

IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



S. RAJENDRAN, RESOLUTION PROFESSIONAL VS. S. MUKANCHAND BOTHRA AND ORS. COMPANY APPEAL (AT) (INSOLVENCY) NO. 844 OF 2019

Brief Facts

This Appeal emanates from the Order dated 11th October 2019 passed by NCLT, Chennai Bench whereby the Adjudicating Authority has issued direction for publications in the newspaper as prescribed in the Order, i.e. Hindu (English newspaper) in All India Edition and vernacular Dinamalar in Tamil Nadu Edition. The Appellant contends that their father Late Mr S. Mukanchand Bothra being a Financial Creditor filed a claim for Rs.15 Crores against PRC International Hotels Private Limited undergoing corporate insolvency resolution process before NCLT, Chennai Bench.

During the pendency of this petition, Mr Bothra expired and the Appellants were impleaded as their legal heirs. After the approval of the resolution plan on 27th August 2019 Mr. Bothra was given a sum of Rs 4.12 Crores out of the actual claim size of Rs 15 Crores. Later on the Appellant approached the RP seeking to know the procedure of receiving the money.

Accordingly RP advised for a copy of the will, probate order, succession certificate etc. and also asked to get the direction of NCLT to release the money. Accordingly the Appellant approached NCLT and matter was decided vide order dated 26th September 2019. Applicant further alleged that the Resolution Professional submitted a Memo, dated 04th October 2019 before the Adjudicating Authority with all false information. After the transfer of the then Judicial Member to Delhi, the new bench of the NCLT modified the earlier Order passed by the NCLT, Chennai bench in this regard.



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

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In contrast, review or modification is not permissible under IBC. Therefore, the Appellant has challenged the Order of the Adjudicating Authority. The Appeal has been filed mainly on the ground that the Adjudicating Authority has no power to review its Order. The Adjudicating Authority cannot review the earlier Order or reopen the case unless it appears that there is an arithmetical error apparent in the previous Order

Decision

In the said matter, NCLAT held that once the resolution plan becomes final and the Adjudicating Authority has substituted the names of the appellants as legal heirs of late Mr. Bothra. Thereafter, any demand for a succession certificate, Probate order at this stage is without any basis. Since the approved resolution plan is binding on all the stakeholders. Therefore the resolution professional has no right to again raise the issue of succession from the appellants at the time of distribution of amount.

It is contended that the Appellants have not complied with the Order of the Adjudicating Authority. Therefore, the Order dated 11th October 2019 cannot be treated as recall, review or modification of earlier Order. It is further said that the Adjudicating Authority has exercised its powers under Rule 11 of the NCLT Rule. It is thus clear that the Appellants are entitled to the share allotted to Late Mr. Bothra. No further proof of succession is needed by the Resolution Professional from the legal heirs, whose names had been substituted in place of Mr. Bothra. Thus, the Appeal deserves to be allowed.

Link to the Order

<https://ibbi.gov.in/uploads/order/2020-06-16-101614-2vcju-c9f0f895fb98ab9159f51fd0297e236d.pdf>

