

Modification of claims post approval of resolution plan: can NCLT exercise equity-based jurisdiction?

Srivatsava Reddy Beerapalli

(An Advocate and student of the Graduate Insolvency Programme at the Indian Institute of Corporate Affairs)

The Insolvency and Bankruptcy Code, 2016 (IBC or Code) provides limited scope to the Adjudicatory Authority while approving resolution plans after successful voting by the Committee of Creditors (CoC). [Section 30\(1\)\[1\]](#) of the IBC provides that it is the duty of the Resolution Professional to ensure that a resolution plan submitted by the resolution applicant is in accordance with the statutory requirements in clauses (a) to (f) of Section 30 (2) of the IBC. Thereafter, the resolution professional shall submit such plan for voting before the CoC and if such a plan is approved by not less than 66% voting share of the CoC as laid down under [Section 30 \(4\)\[2\]](#) of the IBC, the resolution professional submits the plan for approval of the Adjudicatory Authority.

Equitable treatment of stakeholders

Equity-based jurisdiction is a legal principle that requires the Adjudicatory Authority to take into account the interests of all stakeholders in the insolvency process and ensure that the distribution of assets is equitable and fair. The IBC recognizes this principle and mandates the Adjudicatory Authorities to act in an equitable and fair manner in all matters relating to insolvency and bankruptcy.

The importance of equity-based jurisdiction has also been recognized in the report of the Bankruptcy Law Reforms Committee (**BLRC**)[\[3\]](#), which was instrumental in the drafting of the IBC. The BLRC report recognized that the equitable distribution of assets is a key principle of any insolvency regime and emphasized the need for an equity-based approach to insolvency resolution. The report stated that the equitable distribution of assets is essential for maintaining the confidence of investors and creditors in the insolvency process and for promoting the efficient resolution of distressed assets.

The report notes that the interests of different stakeholders may be in conflict, and the resolution process must balance these conflicting interests. It recommends that the resolution plan should prioritize the interests of secured creditors, but also provide for the payment of unsecured debts and the protection of the rights of operational creditors and employees. The report also recommends that the resolution plan should be transparent and provide for the participation of all stakeholders in the decision-making process.

Overall, the equity-based approach to resolution under the IBC and the emphasis on equitable treatment of stakeholders as outlined in the BLRC report are important features of the Indian insolvency regime. They aim to ensure a fair and transparent process for the resolution of corporate insolvency, and promote the interests of all stakeholders, including operational creditors and employees.

Limited scope under the IBC

The jurisdiction of the Adjudicatory Authority to approve a resolution plan is limited under [Section 31](#) of the IBC to determining whether the resolution plan as approved by the CoC under [Section 30\(4\)\[4\]](#) meets the statutory requirements as laid down under Section 30(2) of the IBC. This limited jurisdiction of the Adjudicatory Authority is statutorily defined, recognised and conferred and there is no scope for the Adjudicatory Authority under the IBC to exercise equity-based jurisdiction that operates independently of the provisions of the Code. Similarly, the jurisdiction of the of the NCLAT is also limited under [Section 61\(3\)\[5\]](#) of the IBC. The NCLAT while considering an appeal must limit itself to examining if the Adjudicatory Authority has rights approved the resolution plan as provide for in [Section 31](#) of the IBC and determining if the resolution plan is valid under section 30(2) of the IBC.

Issues raised on limited jurisdiction of NCLT while approving resolution plan

- Whether Adjudicatory Authority should go beyond the commercial wisdom of CoC to adjudicating equitable treatment of stakeholder under the resolution plan?

Judicial Trend

The limited jurisdiction of the Adjudicatory Authority is settled by various case laws decided by the Hon'ble Supreme Court and NCLAT:

In ***Pratap Technocrats (P) Ltd. & Ors. Vs. Monitoring Committee of Reliance Infratel Ltd. & Anr.*** [\(2021\) ibclaw.in 148 SC](#), the Hon'ble Supreme Court held that the jurisdiction conferred upon the Adjudicatory Authority in regard to the approval of a resolution plan is statutorily structured by sub-section (1) of [Section 31](#) of the IBC. The jurisdiction is limited to the determination of whether the resolution plan approved by the CoC fulfills the requirements as laid down in sub-section (2) of [Section 30](#). This is a jurisdiction that is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The Adjudicating Authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself. The extent of jurisdiction exercised by the Adjudicatory Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. There is no equity-based jurisdiction with the NCLT, under the provision so the IBC to interfere in the decision of the CoC, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.

In ***Bank of Baroda v MBL Infrastructures Ltd.*** [\(2022\) ibclaw.in 05 SC](#), the Court held that, once requisite percentage of the voting share has been achieved, majority of the Creditors have given their approval, and the resolution plan was put into operation, much water has flown under the bridge. It was further stated that it has been categorically held that the ultimate objective of the Code is 'maximisation of assets in a time bound manner'. Hence, the Adjudicatory Authority need only determine if the CoC has approved the resolution plan with the requisite voting share of 66% and the resolution plan is compliant with Section 30(2) of the Code.

In a recent judgement of the NCLAT, in ***Paramvir Singh Tiwana v Puma Realtors Pvt. Ltd. (2022) ibclaw.in 1064 NCLAT***, the NCLAT reaffirming the decision of the Supreme Court cited above held, that the commercial decision of the CoC cannot be faulted with when the resolution plan is in compliance with the Code and its Regulations. It further stated that the CoC takes business decision based on ground realities, by a majority which binds all stakeholders including dissenting Creditors.

Interestingly, in the above judgement the NCLAT wrote that it hoped that the IBBI & the Government take effective steps to make necessary amendments/frame Regulations to protect the class of 'Financial Creditors'/Homebuyers from imposition of any haircuts, and likewise take essential measures to safeguard the interest of 'Operational Creditors' in the 'Structure of the Resolution Plans'.

Conclusion

The Code as it exists in our country has consciously limited the jurisdiction of the Adjudicatory Authority in approving resolutions plans under [Section 31](#) and the legislature has not conferred independent equity-based jurisdiction on the NCLT. Primarily, this helps reduce delays and increase time bound resolution ensuring value maximization. On the contrary, the remarks made by the NCLAT in *Paramvir* and continued litigation for equitable treatment in distribution of proceeds under the resolution plan to certain stakeholders leaves room for discussion on the treatment of all stakeholders under approved resolution plans in the prevailing status quo.

Reference:

[1] The Insolvency and Bankruptcy Code, 2016

[2] *ibid*

[3] The Bankruptcy Law Reforms Committee Report, can be accessed at (https://ibbi.gov.in/BLRCReportVol1_04112015.pdf)

[4] Insolvency and Bankruptcy Code, 2016

[5] *ibid*

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