



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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(March 04, 2024)

Mayank Goyal. Vs. G. Madhusudhan Rao & Ors. With Suresh More Vs. G. Madhusudhan Rao & Ors.

**Company Appeal (AT) (Insolvency) No. 147 & 148 of 2024 with No. 182 of 2024
NCLAT Judgement dated February 23, 2024.**

Facts of the Case: -

The present set of two appeals filed by Mr. Mayank Goyal in the capacity of prospective resolution applicant and Mr. Suresh More, (hereinafter referred as 'Appellants') after being aggrieved by the order dated 04.12.23 passed by the Adjudicating Authority.

The Bil Energy Systems Ltd./CD, was admitted into CIRP on 09.12.22, based on a Section 7 application filed by the State Bank of India (hereinafter referred as 'Respondent No. 2'). Initially, the IRP constituted CoC, with Respondent No. 2 as its sole member. Subsequently, the IRP was replaced by the present RP (hereinafter referred as 'Respondent No. 1'), following unanimous voting in the 3rd CoC meeting. In response to the 'Form G' published on 23.03.23, three Potential Resolution Applicants (PRAs) submitted Expressions of Interest (EOIs), including one from Mayank Goyal. However, in its 5th meeting, the CoC concluded that PRAs would not be able to submit any effective resolution plan and on 03.06.23, resolved to initiate the liquidation process of the CD. The AA approved IA No. 2947 of 2023, filed by the Respondent No. 1 seeking liquidation of the CD, and dismissed IA No. 2825 of 2023, filed by the appellant seeking to set aside the resolution pertaining to initiating liquidation of the CD. Aggrieved with the impugned orders Appellants preferred two separate appeals before the NCLAT.

The Appellants submitted that the failure on the part of Respondent No. 1 to perform his duty of taking charge of assets of the CD and tracing other assets cannot be a valid ground for recommending liquidation. Further, it was asserted that there was material irregularity in conduct of CIRP by Respondent No. 1, which was ignored by the AA.

The main issues before the Appellate Tribunal were:

- (i) Whether the IBC allows CoC to consider liquidation before inviting resolution plans?
- (ii) Whether there were valid reasons for the CoC to initiate liquidation in this case?
- (iii) Whether there were sufficient grounds for the AA to reject the CoC's recommendation for liquidation of the CD?



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NCLAT Observations: -

The Appellate Tribunal observed that the AA's findings regarding the IBC permitting the CoC to approve liquidation before taking up any resolution plan for consideration cannot be debunked by the Appellants as being dehors the statutory provisions. However, the decision's conformity with IBC provisions is subject to review by both the AA and this Appellate Tribunal, depending on the specifics of each case. It was further observed that despite numerous attempts by the IRP to engage the suspended management for the handover of assets, no cooperation was received. Consequently, the CoC, under its authority granted by Section 33(2) of the IBC, was justified in opting for liquidation of the CD.

The Appellate Tribunal further asserted that the Appellant's objection to the CoC's decision for liquidation lacks merit, given the CD's three-year inactivity prior to initiation of CIRP. Furthermore, the lack of essential information hindered creation of a proper Information Memorandum (IM). The CoC rightfully noted that the absence of necessary documents for making the prospect of a viable resolution plan unlikely. In the 5th meeting, the CoC unanimously decided on liquidation, aligning with Section 33(2) of the IBC. The AA acknowledged and endorsed the CoC's deliberations, adhering to statutory provisions. Since no grounds for judicial review were established under Section 61(4) of the IBC, the Appellant's objections hold no merit.

Order/Judgement: The Appellate Tribunal did not find any infirmity in the impugned order dated 04.12.23 passed by the AA. There is no ground to interfere with the impugned order.

Case Review: Both the appeals are dismissed. No costs.