



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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(November 13, 2023)

Vinay Kumar Singhal Resolution Professional for PG Advertising Pvt. Ltd. Vs. Mahesh Bajaj
Comp. App. (AT) (Ins) No. 645 of 2023
Date of NCLAT Judgement: October 10, 2023

Facts of the Case: -

The present Appeal is filed by the Resolution professional of PG Advertising Pvt. Ltd. 'CD' (hereinafter referred as 'Appellant') after being aggrieved by the order dated 03.05.23 passed by Adjudicating Authority.

The CIRP application u/s 7 of IBC, 2016 is filed by the Tulsi Nandan Kant Bansal in the capacity of financial creditors against CD, following this, the moratorium was imposed, and IRP was appointed.

During the pendency of the CIRP proceedings, Mahesh Bajaj filed an application in the capacity of operational creditor (hereinafter referred as 'Respondent') for issuance of directions to the RP of the Appellant to provide Information Memorandum and other relevant documents to him as he is a participant of CoC. After that The AA instructed the Appellant by an order dated 03.05.2023 to deliver a copy of the Information Memorandum as well as other documents considered in the meeting of CoC to the Respondent, irrespective of the fact that the Respondent is merely a participant and not a member of CoC. Aggrieved by the order, the Appellant filed an appeal in the Appellate Tribunal.

The Appellant submitted that the CoC comprises only financial creditors of the CD, and Operational Creditors are not considered members. As per Section 24(4) of the IBC, stating that Operational Creditors may attend the meeting but lack voting rights, the Appellant further said that as per Regulation 36(4) of CIRP Regulations, the RP must share the Information Memorandum with the members of the committee but there is no provision either in the IBC or Regulations for giving Information Memorandum to the participants in the meeting of the CoC.

The Respondent submitted that as per Regulation 21(2) and (3)(iii) of the CIRP Regulations it is essential to supply copies of all the documents which are relevant for the matter to be discussed and issues to be voted upon at the meetings and as per Regulation 24(2)(e) of the CIRP Regulations, the meeting cannot be convened without supplying an agenda with all the relevant material for the said meeting.



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NCLAT Observations: -

The Appellate Tribunal after observing submissions of both the parties said that the Respondent has admitted that he is only a 'Participant' and the Code and Regulations are totally silent about the supply of the Information Memorandum to the participant and it has to be inferred that the legislature has made a provision for providing a copy of the Information Memorandum to the member of the CoC and the Resolution Applicant but not to the participant of the meeting of the CoC like the present respondent. Therefore, the finding recorded by the AA that since there is no prohibition in the Code or the Regulations for providing the Information Memorandum to the Operational Creditor as a participant is totally erroneous and unsustainable.

Order/Judgement: The Appellate Tribunal set aside the impugned order dated 03.05.23 passed by AA and held that the Operational Creditor/Respondent being a participant in the meeting of the CoC has no right to seek a copy of the Information Memorandum.

Case Review: *Appeal Allowed.*