CONVERGENCE OF INSOLVENCY AND COMPETITION LAW: A CASE NOTE ON INDEPENDENT SUGAR CORPORATION LTD. V/S GIRISH SRIRAM JUNEJA & ORS. (2025)

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Case Citation:

2025 SCC OnLine SC 181

Court & Bench:

Supreme Court of India

Justice Hrishikesh Roy, Justice Sudhanshu Dhulia, Justice S.V.N. Bhatti

Ration:

2:1

Justice S.V.N. Bhatti – dissenting opinion

Justice Sudhanshu Dhulia – concurring opinion

Parties:

Appellants – Independent Sugar Corporation Ltd.

Respondents – Girish Sriram Juneja

Relevant Facts of the case:

This case revolves around a Corporate Insolvency Resolution Process (CIRP) of India's leading container glass industry, the Hindustan National Glass and Industries Ltd. (HNGIL). During the insolvency proceedings of HNGIL, Mr. Girish Sriram Juneja appeared as the Resolution Professional (RP) in the present matter.

The Committee of Creditors (COC) was established and Expression of Interest was conferred to various prospective interested applicants. AGI Greenpac Ltd. and Independent Sugar Corporation Ltd. emerged as considerable contenders for acquisition of HNGIL and reviving the corporate debtor in accordance with the Insolvency and Bankruptcy Code, 2018.

In the course of the resolution process, AGI Greenpac Ltd. submitted a resolution plan on 28th October 2022. This ultimately got approved by the COC. This took place in accordance with section 30(4) of IBC, 2018 were in the plan must be approved with not less than 66% of voting shares of financial creditors. Conversely, this plan was challenged by Independent Sugar Corporation Ltd. in alignment with section 31(4) of the same act.

Section 31(4) of Insolvency and Bankruptcy Code of 2018 in accordance with section 5 of the Competition Act of 2002 was considered. The later defined that a “Combination” meant any merger, acquisition or amalgamation of enterprises. On the other hand, the former dealt that any resolution plan which contained a provision of combination to require a ‘prior’ approval of that combination from the Competition Commission of India. This approval should be taken before the approval of such plans from the Committee of Creditors.

AGI Greenpac Ltd. claimed that they had received approval from the Competition Commission of India for the resolution plan. The question that pertained was that whether AGI Greenpac Ltd. actually complied the provisions as stated under section 31(4) of IBC, 2018. The approval whether prior or subsequent the COC, along with voting to authorize the plan was the main issue at hand. The mandatory or discretionary requirement of the Competition Commission of India’s approval in relation with the acquisition was the main matter of law discussed in this case.

Question of Law:

- Whether the prior approval from the Competition Commission of India is obligatory condition for any resolution plan persistent to section 31(4) of IBC, 2018?
- Whether the term ‘prior’ under section 31(4) of IBC, 2018 is a mandate or flexible requirement?

- Whether the granting of permission from the Competition Commission of India be postponed in order to execute the insolvency proceedings promptly?
- Whether the resolution plan can be approved even if it fails to comply with section 30(2)(e) of IBC, 2018?
- Whether the COC's commercial wisdom can override the legal statutory norms seeking approval?

Court's Reasoning:

The central disputed contented in the present matter was the interpretation of section 31(4) of Insolvency and Bankruptcy Code, 2018. Furthermore, the legislature's use of the term 'prior' in the statue was the principal point of discussion. The said provision contained two essential terms; "shall" and "prior". It stated that "the resolution applicant shall take the approval from the Competition Commission of India prior to the approval from the Committee of Creditors". The court through the wordings in the said provision observed that the intent of the legislation was clearly to create an exception.

AGI Greenpac Ltd.'s resolution plan had been accepted by both the COC and the resolution professional despite not having a prior approval from the CCI. The resolution plan been proposed by Independent Sugar Corporation Ltd. was neither approved nor considered by the Committee of Creditors during HNGIL insolvency process. Dissatisfied with the order delivered by NCLT, Kolkata bench; the appellant filed an appeal to NCLAT, New Delhi in accordance with section 61 of IBC, 2018. NCLAT delivering an order against Independent Sugar Corporation Ltd. compelled it to again file an appeal as per section 62 of the said act to the Supreme Court of India.

Additionally, the court elucidated that the wordings of section 31(4) are clear, precise and unambiguous. The court declared that there was no room for purposive interpretation, the simple interpretation of the statue should be upheld. This specific provision was admitted as a mandatory obligation fulfilled by the company before insolvency proceedings taking place.

The main contentions with regards to the Competition Commission of India ensured fair competition and restriction of anti- competitive practices in the market. It was observed that HNGIL held up to 60% share in the entire glass packaging industry. Acquisition (referred to as 'combination' as per section 5 of the Competition Act, 2000) by the AGI Greenpac Ltd. would lead to controlling the entire market. This eventually amounted to anti-competitive practices, inconsistent with the CCI. Any acquisition leading to Appreciable Adverse Effect of Competition (AAEC) through the lens of CCI, has been considered void.

The resolution plan ultimately resulted to AAEC in the insolvency proceedings. This prima facie contradicted the provisions of the Competition Act. The Court considered the applicability of sections 30(2)(e), 30(3) and 31(1) of IBC, 2018. These sections clearly stated that the resolution plan should not contravene any provisions of law for the time being in force, the duty of the resolution profession to check that all the requirements under section 30 are fulfilled and the power vested with the Adjudicating Authority (NCLT in this case) to legally bind the said resolution plan, respectively.

Therefore, the significant observation was that even if the applicability of section 31(4) is not considered, still the Competition Commission of India has the authority to intervene in the insolvency proceedings. Moreover, no order by the Adjudicating Authority can override a provision of law for the time being in force.

Decision:

The hon'ble Supreme Court of India delivered the verdict in the ratio 2:1 favoring the appellant i.e. Independent Sugar Corporation Ltd. The Apex Court stated that the rejection of the appellant's resolution plan was unsubstantiated. The resolution plan for the insolvency of HNGIL released by AGI Greenpac Ltd. stood null and void due to the absence in seeking a prior approval from CCI. While the majority opinion concerned the approval mechanism, the dissenting judge raised contentions on commercial wisdom and discretionary role of the CCI provision. The hon'ble Court thus, ordered the appellant's resolution plan to be considered by the COC or any other resolution plans offered where Expression of Interest was offered by the interested applicants.

Analysis:

The case of Independent Sugar Corporation Ltd. V/S Girish Sriram Juneja & Ors. (2025) underscores the importance of receiving an approval from the Competition Commissison of India. This mandatory provision has been intentionally laid down under section 31(4) of IBC, 2018.

Certainly, the Committee of Creditors have the commercial wisdom while executing any combination. COC have the authority to exercise financial reasoning while evaluating a resolution plan, but not at the cost of ignoring a statutory regulation. Prompt insolvency proceedings cannot take place at the cost of legal compliance.

COC is more inclined towards a creditor-centric aspect, aiding the suitable creditor to receive advantage from the specific corporate debtor in a particular matter. Whereas, on the other hand CCI advocates for regulatory competitive acquisitions taking place preventing economic breakdown in the market.

But, on the other hand it also needs to be taken into consideration that insolvency is a time sensitive process. The inclusion of additional transactional and legal charges, the denial of resolutions plan or dissatisfaction towards the autonomy of the Committee of Creditors ultimately weakens the process.

In the long run, for a healthy economy to function, both the IBC and Competition Act need to have a 'check and balance' approach towards each other. The parameters of commercial wisdom have to be at par with legal consequences.

Conclusion:

In light of the foregoing, it can be aptly concluded that the "prior approval" from the Competition Commission of India in any combination (merger, acquisition, etc.) transcends that of the Committee of Creditors or the Resolution Professional in a resolution plan.

In circumstances wherein the legislature has mandated the approval, such approval should not be treated as a matter of discretion. The mere sufficing of the Adjudicating Authority (either NCLT or NCALT) regarding the resolution plan by the COC shall not be binding. Every combination requires its alignment with the Competition Commission of India, which should be strictly followed.

Moreover, during the pendency of an insolvency proceeding, the CCI has the authority to scrutinize it by observing if it amounts to AAEC in the respective market. Thus, the hon'ble Court allowed the appellants resolution plan to proceed and accordingly withdrew AGI

Greenpac Ltd.'s plan. Broder public interest and its role towards competitions in the market highlight the very essence of such legislative exception in the insolvency proceedings.

Reference:

Sucheta, *Proviso to S. 31(4) IBC Mandatory in Nature; Breakdown of SC's 2:1 Verdict Holding AGI Greenpac's Resolution Plan for HNGIL Unsustainable*, SCC Times (Jan. 30, 2025)