



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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Mr. Kunwer Sachdev Vs. IDBI Bank & Ors.

**W.P.(C) 10599/2021 and CM APPLs. 32697/2021, 25107/2023, 61523/2023 and 62100/2023
High Court judgement dated February 12, 2024.**

Facts of the Case: -

The present writ petition was filed by Mr. Kunwer Sachdev (hereinafter referred as 'Petitioner') in the capacity of ex-Director of Su-Kam Power Systems Ltd./CD, seeking issuance of direction for developing framework/guidelines to ensure effective monitoring and functioning of the CoC. This writ petition was filed after the application for liquidation of the CD was approved by AA vide an order dated 27.03.19 and the same was upheld by the NCLAT as well as the Apex court.

The entire fulcrum of the dispute emanates from the insolvency process of the company called Su-kam which was initiated by the AA vide its order dated 05.04.18. Thereafter, an advertisement inviting EOI was published by the RP (Respondent No. 12) on 04.06.18. Further, the RP also issued the request for resolution plans on 19.07.18, pursuant to which resolution plans were invited in respect of the CD. Thereafter, various disputes arose in the CIRP of the CD like the trademark dispute of brand name "SUKAM", ineligibility of the petitioner's resolution plan as per Section 29A(h) of the IBC etc. As no eligible resolution plan could be evolved, the CoC in its meeting held on 23.01.19, decided to make another attempt to obtain a resolution plan for the CD, with 28.02.19 being the last date for the submission of the plans. On 19.03.19, at a meeting of the CoC, the RP, apprised the CoC of the financial position of the CD. At this meeting, the CoC was also informed by the RP that since no compliant Resolution Plan had been received, the RP would be filing an application seeking liquidation of CD before the AA on or at the expiry of the CD's CIRP. Accordingly, in view of the absence of any compliant resolution plan, the RP filed an application seeking for the liquidation of the CD under Section 33(1)(a) of the IBC before the AA on 27.03.2019 and the AA approved the liquidation of the CD.

The petitioner submitted that despite the company's initial valuation of ₹300 crores, the Committee of Creditors (CoC) significantly diminished its worth, leading to a mere ₹10 crores for Respondents 1-11 from the sale. They argue that the company's assets were valued at over ₹274 crores according to its balance sheet. Allegations of misconduct against the RP and liquidator (Respondent No: 13) prompted action by the IBBI. The petitioner asserts that this case exemplifies a misuse or neglect of power by the CoC, causing immense prejudice to the petitioner.



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High Court Observations: -

The Hon'ble High court underscores the repeated calls for a comprehensive code of conduct for the CoC, highlighted in the recommendations of the insolvency law committee's reports in 2020 and 2022. Recognizing its significant impact on CD's and stakeholders, the court emphasizes the need for fairness, transparency, and adherence to due process, including the Wednesbury principles of reasonableness. By placing its reliance on the judgment delivered by the Apex court in *Sashidhar v. Indian Overseas Bank*, the court asserted the importance of upholding CoC decisions within the confines of the law and the principles of natural justice. Prioritizing integrity, professionalism, and confidentiality, the Hon'ble high court stressed that adherence to these principles enhances the credibility and fairness of CoC decisions, ensuring trust in the outcomes of the CIRP under the IBC.

The Hon'ble high court underscores the paramount role of the CoC in the CIRP, likening its commercial wisdom to a guiding GPS for entire voyage CD's CIRP. It further observed, given the CoC's crucial role and the legislative protection of its commercial wisdom, there's a pressing need for a Code of Conduct to ensure the fulfilment of the IBC's objectives.

Order/Judgement: The High Court has partly allowed the petition and instructed the IBBI to establish a Code of Conduct/guidelines, aligning with the case's stance, principles mentioned earlier, and relevant factors. This should be done within three months from this judgment, ensuring the CoC's effective operation while preserving its commercial wisdom and the legislative intent of the IBC.

Case Review: The petition is disposed of, along with pending applications.