

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr.

Brief Facts

In the present case, the Greater NOIDA Industrial Development entity (GNIDA), a statutory entity, acquired land to build an urban and industrial township. On October 28, 2010, one of the plots of property acquired by it was allocated to JNC Construction Ltd. (Corporate Debtor) by means of lease for 90 years with a premium payable in instalments. The corporate debtor failed to pay the premium and was presented with a demand-cum-cancellation notice. A CIRP was initiated against the Corporate Debtor vide order dated May 30, 2019. GNIDA submitted a claim for Rs. 43,40,31,951/- under the category of Financial Creditor. The RP considered GNIDA as an operational creditor and requested that it file a claim in the Operational Creditor category.

The GNIDA did not file a new claim, and the Resolution Plan was authorised by the NCLT on August 4, 2020. GNIDA filed an application under No. 344/2021 challenging its position as an operating creditor,

as well as IA 1380/2021 seeking the recall of the ruling approving the Resolution Plan. The NCLT denied the GNIDA's applications, and the appeal filed before the NCLAT was likewise denied.

Decision

The Bench observed that a Court or Tribunal has the inherent authority to recall an order to guarantee the goals of justice or to avoid misuse of the Court's process. The IBC and its regulations do not preclude the exercise of such inherent power. Section 60 (5) (c) of the IBC authorises the NCLT to entertain or resolve any questions of priority, law, or facts arising from or in relation to the Corporate Debtor's or corporate person's insolvency resolution or liquidation proceedings under the IBC. Rule 11 of the NCLT Rules retains the Tribunal's inherent power. The court stated that even without an authorising provision, a Tribunal has the authority to recall. The power to recall must be utilised sparingly and on restricted reasons, such as where the order is without jurisdiction, the party has not been served with notice, or the order was obtained via misrepresentation of facts or fraud in court.

The Supreme Court ruled that the GNIDA's application for recall was maintainable because it was not notified of the CoC meeting, the action was ex parte, the RP made a deception, and the NCLT erred in accepting the Resolution Plan.

The Supreme Court ruled that the Resolution Plan did not meet the requirements of Section 30(2) of the IBC in conjunction with Regulations 37 and 38 of the CIRP Regulations, 2016. It was undisputed that a claim for Rs. 43,40,31,951/- had been submitted. GNIDA was recommended to file claim Form B under the category of Operational Creditor rather than Form C for Financial Creditors. Assuming GNIDA did not follow the instructions, once the claim was lodged with documentation, it could not have been ignored. The form used to submit a claim is directory. The assertion must be supported by proof. Resolution Plan failed not only to acknowledge the claim, but also to indicate the correct amount owing and payable. The Resolution Plan indicates a figure of Rs. 13,47,40,819/-, although the GNIDA amount due was Rs. 43,40,31,951/-. These issues have not been addressed by NCLT or NCLAT.

The Resolution Plan also did not include GNIDA as a secured creditor, despite the fact that a charge was imposed in its favour under Section 13A of the 1976 Act. The failure to place a secured creditor in the secured creditor category has had a negative impact on GNIDA's interests.

Regulation 38 (3) of the CIRP Regulations, 2016 states that the Resolution Plan must demonstrate feasibility and viability, as well as include provisions for relevant approvals. When the land of the Corporate Debtor belongs to a statutory entity, a closer analysis of the Resolution Plan's feasibility is required. This topic was likewise not discussed by the NCLT or NCLAT.

The Supreme Court granted the appeal and returned the Resolution Plan to the CoC for resubmission

after it met the Code's requirements.

Link of the Order

<https://ibbi.gov.in/uploads/order/cc907a5e0d9f38c34f30369f765c82f1.pdf>



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