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CASE COMMENTARY: K. SASHIDHAR V. INDIAN OVERSEAS BANK AND ORS.

CITATION : (2019) 12 SCC 150.

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INTRODUCTION

The case of **Sashidhar v. Indian Overseas Bank and ors** was decided on the 5th of February 2019 by the Supreme Court, presided over by Justice A.M. Kanwilkar and Justice Ajay Rastogi. The case arose from appeals challenging a shared judgment passed by the NCLAT, Delhi, with regard to insolvency proceedings, concerning two separate corporate debtors, namely, Kamineni Steel and Power India Pvt Ltd (KS&PIPL), headquartered in Hyderabad, and Innoventive Industries Ltd, in Mumbai. Although the appeals involved different corporate debtors, they were decided jointly by the Supreme Court, since they raised a common question relating to *Section 30(4)* of the Insolvency and Bankruptcy Code 2016.

FACTS

The judgment pivoted on two corporate insolvency resolution processes (CIRPs), one involving KS&PIPL and the other Innoventive Industries. Both businesses were distressed and came up with their resolution plans, which failed to attain the approval of the COCs of the respective businesses.

A.

The Innoventive Industries had been deep-sunk in financial distress for many years. In order to revive the company's financial position, it approached its lending banks, such as the Central Bank of India, for a corporate restructuring plan. The company was handed a CDR mechanism with a syndicate of nineteen banks, with CBI spearheading their side. The banks sanctioned a restructuring package on June 24, 2014, hoping the company would rejuvenate without involving insolvency proceedings.

However, the company failed to recover through the restructuring. ICICI Bank, being a financial creditor, initiated insolvency proceedings, invoking *Section 7* of the Code, by filing an application to the National Company Law Tribunal, Mumbai, in December 2016.[1] The NCLT accepted the application on January 17, 2017, setting CIRP in motion. Parallelly, an Interim Resolution Professional(IRP) was appointed, along with a moratorium under *section 14*, and a Committee of Creditors was convened.[2]

The IRP temporarily assumes the powers of the corporate debtor, and the moratorium secures the corporate debtor by provisionally pausing legal proceedings against the debtor.

In order to facilitate the resolution process, the Resolution Professional approached prospective resolution applicants, who were about 27 in number, out of which sixteen showed interest. Ultimately, a resolution plan was formulated and presented before the CoC. In the meeting dated 4 October 2017, the plan obtained majority support from the financial creditors, having 66.57% voting share, whereas those holding 33.43% of the voting share rejected the same. As per *Section 30(4)* of the IBC, at that point in time, approval by financial creditors having at least 75% voting share was necessary for the plan to be successful. Since such approval could not be garnered, the resolution plan was rejected. Hence, the Resolution Professional approached the NCLT for the winding up of the corporate debtor. The application for the reconsideration of the resolution plan and against the liquidation was rejected, and the matter was referred for winding-up proceedings. The NCLAT confirmed the same and hence arose the present appeals to the Supreme Court.

B.

Kamineni Steel & Power India Pvt. Ltd. (KS&PIPL), which was formed in the year 2008, began its commercial operation in the year 2013 but faced tough times financially due to unfavorable market conditions prevailing within the steel industry. Debts were restructured for the company through a Joint Lenders Forum, and proceedings had also been filed by the company in front of the Board for Industrial and Financial Reconstruction. However, with the continuing financial problems being faced by the company, insolvency proceedings started under the Insolvency and Bankruptcy Code 2016, and the Corporate Insolvency Resolution Process had also begun at the National Company Law Tribunal (NCLT), Hyderabad.

In the CoC meeting conducted on 27 October 2017, the resolution plan garnered approval of 55.73% voting share from the financial creditors who supported it, while another 10.94% approved the resolution plan by way of e-mail. However, a total of 15.15% of the voting shares belonging to the financial creditors rejected the plan during the CoC meeting, whereas 11.82% voted against the resolution plan via e-mail. As a result, the resolution plan was

[1]Insolvency & Bankruptcy Code, No. 31 of 2016, S.7 (India).
[2]Insolvency & Bankruptcy Code, No. 31 of 2016, S.14 (India).

unable to get the requisite approval from at least 75% of the voting share according to *Section 30(4)* of IBC.[3] Nonetheless, the NCLT Hyderabad approved the resolution plan and also ordered the re-employment of all workers employed by the corporate debtor. The financial creditors, Indian Overseas Bank, Central Bank of India, and Bank of Maharashtra, aggrieved by the said decision of the NCLT, preferred an appeal before the National Company Law Appellate Tribunal (NCLAT). They challenged the jurisdiction of the NCLT in approving a resolution plan that did not attain the voting threshold stipulated under Section 30(4) of the IBC. An appeal was also preferred by the Managing Director of KS&PIPL, challenging the observations made by the NCLT.

ISSUE

Whether the commercial wisdom of the Committee of Creditors is subject to judicial review under the Insolvency and Bankruptcy Code, 2016.

CONTENTION OF THE PARTIES

The appellants primarily contested that the decision of the COC in rejecting the resolution plan was arbitrary and hollow. They also argued that by vetoing the resolution plan, the COC is acting in contravention of the Code, which aims to revive the financial positions of companies. On top of that, the appellants argued that the committee should have recorded the reasons for their refusal if their reasons were genuine.

The submissions made on behalf of K. Sashidhar, Managing Director of Kamineni Steel & Power India Pvt. Ltd. (KS&PIPL) read that the 75% threshold must be calculated excluding the abstentions, in which case, their resolution plan would have satisfied the 75% requirement. The appellant further submitted that the amendment in IBC, reducing 75% requirement to 66%, which came into effect when the case was pending, was procedural in nature and therefore must apply to pending cases. It was also stated that the resolution plan had genuine potential in reviving the company and must not be negated solely owing to the voting percentage.

In the same vein, the appellants in the Innoventive Industries Ltd. appeals held that the business was commercially sustainable and that its liquidation was premature. It was contended on behalf of the appellant that the Resolution Professional ought to have been allowed to submit another proposal to the CoC, which the NCLT had incorrectly dismissed.

[3] Insolvency & Bankruptcy Code, No. 31 of 2016, S.30(4) (India).

Lastly, the trade union of workers held that the decision to liquidate the business would prejudice the workers and go against the rehabilitative purpose of the Code.

The financial creditors, that is, the respondent, resisted and defended the unequivocal requirement of approval not less than 75% of the voting share provided under *Section 30(4)* of the code. They argued that the decisions of the COC are not to be scrutinized under judicial review, except within reason as mentioned in the IBC. The COC is not under any statutory obligation to state the reasons for its voting. Once the company fails to meet the 75% requirement, liquidation must be the only statutory outcome.

JUDGMENT

The Supreme Court dismissed the appeals and upheld the decision of NCLAT. It held that a resolution plan which failed to meet the requirement under *Section 30(4)* must be met with liquidation.[4] The COC was under no obligation to state its reasons for approving or rejecting a resolution plan. Consequentially, the court directed the liquidation of Innoventive Industries and reaffirmed the decision held by NCLT Hyderabad in the case of KS & PIPL. Judicial review is allowed only to the extent of ensuring statutory and procedural compliance in resolution processes.

The court also rejected the appellant's contentions of excluding absentees from voting share and applying the 75% to 66% requirement amendment retrospectively.

RATIO DECIDENDI

The Court opined that it was for the wisdom of the Committee of Creditors to either accept or reject a resolution plan, which could not be subjected to any challenge in a judicial court except those mentioned under the Insolvency and Bankruptcy Code 2016.

ANALYSIS

The decision in *K. Sashidhar v. Indian Overseas Bank & Ors.* is a landmark judgment that clarified the operational framework of the Insolvency and Bankruptcy Code, 2016. The Supreme Court reinforced the commercial wisdom of the Committee of Creditors as the key principle, since, being financially the most affected parties, financial creditors are better able to judge the feasibility of the proposed resolution plan and the method for reclaiming their investment.

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[4]ibid

Moreover, the judgment demarcated the jurisdiction of the NCLT and NCLAT, stating that these tribunals have no power to oversee the commercial sense of decisions made by the CoC. Instead, they should ensure that there are no breaches of the IBC. Consequently, dissatisfaction on the part of the corporate debtor or any other interested party does not make the decisions made by the CoC subject to revision or nullification. In this way, the Court introduced a needed clarity in the IBC-inspired creditor-led process of resolving insolvencies. Furthermore, by refusing to retrospectively enforce the amendment which reduced the majority requirement from 75% to 66%, the Court acknowledged the fact that it constituted a substantial change to the statute rather than merely procedural.

IMPORTANCE

These principles established in K. Sashidhar v. Indian Overseas Bank & Ors. have been repeatedly confirmed by the Supreme Court in subsequent cases involving insolvency matters. In Committee of Creditors of *Essar Steel India Ltd. v. Satish Kumar Gupta*, the Supreme Court has invoked the principles of K. Sashidhar to confirm that "commercial wisdom of the Committee of Creditors cannot be challenged in judicial proceedings".[5] This principle has also been re-affirmed in *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, where it was reiterated that a tribunal cannot override the decision-making of the Committee of Creditors on grounds that there existed another alternative path for reaching a commercial conclusion.[6] Finally, in *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.*, the Supreme Court referred to K. Sashidhar case as an authoritative case concerning the extent of judicial review under the IBC.[7]

[5]Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 S.C.C. 531 (India).
[6]Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 S.C.C. 467 (India).
[7]Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd., (2022) 1 S.C.C. 401 (India).