



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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(January 22, 2024)

Vishram Narayan Panchpor (RP of Blue Frog Media Pvt Ltd.)

Vs.

Committee of Creditors (Blue Frog Media Pvt Ltd.) & Anr.

Company Appeal (AT) (Insolvency) No 1489 of 2023 & IA No 5342 of 2023

Date of NCLAT Judgement: January 11, 2024

Facts of the Case:-

The present application was filed by the RP (hereinafter referred as 'Appellant') of the Blue Frog Media Pvt. Ltd. (hereinafter referred as 'CD') after being aggrieved by the AA's order of rejecting the resolution plan of Mr. Mahesh Mathai, Ex-Director of the CD (hereinafter referred as 'Respondent-2') on the ground that the Respondent-2 is not eligible to submit a resolution plan under Section 29A of the code.

The CD filed an application under Section 10 which was admitted on 19.05.2021 by the AA. The CoC by 91.86% vote share approved the resolution plan submitted by the Respondent-2. Accordingly, the Appellant filed an application IA No. 2828 of 2021 under Section 30(6) of the Code seeking approval of the resolution plan. The AA by impugned order rejected IA No. 2828 of 2021 holding that the Respondent No.2- is not eligible under Section 29A as he was one of the ex-promoter/directors of the CD. The AA took the view that Section 29A restricts those persons from submitting a resolution plan who could have an adverse effect on the entire CIRP.

The Appellant citing the judgement of the Supreme Court in *Hari Babu Thota vs. Shree Aashraya Infra-Con Ltd.* cited that the Respondent-2 is not covered by any of the clauses under which ineligibility is attached to promoter/ex-management. Section 29A does not make ineligible *ipso facto* all promoters and directors. Ineligibility is attached if they are ineligible under any of the clauses under Section 29A.

The issue raised before the Appellate Authority is that whether ex-promoter/directors are not eligible to submit a resolution plan under Section 29A if no disqualification is attached in any of the clauses under Section 29A.

NCLAT Observations: -

The Appellate Authority observed that a plain reading of Section 29A indicates that a person shall not be eligible to submit a plan if such person, or any other person acting jointly or in concert with such person is covered by any of the clauses mentioned from (a) to (g).



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The Appellate Authority held that the current case is not a case where it is pleaded or alleged that any of the clauses (a) to (g) are attracted with respect to Respondent No.2.

Citing the judgement of the Hon'ble Supreme Court in the *Hari Babu Thota (supra)*, the Appellate Authority held that in the present case none of the clauses of Section 29A are being pressed for ineligibility of Respondent-2/Successful Resolution Applicant. Ineligibility is being held only on the ground that Respondent-2/Successful Resolution Applicant was promoter of the Corporate Debtor till 2018 when he resigned.

The Appellate Authority held the view taken by the AA is not as per the true and correct interpretation of Section 29A as the mentioned section does not make per se Promoters and Directors ineligible to submit a plan unless they are ineligible under clauses (a) to (g).

Order/Judgement: The Appellate Authority held that AA has committed error in holding that the Respondent No.2/Successful Resolution Applicant is ineligible to submit a Resolution Plan and therefore the rejection of IA No.2828 of 2021 is unsustainable. The Appellate Authority set aside the AA's order dated 18.08.2023 and revived IA No.2828 before the AA to be heard and decided afresh in accordance with the law.

Case Review: The Appeal is disposed of accordingly.