



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 28, 2023)

Fervent Synergies Ltd. Vs. Manish Jaju & Ors.
Company Appeal (AT) (Insolvency) No.1338 of 2023
Date of NCLAT Judgement: November 02, 2023

Facts of the Case: -

The present appeal is filled by M/s Fervent Synergies Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the order dated 19.07.23 passed by the Adjudicating Authority.

Sivana Reality Pvt. Ltd./CD launched the 'Samriddhi Garden' project, funded by a ₹130 crore term loan from LIC Housing Finance Ltd. (LICHFL), with the project mortgaged to LICHFL. The mortgage stipulated that any sale or third-party right required prior written consent or NOC from LICHFL.

On 09.08.2018, the Appellant and CD entered 10 separate agreements for the sale of flats in the project. The CD faced insolvency proceedings, and the Appellant filed a claim for 10 flats, initially being informed of its admission as a Financial Creditor (FC) by the Respondent. However, the Respondent later demanded to produce the required NOC for the 10 flats, which the appellant failed to submit. This led to the Appellant's rejection of claims on 17.06.2021. Subsequently, on 30.06.2021, the Respondent reinstated the Appellant's status as a FC belonging to a class of creditors.

The Resolution Plan divided Financial Creditors Class into two categories – 'Affected Homebuyers' and 'Unaffected Homebuyers' based on whether they had obtained or not obtained the NOC from LICHFL. Those without NOC were treated differently in the Plan. The Appellant objected to the Plan before the AA which rejected the application emphasizing that individual objections from homebuyers were impermissible since the Plan had been collectively approved by the Class.

The Appellant submitted that the Plan discriminates between homebuyers, who belong to one class of creditors and such classification between Affected and Unaffected homebuyers is erroneous and illegal. Furthermore, the Appellant argued, given their admitted claim and reliance on representations made by the Respondent is bound by the principle of *promissory estoppel* and cannot deny the claim.

The main issues raised before the Appellate Tribunal are: (i) Whether the categorization of the homebuyers in class as 'Affected' and 'Unaffected' homebuyers is violative of Section 30(2)(e) and the Resolution plan deserve to be set aside on this ground alone? (ii) The doctrine of *promissory estoppel* can be pressed in respect of a Resolution Plan approved by the CoC and submitted to the AA or not?



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NCLAT's Observations: -

The Appellate Tribunal clearly justified the Respondent's decision regarding the classification of the homebuyers into two groups and held that the Resolution Plan did not violate any provision of the IBC. The Appellate Tribunal placed its reliance on its previous judgment in the case of ***Sabari Reality Pvt. Ltd. vs. Sivana Realty Pvt. Ltd. & Ors. 2023***.

The Appellate Tribunal further stated that acceptance or admission of the claim of a Financial Creditor including homebuyers is one aspect of the scheme under the IBC. Subsequent steps in the IBC including the preparation of Resolution Plan are based on the list of creditors, admitted claims of the creditors etc. as per the scheme of the IBC, but the principle of *promissory estoppel* cannot be pressed against the Resolution Applicant, who submits Resolution Plan on the basis of relying on the Information Memorandum, the list of creditors and other aspect of the matter.

The Respondent has not extended any promise to the Appellant/FC's of the CD that the claim submitted by the FC, or any other creditor shall be accepted in toto. The mandatory contents of the Resolution Plan are laid down in the CIRP Regulations, 2016. If a Resolution Plan is compliant with the provision of Section 30, sub-section (2) of the IBC and the provisions of the Regulations, 2016, the Plan cannot be faulted on the ground of the *promissory estoppel*, which the Appellant is pressing against the Respondent, who has admitted the claim.

Order/Judgement: The Appellate Tribunal upheld the decision of AA and held that the doctrine of *promissory estoppel* can't be pressed in reference to the Resolution Plan which have been approved by the CoC in its commercial wisdom and submitted to the AA.

Case Review: *Appeal Dismissed.*