

Indiabulls Asset Reconstruction Co. Ltd. Vs Ram Kishore Arora & Ors.

Citation: [\(2023\) ibclaw.in 68 SC](#)

Date of Judgment: May 11, 2023

Adv. Yashowardhan SNV Dixit

MZM Legal, Mumbai

The Hon'ble Supreme Court of India, through its judgment dated May 11, 2023, in *Indiabulls Asset Reconstruction Co. Ltd. Vs Ram Kishore Arora & Ors.* [\(2023\) ibclaw.in 68 SC](#) delivered by the division bench consisting of Mr. Justice Dinesh Maheshwari and Mr. Justice Sanjay Kumar, adjudicated upon a cluster of appeals filed by Union Bank of India and Indiabulls Asset Reconstruction Company Limited against an order dated June 10, 2022, passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi ("NCLAT"), reported at [\(2022\) ibclaw.in 455 NCLAT](#) concerning 'project-wise insolvency' of the Corporate Debtor-Supertech Limited.

I. Facts of the Case

Corporate Debtor, a real estate company engaged in the construction of various projects, mostly in the National Capital Region (NCR) had received credit facilities from Union Bank of India of INR 150 crores towards the development of one such 'Eco Village - II Project'. Subsequently, Union Bank of India and Bank of Baroda extended further credit facilities of INR 200 crores.

The above credit facilities were secured through a mortgage, corporate guarantee, and personal guarantees. However, on account of default in re-payment, the account of the Corporate Debtor was declared as a Non-Performing Asset (NPA) on June 20, 2028. Consequently, Union Bank of India filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") seeking initiation of corporate insolvency resolution process against the Corporate Debtor and thereby, claiming a total amount of INR 431.92 crores along with accrued interest.

The Hon'ble National Company Law Tribunal, New Delhi ("**NCLT**") admitted the above application filed under section 7 of the Code, thereby, initiating the corporate insolvency resolution process of the Corporate Debtor and appointing Mr. Hitesh Goel as the Interim Resolution Professional of the Corporate Debtor. However, being aggrieved by the NCLT Order dated 25.03.2022, the suspended directors of the Corporate Debtor filed an appeal with the Hon'ble NCLAT. The Hon'ble NCLAT, through its order dated April 12, 2022, directed IRP not to constitute the committee of creditors ("**CoC**") until the next date, and such interim order constituted till June 10, 2022.

Subsequently, NCLAT, in pursuance of its order dated June 10, 2022, reported at [\(2022\) ibclaw.in 455 NCLAT](#), modified the earlier interim order and *inter alia* allowed the formation of CoC solely for the "Eco Village Project-II". While Eco Village Project-II has to be completed with the assistance of erstwhile management, the other projects of the Corporate Debtor had to continue as ongoing projects.

Consequent to the implication of the above NCLAT Order dated June 10, 2022, Indiabulls Asset

Reconstruction Co. Ltd. and Union Bank of India preferred an appeal before the Hon'ble Supreme Court of India.

II. Issues before the Hon'ble Supreme Court

The Appeal challenged the adoption of reverse CIRP by NCLAT and the constitution of CoC to only one specific project- Eco Village Project.

III. Contentions Raised by the Parties

The Appellant challenged the order passed by the Hon'ble NCLAT on no provision relating to the 'reverse corporate insolvency resolution process' under the Code.

- a. No power of the Hon'ble NCLAT to issue directions relating to the initiation of the reverse corporate insolvency resolution process.
- b. Absence of power of the Hon'ble NCLAT to accept a resolution plan presented by the promoter of the Corporate Debtor without giving an opportunity to CoC to evaluate the commercial viability of the plan.
- c. Acceptance of the resolution plan from the promoters of the corporate debtor is a violation of section 29-A of the Code.

IV. Grievances of Parties

- a. **Financial Creditors:** The credit facility to the Corporate Debtor was extended as a single corporate entity notwithstanding the fact that the funds are being utilized for a single specific project or multiple projects. The credit facility provided does not get converted on a "project-based" mechanism. Management cannot participate as a resolution applicant; it would be going against the purpose of the Code.
- b. **Promoters/Corporate Debtor:** erstwhile management of the Corporate Debtor should be allowed to carry out the execution of the interim funding and settlement plan under the supervision of IRP. No coercive action is to be taken against the assets of the Corporate Debtor.
- c. **Interim Resolution Professional:** IRP opposed any interference with the directions issued by NCLAT.
- d. **Home Buyers of Eco Village Project-II:** Direction be issued to complete the construction of the said project in a similar manner as envisaged for other home buyers for whom CoC has not been constituted and construction should be completed under the supervision of IRR and erstwhile management.

V. Observation of the Hon'ble Supreme Court of India

The Hon'ble Supreme Court held that if at the present stage on submissions of the appellants, CoC is constituted for the corporate debtor as a whole in the displacement of the direction of NCLAT, it is likely to affect those ongoing projects and thereby cause immense hardship to the home buyers while throwing every project into a state of uncertainty.

Further, it was held that the role of the erstwhile management should be limited to the extent no new rights are being created. As per the opinion of the Hon'ble Supreme Court, greater convenience

is likely to be caused by passing any interim order of the constitution of CoC in relation to the Corporate Debtor as a whole and may cause irreparable injury to the home buyers. Therefore, the Hon'ble Supreme Court declined to alter the directions issued by the Hon'ble NCLAT in the order dated June 10, 2022.

VI. Obiter Dicta

The Hon'ble Supreme Court encountered the aspect of the nature of the interim relief arrangement until the disposal of these appeals. The Hon'ble Supreme Court cited the dictum laid down in the *Union of India and Ors. V. M/S Raj Grow Impex LLP and Ors.* (2021) that only a *prima facie* case in favor of the suitor is not enough; other elements such as the balance of convenience and likelihood of irreparable injury shall too be taken into account. In view thereof, the Hon'ble Supreme Court observed that, as a fundamental principle, the court should take whichever course appears to carry the lower risk of injustice even if it turns out to be 'wrong'.

The Hon'ble Supreme Court also took note of *Dorab Cawasji Warden v. Coomi Sorab Warden* (1990) while holding that the granting of interim relief to a party who fails or would fail to establish his right at the trial, may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party would succeed may equally cause great injustice or irreparable harm.

Disclaimer: The Opinions expressed in this article are that of the author(s). The facts and opinions expressed here do not reflect the views of IBC Laws (<http://www.ibclaw.in>). The entire contents of this document have been prepared on the basis of the information existing at the time of the preparation. The author(s) and IBC Laws (<http://www.ibclaw.in>) do not take responsibility of the same. Postings on this blog are for informational purposes only. Nothing herein shall be deemed or construed to constitute legal or investment advice. Discussions on, or arising out of this, blog between contributors and other persons shall not create any attorney-client relationship.

[Article Dashboard](#)

[Join WhatsApp Channel](#)

[Subscribe Now](#)

[Corporate Plan](#)

[Dashboard/OnePage](#)

[Case Laws Portal](#)

[Bare Acts/Legal Contents](#)

[IBC Commentary](#)

[Arbitration Portal](#)

[Case Citation](#)

[Weekly Bulletins](#)

[Articles](#)

[e-Journals](#)

[Annual Case Digest](#)

[Testimonials](#)

Follow for daily updates:

-  [Facebook](#)
-  [LinkedIn](#)
-  [Telegram](#)
-  [X](#)
-  [WhatsApp](#)
-  [YouTube](#)

[Download Mobile App](#)

[Subscribe Daily Email Newsletter](#)

- - -

Disclaimer: While every effort is made to avoid any mistake or omission, this document including case-summary/brief about the decision/ add. info/headnote/ judgment/order/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this document. The authenticity of this text must be verified from the original source. Read more [here](#).