

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **Torrent Power Ltd. & Ors. Vs. Ashish Arjunker Rathi & Ors.**

### **Brief Facts**

The present appeals arose from the approval of a resolution plan in the Corporate Insolvency Resolution Process of SKS Power Generation (Chhattisgarh) Ltd., initiated upon an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Bank of Baroda. Pursuant to admission of the petition, the Interim Resolution Professional was appointed and later confirmed as the Resolution Professional. Expressions of Interest were invited, and multiple prospective resolution applicants, including Torrent Power Ltd., Vantage Point Asset Management Pte. Ltd., Jindal Power Ltd., and Sarda Energy and Minerals Ltd. (SEML), submitted their respective resolution plans.

Following a structured bidding and negotiation process governed by the Request for Resolution Plan and a Process Note, the Committee of Creditors conducted an inter-se bidding process and ultimately approved the resolution plan submitted by SEML with 100% voting share. The Resolution Professional accordingly filed an application for approval of the plan before the NCLT. Subsequently, unsuccessful resolution applicants filed interlocutory applications alleging material irregularities in the process, contending inter alia that SEML had been permitted to modify its commercial offer post conclusion of the bidding process by increasing its commitment towards bank guarantees and altering the structure of deferred payments, thereby vitiating the process.

The NCLT rejected these objections and approved the resolution plan, holding that no impermissible

modification had been made and that the commercial wisdom of the CoC could not be interfered with. Appeals preferred before the NCLAT were also dismissed, affirming the NCLT's findings. Aggrieved thereby, the unsuccessful resolution applicants approached the Supreme Court contending that the process suffered from material irregularity and that the CoC's decision was arbitrary and contrary to the objective of value maximisation.

## **Decision**

The Supreme Court dismissed the appeals and upheld the approval of the resolution plan, reiterating the primacy of the commercial wisdom of the Committee of Creditors. The Court held that no case of "material irregularity" within the meaning of Section 61(3) of the Code had been made out, particularly as the Resolution Professional had merely acted upon the instructions of the CoC in seeking clarifications from all resolution applicants. It was observed that such conduct could not be construed as an irregular exercise of power.

On merits, the Court found that the alleged enhancement of SEML's offer in respect of bank guarantees was misconceived. The resolution plan, from its inception, contemplated that the entire margin money of approximately Rs.180 crores would ultimately be made available for distribution to secured financial creditors. The clarification furnished by SEML merely explained the treatment of certain guarantees and ensured that issuing banks were not left unsecured during the interim period, without altering the financial outlay of the plan.

Similarly, with regard to the alleged conversion of deferred payments into upfront payments, the Court held that no modification of the commercial terms had occurred. The plan had always provided the CoC with an option to either receive the deferred amount over time or its discounted value upfront. The clarification only reaffirmed that the upfront amount represented the net present value of the deferred payments and did not enhance or vary the offer.

The Court further emphasised that the scope of judicial review under Sections 61 and 62 of the Code is limited and does not extend to re-evaluating the merits of a commercial decision taken by the CoC. In the absence of any violation of statutory provisions or demonstrable perversity, interference with concurrent findings of the NCLT and NCLAT was held to be unwarranted. Accordingly, the appeals were dismissed, and the resolution plan, having already been implemented, was allowed to stand.

## **Link of the Order**

<https://ibbi.gov.in/uploads/order/8cd1a6c4d9030c24a69e31bcff45cb98.pdf>

