

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Ashok G. Rajani Vs. Beacon Trusteeship Ltd. & Ors.

Brief Facts

In the present case, the appeal was filed under Section 62, of the Insolvency and Bankruptcy Code, 2016. In a company appeal filed by the appellant, the National Company Law Appellate Tribunal, Principal Bench at New Delhi issued an interim order, notifying the Interim Resolution Professional of the appeal but allowing the IRP to continue with M/s Seya Industries Limited's Corporate Insolvency Resolution Process (Corporate Debtor). However, the NCLAT prohibited the IRP from forming a Committee of Creditors until the next hearing date.

According to Section 12A of the IBC read with Rule 11 of the National Company Law Tribunal Rules, 2016, the Appellant and the Respondents were given the option to resolve their differences before the Adjudicating Authority (NCLT) during this time.

Decision

The apex court noted that under Section 12A of the IBC, the Adjudicating Authority may permit the withdrawal of an application that has been admitted under Sections 7, 9, or 10 upon a request made by the applicant and approved by 90% of the Committee of Creditors voting shares in the manner that may be specified.

It was further noted that the issue of the Committee of Creditors' approval by the required number of votes can only come up after the Committee of Creditors has been established. It viewed that the applicant might withdraw a request that had been accepted under Section 7 of the IBC before the Committee of Creditors was established.

The court further stated that the NCLT is empowered to issue orders for the ends of justice, including orders allowing CIRP applicants to withdraw their applications and enabling corporate bodies to conduct business freely and without hindrance when the statement of objects and reasons is read in conjunction with statutory Rule 11 of the NCLT Rules.

The court determined that there is no reason why the CIRP applicant should not be permitted to withdraw its application once its disputes have been resolved, taking into account the investments made by the Corporate Debtor and the number of people who depend on the Corporate Debtor for their survival and livelihood. Additionally, the settlement cannot be halted in advance of the

formation of the Committee of Creditors in anticipation of claims made by third parties against the Corporate Debtor. It was further stated that the applicant's withdrawal of a CIRP application would not preclude any other financial creditors from pursuing a lawsuit under IBC, 2016. It is not necessary to strangle the settlement because it is vital to follow the deadlines for finishing the resolution process.

The court further held that the order being contested is only an interim order that does not warrant interference and that there is no legal issue that needs to be resolved by the court in an appeal brought under Section 62 of the IBC. Finally, the appeal was dismissed and it instructed the NCLT to review the settlement application and make a decision in light of the findings.

Link of the Order

<https://ibbi.gov.in/uploads/order/8da40cbbdbe043241eb6a983059058aa.pdf>



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