



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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(September 18, 2023)

Suraksha Realty Ltd. Vs. Mr. Anuj Bajpai.
IA No. 1758/2022 in C.P.(IB)2808/2018
Date of NCLT Judgement: Sept. 04, 2023

Facts of the Case: -

The present IA is filed by the Suraksha Realty Ltd. (hereinafter referred as 'Applicant') in CIRP proceedings of the Corporate debtor Panache Aluminum Extrusions Pvt. Ltd., after being aggrieved by the actions of Mr. Anuj Bajpai, Resolution Professional of CD (hereinafter referred as 'Respondent'). The CIRP proceedings were initiated against the CD by an order dated 31.12.19 passed by the AA and the RP was appointed.

As per the Applicant, the CD along with its group company-Blockwel Pvt. Ltd., sought a financial assistance of ₹3 crores from him. The loan was provided as per agreed terms of agreement executed between the Applicant and CD (borrower) with its group company as 'Co-borrower' at an interest rate of 15% per annum and 210-days of repayment period. To secure the loan, physical shares of the Blockwel Pvt. Ltd. were pledged.

The Applicant vide letter dated 09.12.18 demanded a total payment of ₹ 9.30 crores from the CD and Co-borrower informing them that it would invoke the agreement on 'Pledge of Shares' if the payment was not made. However, no payment was received despite this letter. The applicant contended that he got to know about the CIRP proceedings only after being contacted by the police and he was unaware of the claims process and could not file their claim as a secured Financial Creditor. The Applicant believes that the Respondent should have been aware of these secured loans and advances based on the CD's records such as ledger accounts and balance sheets, and the CoC did the same mistake while approving the Resolution Plan without informing to PRA's about such claims.

The Respondent contends that the Applicant's claim is time-barred due to failure to meet the Regulation 12 of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, and once a CoC-approved Resolution Plan is in place, new claims cannot be accepted. Further, the Respondent submitted that the Code doesn't require individual notifications to creditors, as the necessary regulations, including the Public Announcement, were followed and the Applicant has not proven the existence of any mortgage or security from the CD that would establish a charge in favor of the Applicant.



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NCLT's Observations: -

The AA placed reliance on the judgment pronounced by the Apex court in the case of *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors., 2021* whereby it was held that due adherence to the timelines provided in the Code and related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution and if a claim is not made within the stipulated time, the same cannot become part of the Information Memorandum to be prepared by the IRP.

The AA further stated that the Respondent can't be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the stipulated time and the extended time as permitted by Regulation 12. It was further observed that SRA should not be burdened with unresolved claims that arise after their Resolution Plan has been accepted, as this would introduce uncertainty regarding the amounts payable by the prospective resolution applicant taking over the CD's business.

Order/Judgement: The AA said that the Resolution Plan has already been approved by the CoC which is pending for approval with the AA. Therefore, admission of any claim at this stage would jeopardize the whole CIRP process.

Case Review: *IA Application Dismissed.*