



# 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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(April 01, 2024)

**Mr. Girish Nalavade Vs. Bhrugesh Amin & Ors.**  
**Company Appeal (AT) (Insolvency) No. 1542 of 2023**  
**NCLAT Judgement dated March 19, 2024**

### **Facts of the Case: -**

The present appeal is filed by Mr. Girish Nalavade (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 06.10.23 passed by the Adjudicating Authority (AA).

The Appellant and other Homebuyers had purchased flats in the real estate project 'Nirmal Sports City' of Modella Textile Industries Ltd. /CD (hereinafter referred as Respondent 4) in 2012-13. ECL Finance Ltd. (ECLF), a part of the Edelweiss group (hereinafter referred as Respondent 2) provided a Term Loan to the Respondent 4 on 24.07.13. The Respondent No. 4 passed a resolution on 10.03.16 to issue unlisted, unrated, secured, redeemable, Non-Convertible Debentures (NCDs) through private placement to the Respondent 2. IDBI Trusteeship Services Ltd. acted as the Debenture Trustee, and a Debenture Trust Deed (DTD) was executed on 22.03.2016. Another loan was granted by ECLF to the Respondent 4 on 28.09.2016. The Respondent 4 passed another resolution on 02.11.17 for the issuance of NCDs through private placement to the Respondent 2, and another DTD was executed on 17.11.17. In 2017, the Respondent 4 entered into an Agreement with Godrej Properties Ltd., and relaunched the project as "Godrej Alive," offering Homebuyers the choice to continue with the project or exit with 9% compound interest. However, the project failed to materialize, leading to the initiation of CIRP on 04.05.2022. In the 12th CoC meeting, a Resolution Plan by Ashar Ventures and Ors. (hereinafter referred as Respondent No.3) was approved with 88.95% vote share. However, Homebuyers holding 11.05% vote share, voted against the Resolution Plan. The RP (hereinafter referred as Respondent No. 1) filed an I.A. No 2319 for approval of the Resolution Plan, while the Appellant, representing 77 Homebuyers, filed I.A. No. 2688/2023 seeking rejection of the plan. The AA dismissed the Appellant's application, leading to this present appeal.

### **NCLAT Observations: -**

The Appellate Tribunal, after observing the submissions of both parties, stated that it is settled law that once the CoC has approved the Resolution Plan by requisite majority and the same is in consonance with applicable provisions of law, and nothing has come to light to show that the RP had committed any material irregularities in the conduct of the CIRP proceedings, the same cannot be a subject matter of judicial review and modification.



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Moreover, considering that the resolution plan was already under implementation and all 77 Homebuyers, including the Appellant, have accepted the offer of 100% of their principal amount from the SRA, the Appellant, as a dissatisfied minority, must align with the majority's decision, as established in legal precedents like *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Ltd. and Ors. (2022)*

The Appellate Tribunal further emphasized that the intent, objective, and purpose of IBC being time-bound resolution during insolvency of the CD, it clearly does not provide any leeway or scope to dissatisfied individual Homebuyers in a minority like the present Appellant to override the commercial wisdom of the majority in the CoC.

**Order/Judgement:** The Appellate Tribunal didn't find any plausible ground or merit in the contention of the Appellant to reject the CoC approved Resolution Plan, which has since been approved by the AA. Any indulgence shown would amount to derailing the resolution process and setting the clock back, which the Appellate Tribunal cannot countenance.

**Case Review:** Appeal is dismissed.