

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **BIMALESH BHARDWAJ & Others Vs. VALUE INFRATECH INDIA PVT LTD & Others**

### **Brief Facts**

The present appeal has been filed by the Appellants aggrieved by the order of the Adjudicating Authority (NCLT, New Delhi) for liquidation of the Corporate Debtor (Value Infratech India Pvt. Ltd. 'Respondent No. 1') under Section 61 of the IBC, 2016.

The Appellants, who are homebuyers in the project 'SKYWALK RNE' being developed by Corporate Debtor have stated that the Resolution Professional 'RP' has clubbed the claims of Respondent No.1 to 3 amounting to Rs.30.70 crores along with compound interest @ 24%, thereby giving Respondent No. 4 (Capri Global Capital Limited) undue advantage of much higher voting share than is permissible, in the constitution of CoC. Further, the CoC in its second meeting had decided for liquidation of CD, despite objection put forth by Authorized Representative 'AR' of the homebuyers.

In accordance with the wish of Respondent No. 4, and in undue haste, the RP submitted a proposal for liquidation of Corporate Debtor before the CoC in its second meeting and as it was given highly inflated voting rights, the decision for liquidation of the Corporate Debtor was approved in the COC meeting. Hence, the Appellants have claimed this decision illegal on two pertinent issues, Whether the CoC was constituted by the Resolution Professional in accordance with IBC provisions? and whether the recommendation for liquidation of Corporate Debtor was taken by the CoC in contravention of IBC provisions?

## **Decision**

The Appellate Tribunal was of the view in the present case, that the information memorandum was not prepared with full and correct details of assets and liabilities of the Corporate Debtor. The RP also did not pursue the application filed u/s 19(2). As a result, the CoC decided to abandon the step of inviting of EOI for Resolution Plan. Thereafter in undue haste, the CoC decided to go for liquidation of the Corporate Debtor.

The decisions of CoC were a blotted one, since it was taken in the CoC, in which Respondent No. 4 was given much inflated voting right resulting in majority share of voting rights in CoC which is *ab-initio illegal*. Further it was found surprising as to how RP could prepare an information memorandum without getting access to the records and documents of the Corporate Debtor. It found that the CoC was not constituted in accordance with the provisions of IBC and the CIRP was not pursued with fairness and due diligence by the RP and the resolution for liquidation of the Corporate Debtor was taken in a meeting with an improper voting share and taken in unseemly haste.

The NCLAT in view of the above directed as follows in the Present Appeal: - The CoC as constituted in the CIRP of the Corporate Debtor was not in accordance with provisions of IBC, therefore its constitution is quashed.

The claims of various financial creditors including home buyers should be appropriately fixed, keeping in view the order of this Tribunal in CA (AT) (Ins) 29 of 2020.

The IA for exclusion of time spent in pursuing the application before the Adjudicating Authority under sections 19(2) and 21-A of the IBC should be preferred before the Adjudicating Authority for appropriate order. Further, it directed Adjudicating Authority to replace the RP with a suitable one, as the action of the RP in this matter caused prejudice to homebuyers and directed IBBI to investigate the conduct of the RP in observing various provisions of IBC and take appropriate action.

## **Link of the Order**

[1778f13a497e5ad1e39556d224288483.pdf \(ibbi.gov.in\)](https://ibbi.gov.in/1778f13a497e5ad1e39556d224288483.pdf)



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