

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



EDELWEISS ASSET RECONSTRUCTION COMPANY LTD.

VS.

PETER BECK AND PETER VERMOEGENSVERWALTUNG LTD. & ANR

Brief Facts

The present appeal arises from the order of the NCLT in the matter of Edelweiss Asset Reconstruction Company Ltd. (Edelweiss) Vs. Peter Beck and Peter Vermoegensverwaltung Ltd. and Anr. (Peter Group) and Company Appeal AT 169 of 2021 filed by the State Bank of India, authorized by other financial creditors to file the appeal on their behalf.

The appeal was filed against the order of the Adjudicating Authority, providing an extra period of two weeks to Peter Group, the successful Resolution Applicant Peter Beck and Peter Vermoegensverwaltung Ltd. to deposit Rs. 10 crores. In this matter, Adjudicating Authority vide an order 28 February 2018 approved the Resolution Plan of Peter Group Peter Beck and Peter Vermoegensverwaltung Ltd. to takeover Sharon Biomedicine Ltd. (Corporate Debtor). This was also approved by the Supreme Court. Alleging failure of the Peter Group to implement the Resolution Plan as per its provisions, the Appellant approached Adjudicating Authority demanding that CIRP should be re-initiated along with reinstating the previous Resolution Professional and 90 days of extra period should be given to invite Expressions of Interest (EoI) for resolution plans.

The Counsel for the State Bank of India stated that when asked to renew the Bank Guarantee, to the monitoring agency claiming that Rs. 10 crores, which was deposited in Abhyudaya Cooperative Bank Limited, was in respect of share application money and sought its return as per applicable laws in respect of the share application money.

Decision

NCLAT relied on the submission of the Peter Group that the CoC agreed to infuse funds amounting to Rs. 10 crores in the Corporate Debtor in the lieu of bank guarantee and based on this agreement it infused Rs. 10 crores in the Corporate Debtor before the expiry of the bank guarantee and honor its commitment and this amount remains with the Corporate Debtor till date. The Successful Resolution Applicant has claimed to be unsecured Financial Creditor of the Corporate Debtor, and therefore has interest in maintaining the Corporate Debtor as a going concern.

NCLAT stated that the main hindrance in implementation of the approved resolution plan was submission of a proper bank guarantee of Rs. 10 crores and other payments and actions that had to be taken from zero date in accordance with the approved resolution plan. Thus, the NCLAT believed it would serve the interests of justice if the Corporate Debtor was not sent into liquidation, but its insolvency was resolved so that it continued to be a going concern as that would be in the interest of the Corporate Debtor's stakeholders and creditors.

The Appellate Authority partially modified the order of the Adjudicating Authority and directed that an enforceable bank guarantee of Rs. 10 crores should be submitted by the Successful Resolution Applicant within 30 days of this order. If the bank guarantee of Rs. 10 crores have already been deposited, that amount will be either adjusted against the pending amounts to be paid by the Successful Resolution Applicant or refunded to him within a period of 30 days. The Appeals are disposed of as indicated above.

Link of the Order

<https://ibbi.gov.in/uploads/order/3b0eace9e891464272cf44a491c08e2a.pdf>



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**