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CHATTISGARH DISTILLERIES VS. DUSHYANT DAVE AND ORSCOMPANY APPEAL (AT) (INS) NO. 461 OF 2019

Brief Facts

Corporate Insolvency Resolution Process against Anand Distilleries Pvt Ltd. (“Corporate Debtor”) was admitted u/s 7 of IBC,2016 vide order dated 14th February 2018. The resolution plan submitted by the Resolution applicant Dera Finvest Pvt Ltd was approved by 98.72% of the COC and thereafter the resolution plan was placed before the Adjudicating Authority (“AA”) for approval.

The erstwhile promoter and director of the Corporate Debtor objected the resolution plan on the ground that the successful resolution applicant is ineligible under Section 29A of IBC,2016 as the license approved in favour of the corporate debtor cannot be transferred to any other entity as per the provisions of State Excise Act and this would frustrate the purpose of the resolution applicant.

Appellant Chhatisgarh Distilleries Ltd. filed an application under section 60(5) of IBC,2016 before the AA seeking directions to submit its resolution plan (with better value in comparison to previous resolution applicant) for consideration of the resolution professional and COC under Section 30(3) of IBC,2016.

AA rejected the application on two grounds: First once the plan is submitted before the Adjudicating Authority then the CIRP period stopped running and secondly COC or RP has not sought any relief to recall the approved resolution plan and for allowing them to reconsider the approved resolution plan along with the new resolution plan offering better value. Accordingly, Appellant preferred an appeal before NCLAT.



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Decision

While deciding the matter, NCLAT referred the order passed in the matter of Essar Steel India Ltd. Vs. Satish Gupta & Ors.; where it was held that the decision of Committee of Creditor is purely Commercial and cannot be adjudicated by AA.NCLAT held that the AA cannot direct the CoC to consider the second Resolution plan submitted before the Authority although the second Resolution Applicant is ready to invest more amount in comparison to the first Resolution Applicant.

Therefore, AA is well within its jurisdiction while rejecting the application of Appellant. Moreover the appeal lacks the ground provided u/s 61(3) of IBC,2016 for maintaining the appeal. The AA while considering the application has elaborately assigned the reasons for rejecting the application and we are in agreement with the order of the AA.

Link to the Order

<https://ibbi.gov.in//uploads/order/42e4e9efd0770c890ea32317db9b9f37.pdf>

