

2023 PLRonline 0102 (NCLAT)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 437 of 2023

Kapil Wadhawan ... Appellant

Versus

Piramal Capital & Housing Finance Ltd. & Ors. ... Respondent

15.05.23

IBC S. 26 - Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - (CIRP Regulations), Regulation 35A, 38(2)(d) and avoidance application is independent of the resolution of the Corporate Debtor and can survive the CIRP. We, thus, are of the view that argument of the Appellant that after conclusion of the CIRP by approval of the Resolution Plan, avoidance application becomes infructuous, cannot be accepted - RP becomes functus officio upon conclusion of the CIRP, but he does not becomes functus officio with regard avoidance application. [Para 19, 20]

Held, The Adjudicating Authority in the present case has substituted the Piramal – Successful Resolution Applicant relying on provisions of the Resolution Plan. The Adjudicating Authority while approving the Resolution Plan vide its order dated 07.06.2021 has noted the provisions of the Plan, which empowers the Resolution Applicant to pursue the avoidance application.

Further, Regulation 38(2)(d) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 – (CIRP Regulations), and its applicability to a Resolution Plan submitted before June 14, 2022. Although the proviso states that this clause does not apply to Resolution Plans submitted prior to that date, in the present case, the Resolution Plan includes a provision allowing the Successful Resolution Applicant to continue with avoidance applications. This provision is not contradictory to the Insolvency and Bankruptcy Code or the Regulations. While Regulation 38(2)(d) is not specifically relevant to the Resolution Plan in question, the legislative intention behind the Regulation clarifies the law. The Resolution Plan has been approved by the Adjudicating Authority and is binding on the Corporate Debtor, its employees, members, creditors, government authorities, guarantors, and other stakeholders. Since the Resolution Plan empowers the Successful Resolution Applicant to pursue avoidance applications, this provision applies to everyone involved, including the former Administrator. The argument put forth by the Appellant’s counsel, suggesting that only the former Administrator/Resolution Professional can pursue the avoidance application, is rejected due to the specific clause allowing the Successful Resolution Applicant to pursue it.

[Para 21, 22]

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - (CIRP Regulations), Regulation 35A - Avoidance application - The timeline for filing avoidance application under Regulation 35A have been held to be not mandatory, however, the applications have to be filed in a reasonable time and any avoidance application, which is filed with inordinate delay can be refused to be entertained by the Adjudicating Authority - Plea that avoidance applications, which were filed after approval of the Resolution Plan by the CoC, could not have been entertained - In the Code and the Regulations, there are no such provisions, which indicate that avoidance application filed after approval of the Plan by the CoC is to be rejected or not - It depends on the facts of each case and circumstances as to whether any application filed after approval of the Resolution Plan by the CoC can be considered or not - In the present case, Resolution Plan has noted the pending avoidance applications. [Para 24]

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