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Committee of Creditors are The Decision Makers - Court Perspective

■ Sachin Gupta & Amir Bavani



Insolvency and Bankruptcy Code (IBC / Code) is a time-bound process for restructuring and revival of a Debtor Company, which involves the Committee of Creditors (CoC), Interim Resolution Professional (IRP) / Resolution Professional (RP) and the Adjudicating Authority (AA). IBC is a welcoming legislation, which has brought in a positive perspective of improving credit culture in India by creating a 'creditor driven regime' and the role played by judiciary in achieving the same is noteworthy.

IBC is a mechanism for resolution or liquidation of a Corporate Debtor and once the Adjudicating Authority admits an application under Section 7, 9 or 10; CoC gets to decide the fate of the Corporate Debtor Company. Revival or liquidation of a Corporate Debtor Company, as decided by CoC is subject to judicial approval and many a times there have been instances wherein CoC's authority was challenged with respect to rejection of a Resolution Plan. Whenever Judiciary has been asked to intervene in the decision making process by the affected parties, Tribunals and Courts have been kind enough to interpret the language of the Code as envisaged by legislature.

As stated by the NCLT, Ahmedabad Bench in *Vijay Gupta v. Steel Konnect (India) Pvt. Ltd. & Ors.* "The Code nowhere expressly authorises the Adjudicating Authority to sit over the Judgment on the Resolution of CoC in rejecting the Resolution Plan. The Code, through Section 31 gives the authority to the Adjudicating Authority to approve the plan when approved by CoC and can reject if it does not conform to the requirements referred under Section 30 (2) but not to sit over Judgment on the Resolution Plan approved by the CoC in rejecting the Resolution Plan." In this context, the case of *Innoventive Industries Ltd. Vs ICICI Bank & Another* was referred, in which the Hon'ble Supreme Court alluded to the report of Reforms Committee wherein it was concluded that "the most significant change being, that when a company defaults on its debt, control of the company should shift to creditors rather than the management who was retaining control after the default." Therefore, the intention of the legislature while introducing IBC is to empower the CoC to take a business decision upon the resolution plan for acceptance or rejection, as the case may be and it is only when the CoC accepts the Resolution Plan; the same is placed before Adjudicating Authority. In other words, the Adjudicating Authority has no authority or jurisdiction to intervene when CoC rejects the Resolution Plan.



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Interestingly NCLAT in Rajputana Properties Pvt. Ltd. vs. Ultra Tech Cement Ltd. & Ors. opined that “CoC should record reasons (in short) while approving or rejecting one or another resolution plan”. It further went on to say that the views of suspended Board of Directors, operational creditors and resolution applicants are to be taken into consideration by CoC before approving or rejecting a resolution plan and stated that the same shall be recorded. Furthermore, NCLAT in M/s Bhaskara Agro Agencies Vs. M/s. Super Agri Seeds Pvt. Ltd. stated, “So far as the viability or feasibility of ‘Resolution Plan’ is concerned, the AA or the Appellate Tribunal cannot sit in appeal over the decision of the CoC. They are the experts to find out the viability and the feasibility of a plan and the matrix. As the aforesaid factors are technical in nature which can be determined by experts like the ‘Financial Creditors’, we are not inclined to sit in appeal over the decision of the CoC to find out whether one or other ‘Resolution Plan’ is viable and feasible or not.”

Notably, NCLT Hyderabad Bench in M/s. Alliance Projects Vs. M/s. Ind-Barath Power (Madras) Limited & Ors. opined that the Adjudicating Authority has jurisdiction to decide whether the Resolution Plan is properly rejected or not by the CoC and emphasised on mentioning the reasons for such rejection in the minutes.

Finally, in the case of K. Shashidhar v. Indian Overseas Bank & Ors, the apex court discussed the aspect of approval or rejection of resolution plan by CoC in detail and very clearly stated that under Section 33(1) of the Code, Adjudicating Authority has nothing more to do than to

order for liquidation if it receives a rejected Resolution Plan. The legislature nowhere authorises Adjudicating Authority to analyse or evaluate the justness of rejection of the commercial decision taken by the CoC. It further stated, “The commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by IBC”. On the aspect of legislative intent Supreme Court reiterated that “the legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority”.

Supreme Court opined that grounds for challenge under sections 30(2) or 61(3) of the Code are with respect to testing of validity of the “approved” resolution plan by the CoC and not for approving a resolution plan that has been disapproved or deemed to have been rejected by the CoC in exercise of its business decision. In other words, Supreme Court clarified that NCLT and the NCLAT does not have the jurisdiction to reverse the commercial wisdom of dissenting Financial Creditors

It is noteworthy that when IBC was introduced, no specific requirement was enshrined under the Code for recording the reasons for approval or rejection of resolution plan. The said requirement to record the reasons has been introduced by an amendment to the regulations w.e.f. 4th July, 2018. Thereby, it is evident that the questions pertaining to approval or rejection of resolution plans by CoC under the Code has evolved with time wherein the courts have paved the way for a creditor driven regime, as envisaged by the legislature. [W](#)



Sachin Gupta heads the Litigation Practice of the Firm as a Partner, with prime focus on complex civil & commercial litigation and arbitration matters. He handles matters in the Supreme Court of India, High Courts and various Tribunals, other quasi-judicial and alternate dispute resolution forums.



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