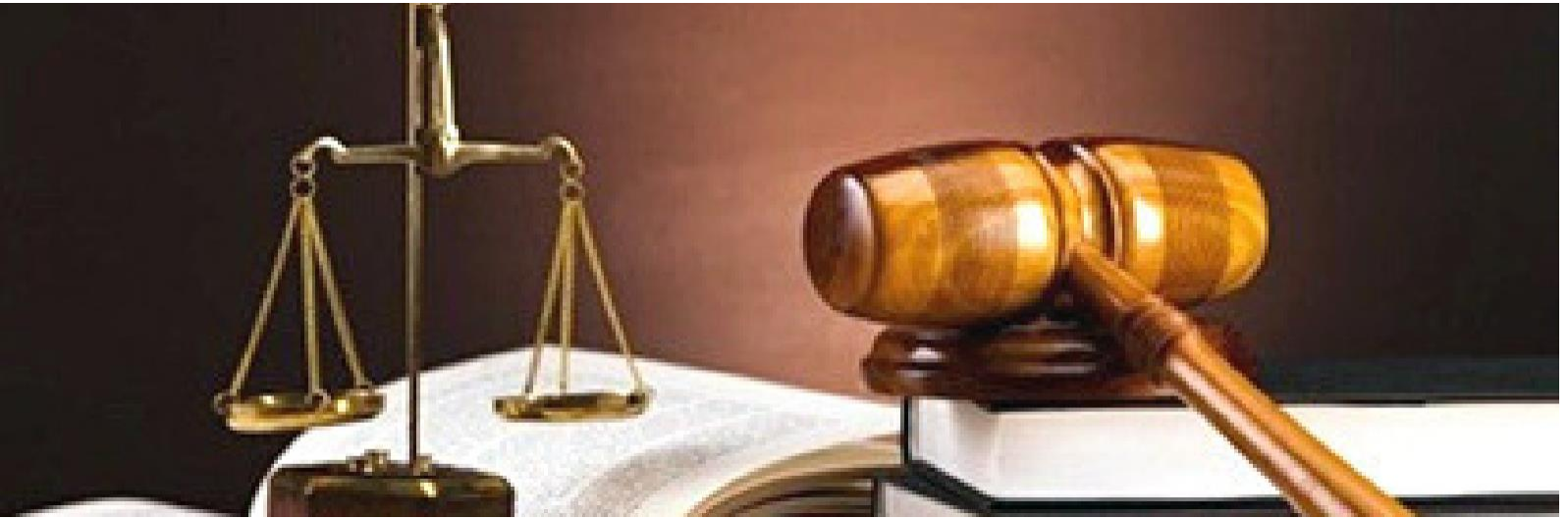


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Kalparaj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr.

Brief Facts

The appeal in present matter was filed by the successful resolution applicant against the order of the NCLAT which had annulled the decision of CoC to accept a resolution plan of the applicant when challenged by the respondent on the grounds that the plan of the successful resolution applicant was accepted beyond the time period set under the timeline of CIRP.

Decision

Supreme Court observed the following:

- I. It was reinstated that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by IBC. There is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. The opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. The legislature has consciously not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the AA and that the decision of CoC’s ‘commercial wisdom’ is made non justiciable. (Para 141)

- II. Appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same. (Para 149)
- III. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of IBC. (Para 155)

Link of the Order

<https://ibbi.gov.in/uploads/order/09d6ec71f2fdefd0e1011ae0c57e3e38.pdf>



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