

IBC DOSSIER

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BANK OF BARODA & ANR. VS. MBL INFRASTRUCTURES LIMITED & ORS.

Brief Facts

M/s. RBL Bank (Financial Creditor) filed an application under Section 7 of the Code before Adjudicating Authority to initiate the corporate insolvency resolution process (CIRP) against M/s. MBL Infrastructures Limited (Corporate Debtor). After the expiry of the initial period of CIRP, an application was filed by the Resolution Professional for extending the duration of CIRP by an additional period of 90 days, which was duly granted.

The Adjudicating Authority, held that Mr. Anjaneer Kumar Lakhotiya (Chairman/Director) was eligible to submit a Resolution Plan, notwithstanding the fact that he did extend his personal guarantees on behalf of the M/s. MBL Infrastructures Limited (Corporate Debtor) which were duly invoked by some of the creditors. This issue was never placed and raised before the Adjudicating Authority.

Mr. Anjaneer Kumar Lakhotiya (Chairman/Director) filed an application invoking Section 60 of the Code seeking an appropriate direction to the dissenting and abstaining creditors to facilitate a possible change of mind by supporting the resolution plan, as modified. The Adjudicating Authority approved the resolution plan submitted inter alia holding that there is a marked difference between extension and exclusion.

Hence, the appellant put into challenge, the aforesaid order passed by the Adjudicating Authority in Company Appeal.

Decision

As repeated on various other occasions by Court, judging a statute through 'Literal to Heydon's Golden rule' has gone through a complete circle. Thus, they have come to a stage of applying a reasonable, creative and fair construction principle.

The objective behind Section 29A of the Code is to avoid unwarranted and unscrupulous elements to get into the resolution process while preventing their personal interests to step in. Secondly, it consciously seeks to prevent certain categories of persons who may not be in a position to lend credence to the resolution process by virtue of their disqualification.

Though the very resolution plan submitted by the Mr. Anjaneer Kumar Lakhotiya (Chairman/Director), being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved. Secondly, majority of the creditors have given their approval to the resolution plan. The Adjudicating Authority has rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation and as of now the Corporate Debtor is an on-going concern. The appeal was disposed of on the above terms.

Link of the Order

<https://ibbi.gov.in/uploads/order/a439cd71e7b1f7dcb9644c371e597424.pdf>



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