

IBC DOSSIER

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Indiabulls Asset Reconstruction Company Limited Vs. Ram Kishore Arora & Ors.

Brief Facts

In the present case, the corporate debtor's financial creditors included Union Bank of India and Indiabulls Asset Reconstruction Company Ltd. The National Company Law Appellate Tribunal (NCLAT) accepted a request made in accordance with Section 7 of the Insolvency and Bankruptcy Code, 2016, and then issued a number of directives that effectively changed how corporate bankruptcy resolution was conducted.

The "project-wise insolvency resolution process" was only applicable to one project, "Eco Village-II" of the corporate debtor, who was engaged in the real estate business and had a number of active projects. Another appeal filed by Assets and Care Reconstruction Ltd., a corporate guarantee beneficiary, contested the NCLAT's directive to the IRP to schedule a meeting of only those financial institutions that had extended loans to the corporate debtor prior to the term sheet's completion.

Decision

"We are not inclined to alter the directions in the order impugned as regards the projects other than Eco Village-II," the apex court stated in the present case. The court did not interfere with those directions in relation to the Eco Village-II project, as the CoC was mandated by the Appellate Tribunal in the impugned order dated 10.06.2022. Also, the court directed that all the process beyond voting on the resolution plan was to be carried out with specific orders from the Court.

The Court declared that the impugned order is permitted to be in effect subject to the final orders which are to be made in the appeals and, of course, subject to the modification that the Eco Village-II project's process beyond voting on the resolution plan shall wait for additional orders. The interim direction dated 27.01.2023 in these matters was modified in the manner that the NCLAT can deal with the offers alleged to have been received and pass an appropriate order thereon, but, the entire process shall remain subject to the orders to be passed in these appeals. The Court noted that no temporary relief or interim arrangement is now thought to be necessary in the case of Civil Appeal No. 1975 of 2023.

"Infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP," the two-judge bench of Justice Dinesh Maheshwari and Justice Sanjay Kumar stated. It is likely to affect those ongoing projects and cause enormous hardship for the home buyers while throwing every project into a state of uncertainty if, at this point, on the arguments of the appellants, CoC is ordered to be formed for the corporate debtor as a whole in the displacement of the directions of the Appellate Tribunal.

The Bench further noted that giving any temporary order establishing the CoC in reference to the corporate debtor as a whole is likely to result in more hardship, which may result in irreparable harm to the homebuyers. The Court made it clear that further interlocutory applications that are still ongoing are free to be mentioned by the parties if they are advised to do so and if it is required.

Link of the Order

<https://ibbi.gov.in/uploads/order/c06af59a186aa3c950a56ee60c845a9e.pdf>



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