

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Abhishek Singh Vs. Huhtamaki PPL Ltd. & Anr.

Brief Facts

In the present case, Huhtamaki PPL Ltd. ("Operational Creditor") filed a suit with the National Company Law Tribunal ("NCLT") in Ahmedabad for an unpaid debt against Manpasand Beverages Ltd. ("Corporate Debtor"). The NCLT acknowledged the Section 9 petition and ordered the Corporate Debtor to participate in CIRP (the "Admission Order"). After that, before the CoC was established, an agreement between the Operational Creditor and the Corporate Debtor was reached, and Abhishek Singh, a Director of the Corporate Debtor who had been suspended, dutifully paid the agreed-upon sum. The Interim Resolution Professional of the corporate debtor filed an application under Regulation 30A of the IBBI Regulations before the NCLT seeking the withdrawal of the CIRP against the corporate debtor after receiving the settlement sum and following the operational creditor's application under Section 12A of the IBC.

The Withdrawal Application was, however, denied by the NCLT for several reasons, including the following:

(a) the Appellant paid the Operational Creditor from the Corporate Debtor's account in violation of the moratorium;

(b) the Withdrawal Application would negatively impact the rights of 35 creditors who had each filed a claim against the Corporate Debtor; and,

(c) Regulation 30A of the IBBI Regulations was not binding on the NCLT.

The Appellant appealed the Impugned Order to the Supreme Court on the grounds that withdrawal of proceedings is permitted under Section 12A of the IBC, Regulation 30A of the IBBI Regulations, and Rule 11 of the NCLT Rules, 2016, and the NCLT made a grave legal error in concluding that Regulation 30A of the IBBI Regulations was not binding on it. The IRP and other corporate debtor creditors submitted intervention requests and objected to the current appeal, seeking to uphold, among other things, the conclusions in the impugned order.

Decision

The apex court allowed the appeal and observed that while Section 12A of the IBC expressly forbids considering petitions for withdrawal before the creation of the CoC, it allows permitting withdrawal of applications admitted under Sections 7, 9, and 10 of the IBC with the permission of 90% of the CoC's voting members.

Despite the IBC's superior status, the IBBI Rules are binding on the NCLT. As a result, the NCLT erred when it determined that IBBI Regulation 30A does not have a binding effect.

Regulation 30A of the IBBI Regulations was changed in response to the ruling in *Swiss Ribbons (P) Ltd. v. Union of India* to permit applications for the withdrawal of CIRP to be considered even prior to the establishment of CoC. Section 12A of the IBC does not contradict Regulation 30 of the IBBI Regulations, and the same only advances the cause stated in Section 12A of the IBC.

The court further observed that even before the CoC was established, the NCLT had the authority to accept or reject a request to remove the CIRP under Rule 11 of the NCLT Regulations, 2016. Even for handling the claim for expenses of the IRP, Regulation 30A of the IBBI Regulations provide a thorough framework.

Also, if the settlement reached by the Corporate Debtor and Operation Creditor in the current case is accepted and the proceedings are allowed to be terminated, the other creditors of the Corporate Debtor would not have their independent rights against the Corporate Debtor negatively affected.

Given the foregoing, the Supreme Court annulled the impugned order and granted the withdrawal request. The Supreme Court made it clear that its comments wouldn't have an impact on the other creditors, who would be able to present their independent claims in the appropriate proceedings that would be handled in accordance with the law.

[Link of the Order](#)

<https://ibbi.gov.in/uploads/order/04d5c8ffdebf585cb5ca21a9227e86a7.pdf>



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