IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



MR. BABU MANOHARAN JAIKUMAR CHRISTHURAJAN

vs.

MR. UMESH GARG, LIQUIDATOR OF JEPPIAAR CEMENTS PVT. LTD. & ORS.

Brief Facts

M/s. Jeppiaar Power Corporation Ltd. availed a term loan of Rs. 92.50 crores from Indian Bank in 2013, and a further loan of Rs. 48.50 crores in 2016, for both of which M/s. Jeppiaar Cements Pvt. Ltd. (the Corporate Debtor) stood as corporate guarantor. On the principal borrower's default, Indian Bank invoked Section 7 of the IBC against the Corporate Debtor, and CIRP commenced on 10.10.2019. The Committee of Creditors (CoC) comprised Indian Bank (96.65% voting share) and HDFC Bank (3.35%), and retained the IRP as Resolution Professional (RP).

The 180-day CIRP period, due to expire on 07.04.2020, was sought to be extended by 90 days (IA 321/2020), and later by exclusion of 737 COVID-affected days (IA 656/2022); both applications came up before the Adjudicating Authority only on 15.07.2022. Meanwhile, on 30.03.2022, Indian Bank sanctioned a One-Time Settlement (OTS) to the directors of the principal borrower, granting time till

30.06.2022, under which the appellant and other guarantors paid Rs. 66.75 crores, with the balance outstanding.

At the 11th CoC meeting on 13.06.2022, a resolution for liquidation of the Corporate Debtor was put to vote (16.06.2022 to 04.07.2022), but neither CoC member voted in its favour. The RP then moved an application under Section 60(5) seeking directions, but two days later informed the CoC by e-mail that the Registry of the Tribunal had asked him to file under Section 33(1) instead. Indian Bank responded, "Please proceed in accordance with the provisions of the IBC", following which the RP filed IA 800/2022 under Section 33(1) for liquidation, disclosing the pending OTS. The Adjudicating Authority allowed this application and ordered liquidation on 26.08.2022.

Curiously, within days of instructing the RP to act per the Code, Indian Bank extended the OTS compliance deadline to 30.09.2022, and after the liquidation order, on 15.09.2022, allowed the personal guarantors to complete the OTS and issued a No-Objection Certificate. Indian Bank itself then filed IA 512/2023 under Section 12A for withdrawal of CIRP, which was dismissed on 20.04.2023 since no RP remained in office following liquidation. The suspended directors of the Corporate Debtor appealed the liquidation order to the NCLAT.

Decision

The NCLAT, Chennai Bench, allowed the appeal and set aside the liquidation order dated 26.08.2022. It held that the RP's decision to file under Section 33(1), abandoning his originally intended Section 60(5) application, was neither independent nor objective, since he acted on the Registry's advice and a private communication with a single CoC member (Indian Bank) outside a duly convened CoC meeting - a course that offended the statutory design of the Code.

The Tribunal held that Section 12A (withdrawal on settlement) is as much a mode of insolvency resolution as the resolution-plan route under Section 31, and that an RP owes a duty to seek extension of the CIRP period (up to the 330-day outer limit under Section 12(3)) to enable a Section 12A exit, rather than precipitating liquidation where settlement is underway. On the facts, since the financial creditors' dues stood substantially settled through the OTS, liquidating an otherwise solvent company merely to discharge a residual operational debt would run contrary to the Code's object of preserving companies as going concerns.

Distinguishing Asha Chopra & Ors. Vs. M/s. Hind Motors India Ltd. (relied upon by the Liquidator) on facts - since reversal there was sought years into liquidation, whereas here the OTS payments ran parallel to the liquidation proceedings - the Tribunal reiterated that liquidation is a remedy of last resort (Swiss Ribbons Pvt. Ltd. Vs. UOI) and that the CIRP timeline is directory, not mandatory.

Invoking its interpretative and purposive role, the Tribunal held that where more than one route exists to resolve an insolvency-condition, fairness must guide the choice.

Accordingly, the Tribunal set aside the order of liquidation, restored the CIRP, and directed the Resolution Professional to explore the Section 12A withdrawal route. All pending interlocutory applications were closed, with no order as to costs.

Link of the Order

https://ibbi.gov.in/uploads/order/ac7b5c72e061cb9f6665a05bcca09041.pdf