

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Mr. Ankur Narang & Ors. Vs. Mr. Nilesh Sharma

Brief Facts

In the present case, the current Appellants were a group of 25 petitioners, each of whom had been assigned a residential flat in a project called Canary Greens in Gurugram (hereinafter referred to as the "Project"). Today Homes and Infrastructure Pvt. Ltd. - Corporate Debtor - was the developer of the aforementioned project. Because the Corporate Debtor did not provide possession of the flats within the prescribed time frame, the Appellants filed a complaint with the National Consumer Disputes Redressal Commission ("NCDRC"), and the NCDRC ordered on 31.01.2017 that the Corporate Debtor refund the entire amount received from each of the complainants, including Service Tax and VAT, as well as compensation in the form of simple interest @ 10% p.a. and Rs. 10,000/- as damages. The NCDRC had resolved all of the complaints with these orders.

The applicants filed their claim after the Corporate Debtor was admitted to CIRP. The Resolution

Professional ("RP") voiced several issues about the calculation of their claims and urged them to alter their claims, which prompted the Appellants to file IA Nos. 4059/2020 and 4914/2020 before the Adjudicating Authority. Because the RP later accepted their full claims, both IAs were ruled infructuous. The claim submitted to the RP reportedly solely concerned the principal amount yet to be collected from the Corporate Debtor. To move the CIRP process along, the RP solicited resolution plans.

The resolution plan was adopted by the Committee of Creditors ("CoC") with a 96.93% vote share after the RP submitted the proposals received from the Resolution Applicants to the CoC. Notably, the Adjudicating Authority had yet to approve the resolution plan. In the meantime, the Appellants who were dissatisfied with the settlement plan filed IA No. 4171/2021 with the Adjudicating Authority, disputing the resolution plan as approved by the CoC. The Adjudicating Authority dismissed the stated IA in the impugned ruling dated 01.08.2023, which is the subject of the current appeal.

The Appellants had voiced their concerns with the Authorised Representative about various elements in the resolution plan, particularly clause 9. The claim was made that the resolution plan unjustly deducts payment of compensation/interest from their principal amount. Thus, because the plan was contingent on the payments to the Appellants, and thus these terms in the resolution plan were detrimental and discriminatory to their interests, the CoC acted in violation of Section 30(2)(e) of the IBC by approving such a resolution plan.

Decision

The court noted that the Appellants were allowed to address their concerns to the RP as well as the Authorized Representative of the Home Buyers. Despite first expressing doubts, the RP did not hesitate to accept their assertions. The RP also assisted the Appellants in routing their objections to the Authorised Representative, who gave them a window of opportunity to discuss their concerns with the resolution applicants. Also, the RP and the Authorized Representative did not fail to discharge their responsibilities, and no cause of action exists on this basis.

The court further noted that it is undeniable that the Appellants represent a total of 25 home purchasers with admitted claims of roughly Rs. 14 crores, as opposed to over 1500 home buyers in the abovementioned project with claims totaling Rs. 1110.20 crores. The CoC admittedly adopted the resolution plan with a 96.93% voting share.

Moreover, when the majority had approved the resolution plan, the Appellants' objections were irrelevant because they represented the minority of homebuyers. In the Jaypee case, it was clearly held that when the Home Buyers as a class voted in favor of a resolution plan, a specific constituent of

that class, even if in a minority, could not be heard in opposition to the resolution plan by way of objection because there is no concept of dissenting homebuyers within the Creditors in class. Once the CoC has accepted the resolution plan by the required majority and it is in accordance with applicable legal provisions, it cannot be subjected to judicial review and modification. As a result, the court was not convinced by the Appellants' contention that the Adjudicating Authority erred in rejecting their IA without first considering the main petition seeking approval of the resolution plans.

Therefore, simply because a creditor's claim has been reduced does not render the resolution plan illegal. We concur with the Adjudicating Authority that "a resolution plan that provides a lesser amount than admitted does not render it illegal." Any provision in the resolution plan that requires creditors to cut their hair cannot be interpreted as a violation of Section 30(2)(e) of the IBC.

Under such circumstances, there is nothing to suggest that there was any breach of rules and regulations that resulted in a substantial miscarriage of justice for the Appellants. We believe that the Adjudicating Authority did not make any mistakes in dismissing IA 4171/2021.

Hence, there were no sufficient grounds to hear this appeal. The appeal was denied with no costs.

[Link of the Order](#)

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