the PRA's. An extension of the CIRP period was granted by the AA. The resolution plans received through PRA's to the CoC, during its successive meetings were unsatisfactory, the CoC, in response, permitted PRA's to revise their offer. However, the revisions were not received within the stipulated timeframe and thus the liquidation proceedings were initiated. During the 9th CoC meeting, the Appellant indicated a Section 12A settlement proposal, but submitted it after significant delay, i.e. just before the 11th CoC meeting. Despite the challenges, CoC meetings continued to evaluate plans, including one from M/s Metro Realty Group (hereinafter referred as 'Respondent no.3'). The resolution plan submitted by Respondent no. 3 was considered after a halt to liquidation proceedings. The plan was approved during the 19th CoC meeting, benefiting stakeholders and promoters. The Appellant didn't object to the resolution plan but later, filed the appeals challenging the orders.

The main issue raised before the Appellate Tribunal is: (i) Whether the exercise of commercial wisdom of the CoC in approving the resolution plan of Respondent No.3 is sustainable in the teeth of material irregularity alleged by the Appellant or not?



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NCLAT's Observations: -

The Appellate Tribunal while placing their reliance on the judgement pronounced in '*Ngaitlang Dhar v Panna Pragati Infrastructure Pvt. Ltd.*' by the Hon'ble Supreme Court held that it's a trite law that commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the process within the timelines prescribed by the IBC.

The Appellate Tribunal further held that the CoC, led by the RP, ensured transparency by updating the AA about developments since the liquidation application. The 19th CoC meeting also clearly notes that multiple opportunities given to the Appellant to submit resolution proposal went futile. The Appellant even supported the resolution plan of Respondent No.3. Hence, there's no valid basis for the Appellant to claim unfair treatment in the resolution process.

The Appellate Tribunal further held that when the COC has approved a Resolution Plan by 100% voting share after considering its feasibility and viability, such decision of CoC is a commercial decision. The Appellant had multiple opportunities to submit a Section 12-A proposal but consistently failed to do so, and therefore, there is no sufficient ground for the Appellant to claim prejudice.

Order/Judgement: The Appellate Tribunal held that the commercial wisdom of CoC in approving the Resolution Plan is not to be interfered in the exercise of jurisdiction of judicial review either by the Adjudicating Authority or by the Tribunal in the exercise of its appellate powers. Hence the AA did not commit any error in approving the resolution plan.

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