IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016

SANJAY DAVE
Vs.
ANDHRA BANK LTD. & ORS.

Brief Facts

The Corporate Insolvency Resolution Process (CIRP) of Oracle Home Textiles Limited commenced on 9 August 2018. The appellant, who was the promoter/director of the Corporate Debtor and eligible to submit a resolution plan owing to the MSME status of the Corporate Debtor, submitted a Resolution Plan pursuant to the permission granted by the Adjudicating Authority. The Committee of Creditors (CoC) approved the Resolution Plan with a voting share of 99.90%.

Subsequently, the Resolution Professional issued a Letter of Intent (LoI), which expressly stated that it was subject to the outcome of pending applications filed by prospective resolution applicants before the NCLT. The appellant refused to accept the LoI, contending that it contained additional conditional terms, including assumption of liabilities arising from pending employee litigation. Despite repeated opportunities and issuance of fresh LoIs, the appellant neither accepted the LoI nor furnished the

Performance Bank Guarantee within the stipulated period.

Consequently, the Earnest Money Deposit (EMD) of ₹1 crore was forfeited in accordance with the Request for Resolution Plan (RFRP). As no valid Resolution Plan could be implemented within the CIRP period, the CoC resolved to liquidate the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016. The appellant challenged the forfeiture of EMD and the liquidation order before the NCLAT and subsequently before the Supreme Court.

Decision

The Supreme Court dismissed the appeals and upheld the decisions of the NCLT and NCLAT. The Court held that merely making the LoI subject to the outcome of pending judicial proceedings did not render it a conditional LoI. Since the appellant was fully aware of the pending litigation and had participated in CoC meetings where these issues were discussed, he was estopped from challenging the LoI after approval of his Resolution Plan.

The Court reiterated that once a Resolution Plan is approved by the CoC, it becomes binding upon the Successful Resolution Applicant, who cannot seek to renegotiate or withdraw from the plan. The Court further held that the forfeiture of the Earnest Money Deposit was valid as the appellant failed to accept the LoI and furnish the Performance Bank Guarantee within the prescribed timeline. It also affirmed that the CoC is empowered under Section 33(2) of the Code to resolve for liquidation before approval of the Resolution Plan by the Adjudicating Authority, and such commercial wisdom is ordinarily not subject to judicial review. The judgment reinforces the principles of finality, certainty, and time-bound resolution under the Insolvency and Bankruptcy Code.

Link of the Order

https://ibbi.gov.in/uploads/order/913c69792055e4cf3fd2938c772403fd.pdf