

IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



RAJIVE KAUL VS. VINOD KUMAR KOTHARI & ORS. COMPANY APPEAL (AT) (INS) NO.44 OF 2020

Brief Facts

NICCO Corporation Limited (“NICCO”) was admitted under corporate insolvency resolution process on 18th January 2017 under Section 10 of IBC,2016. NICCO holds 25% of the shares in NICCO Parks (i.e 1,17,00,000 shares) and Resorts Private Limited (“NICCO Parks”) and also pursuant to its Article of Association, NICCO has power to nominate director on the board of NICCO Parks. NICCO is undergoing liquidation under the provisions of IBC,2016 since 17th October 2017.

NICCO Parks was incorporated on 17th March 1989 and on 23rd February 1990 was converted into a ‘Joint Sector Undertaking’ between NICCO and two State-Owned Corporations (West Bengal Tourism Development Corporation Limited and West Bengal Industrial Development Corporation Limited) via Joint Sector Agreement. Pursuant to this shareholding of NICCO Parks is owned as 25% by NICCO, 26% by two State-Owned Corporations and remaining by public and also NICCO as well as of two State-Owned Corporations got right to nominate three directors each on the Board of NICCO Parks.

NICCO nominated Mr. Rajiv Kaul (Promoter of NICCO) as one of the First Directors on the Board of NICCO Parks. The ground of Appeal in the underlying case lies against the order of the NCLT, Kolkata Bench dated 17th October, 2017 pursuant to which directors including where Mr. Rajive Kaul (“Appellant”) has been ordered to vacate the office as ‘Nominee Directors’ of NICCO. This particular direction was issued after the Appellant has been appointed as a director in the individual capacity on the Board of NICCO Parks by its shareholders in accordance with the provisions of the Companies Act,2013.



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA (IPA ICAI)**

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Decision

Hon'ble NCLAT held that a company undergoing liquidation acts through the 'Liquidator' and the 'Liquidator' steps into the shoes of the Board of the Directors of the Company. However, the property of the Company forming part of Liquidation still remain vested in the Company.

Therefore, promoters and directors of NICCO who were appointed as nominees of NICCO on the Board of NICCO Parks who were reluctant to vacate their office, on account of ineligibility provided under Section 29A of the IBC,2016 should not be permitted to derive any benefit during the liquidation of NICCO. Section 238 of IBC,2016 has an overriding effect of other laws and maximisation of value of liquidation estate can only be certain if the said shares of Nicco Park as held by NICCO together with the class rights are considered as part of the liquidation estate.

Further, NCLAT held that since the appellant had acted against the Liquidator, the impugned orders passed by the NCLT, Kolkata Bench in discharging their 'Nominee Directors' position w.e.f. 17th October 2017 is free from legal flaws. Also Liquidator is armed with requisite powers to remove the 'Nominee Directors' of the corporate debtor during liquidation.

Link of the Order

<https://ibbi.gov.in/uploads/order/1679091c5a880faf6fb5e6087eb1b2dc.pdf>

