

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

Bank of Maharashtra (BOM) vs Videocon Industries Limited (VIL) (plus 12 group companies) NCLAT Dated 05.01.2022.

The Resolution plan by Twin Star Technologies Limited (Vedanta Group) was approved by NCLT Mumbai u/s 31 of IBC vide order dated 08.06.2021. Applicant BOM was one of the dissenting financial creditor (i.e one of the financial creditor voted against the approval of Resolution Plan) The said Resolution Plan was approved by the CoC by 95.09% also known as Assenting Financial Creditors (AFS) The appeals have sought to quash and set aside the impugned approval order u/s 31 dated 08.06.2021.

Total claims of Rs. 72,078, Cr. Accepted by RP Rs.64,637 cr. Resolution Plan provided for meagre amount of Rs. 2,962 crores. Haircut over 95% while that of OC is hardly 0.72%. AFC of 94.98% has filed an affidavit stating that they feel duty bound to reconsider their decision in larger public interest resulting from uprecedent haircut. At the hearing on 19.07.2021 the NCLAT impugned order was stayed and RP was to continue to manage the CD. AFC have accepted that proceedings with the implementation of the Resolution Plan is not feasible. No law debars review its own decisions if at a later stage reveals that either in the interest of the organization or in the public interest. AFC are of the view that power to approve includes power to vary, modify and reconsider. While SRA stated that after approval of Resolution Plan, CoC is functus officio and cannot review the same.

BOM - Plan provides less than the liquidation value which the bank will receive otherwise. It is against the provisions of the the code specifically S. 30. The AFC wants this to be placed before the full CoC to reconsider its decision in larger public interest and to ensure that public money and interest of stake holders are properly protected. It is trite that the power to do also includes power to undo.

Decision – Section 30(2)(b) of the code has not been complied with and hence, the approval of the Resolution Plan is not in accordance with section 31 of the code. The approval of Resolution Plan by the CoC as well as AA is set aside and the matter remitted back to CoC.

Twin star Technologies moves SC against NCLAT stay in Videocon Case.