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BUILDING NEW DIMENSIONS IN INSOLVENCY JURISPRUDENCE – POWERS OF RECALL AND INTERFERING WITH COMMERCIAL WISDOM OF COMMITTEE OF CREDITORS

[GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY V. PRABHJIT SINGH SONI & ANR.]

– A STEP FORWARD

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1. INTRODUCTION

Formulating Resolution Plans under the Insolvency and Bankruptcy Code 2016 (IBC 2016) is a question of utmost importance, as it directly affects the rights of the erstwhile promoters, and therefore, from time to time, the judiciary interprets them in light of new facts and circumstances. The Greater Noida Industrial Development Authority¹ – This case is one of the Supreme Court's landmark judgements, which has further clarified the whole process of formulating Resolution Plans and also clarified the circumstances under which the orders for the approval of the Resolution Plan can be recalled.

2. THE SUPREME COURT AND RESOLUTION PLANS UNDER THE IBC 2016

The commercial wisdom of the Committee of Creditors (CoC) regarding making the Resolution plans is generally not justiciable before a court of law. But,

in some instances, if the Adjudicating Authority found that any of the parameters defined under section 30 (2) of the IBC 2016, and in Regulations 37 and 38 of the CIRP Regulations 2016, were not fulfilled while making the resolution plans, then the adjudicating authority can send the resolution plan back to the CoC for the re-submission. Recently, the Supreme Court² concluded that excluding a creditor entitled to be a part of the CoC, as per the provisions of law, would result in the order becoming vulnerable and, accordingly, called for a judicial review.

3. INFIRMITIES IN RESOLUTION PLANS: STATUS UNDER THE IBC 2016

In the case at hand, Greater Noida Industrial Development Authority, who was a secured creditor of the Corporate Debtor in terms of Section 13-A of the U.P. Industrial Area Development Act, 1976, had not been considered as a creditor. It was not brought in as a

1. Greater Noida Industrial Development Authority v. Prabhjot Singh Soni 2024 INSC 102.

2. Ibid note 1.

member of the Committee of Creditors (CoCs) despite the factual position of its holding more than 10% of the total debt in terms of Section 24(3)(c) of the IBC 2016. The Resolution Plan stood approved without its claim being recognised and despite being a statutory secured creditor as per the U.P. Industrial Area Development Act, 1976. As a result, it was not treated as a part of the CoC, and the Resolution Plan did not consider its submission too.

The Supreme Court was of the view that the Resolution Plan in this situation had failed to take into account the actual factual position of the Appellant being an Operational creditor himself, who had not been included in the meeting of the CoC. Resultantly, the entire proceedings up to the resolution plan's approval stage were ex-parte qua the Appellant. And, since the Resolution Plan did not meet the parameters as stipulated under the provisions of IBC 2016, read with Regulations 37 and 38 of CIRP Regulations, 2016, the Resolution Plan was directed to be reconsidered after complying with the parameters as stipulated in the IBC 2016³ by including the Appellant as a member of the CoC.



3.1 DUTIES OF THE ADJUDICATION AUTHORITY WHILE APPROVING THE RESOLUTION PLAN UNDER THE IBC 2016

There is a criterion that the Adjudicatory Authority has to follow before approving the Resolution Plans under the IBC 2016. Therefore, the Supreme Court in Greater Noida Industrial Development Authority⁴ case, while concluding, has travelled into the aspect that it is necessary for the Adjudicating Authority under section 30(2) of the IBC 2016, while approving a Resolution Plan, to arrive at a subjective satisfaction that the Resolution Plan confirms to the requirements of Law. The Supreme Court further has to examine whether a Resolution Professional's Resolution Plan confirms the requirements of Section 30(2) of the IBC 2016, for which it specifically noted that if a claim is submitted and if a party submits the claim as a Financial Creditor while being an Operational Creditor, its claim would have to be accorded consideration in the Class to which it belongs rather than being non-suited.

3.2 INTERFERENCE BY APPELLATE TRIBUNAL (NCLAT)

The Appellate Tribunal viz. National Company Law Appellate Tribunal (NCLAT) can also interfere with the Order approving the resolution plan while exercising powers under Section 32 of the IBC 2016, read with Section 61(3) of the IBC 2016, which deals with the Appeal challenging an order approving the Resolution Plan if the approved Resolution Plan contravenes provisions of any law for the time being in force. In the case at hand, the resolution plan contravened the appellant's rights⁵.

4. ADJUDICATING AUTHORITY'S POWER TO RECALL UNDER IBC 2016

The Supreme Court has also examined the issue that when an error is brought to the

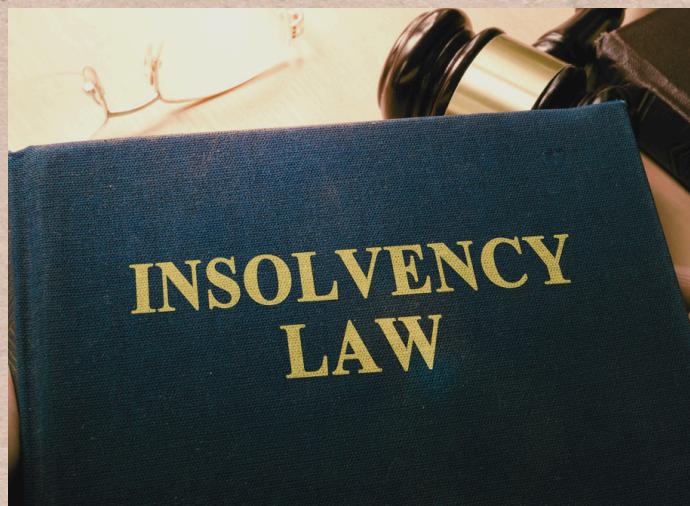
3. The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 30(2).

4. *Supra* note 1 at 1.

5. *Ibid* at p. 33.

attention of the Adjudicating Authority and a recall is sought. The Adjudicating Authority can entertain a Recall Application, and as a matter of fact, the aggrieved party could file both Recall Application and Appeal. The Supreme Court was of the view that the inherent power to recall is available to the Tribunal to recall an order to secure the ends of justice and prevent the abuse of the process of law.

The judgment of the Supreme Court gave a reprieve to the Greater Noida Industrial Development Authority and its right to participate in the CoC, having more than 10% of the total debt and having a secured right on the assets. The Supreme Court had also noticed that even though, as per the settled principles of law, the Appellant could not claim to be a financial creditor, its rights as an operational creditor could not be taken away, especially when the Resolution Professional was aware of Greater Noida Industrial Development Authority being the creditor. The Supreme Court has held that the Resolution Professional is bound to collate the date obtained from the claims submitted and information gathered from the record of the Corporate Debtor. It has further held that the Resolution Professional cannot simply reject the claim on the procedural premise that the claim has been submitted in a wrong form.



In this case, the claim was submitted by the Greater Noida Industrial Development Authority as a Financial Creditor and its claim as a creditor itself was rejected by the Resolution Professional despite the fact that its claim as a creditor of the Corporate Debtor Company was verifiable.

5. CONCLUSION

This judgment is significant from various angles. Firstly, it is expected to bring more vigilance to the resolution professionals, who are expected to act more pragmatically and not reject the claims of the parties at their whims and fancies especially when the claim as submitted is verifiable and is required to be accorded due consideration. Secondly, on the other hand, it also raises an alarm for the Resolution Applicants, who are likely to call upon the Resolution Professionals and the CoC to be more vigilant because, ultimately, they are likely to be adversely impacted if the Plans are to be re-visited upon. Thirdly, this judgment shall be a torch-bearer for future resolution plans and gives clarity of rights available to the creditors whose rights for being marginalised despite the statutory rights and who were ousted on the premise of commercial wisdom. Fourthly, this judgment is also significant since it further deciphers into the aspect of Recall Powers of the Tribunals and prevents the abuse of the process of law by holding that the Tribunals have ancillary and incidental powers to discharge its functions effectively and in the absence of a statutory prohibition, they are entitled in law to recall the order. Fifthly, the expansion of the inherent power to recall an order, which is to prevent abuse of the process of law, has given a respite to those litigants who have suffered because of the non-exercise of the recall powers by the Tribunals. Sixthly, this judgment is another development in insolvency-related jurisprudence, strengthening the judicial dispensation under the IBC 2016,

and safeguards the parties' rights while clarifying and drawing an exception as to when commercial wisdom can be interfered with. The Insolvency and Bankruptcy Code is an economic legislation where the rights of the parties to agitate against Resolution plans are extremely limited. The Supreme Court has specified the recall power of the tribunals under the Insolvency Code, which is expected to reduce the complexities in insolvency litigation. The judgment also dwells upon the guiding factors regarding the resolution plan. In effect, this judgment has prevented the miscarriage of justice.

