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Supreme Court's Mandate on CCI Clearance before approving resolution plans involving combinations: A procedural bottleneck or necessary scrutiny?

Introduction

The Insolvency & Bankruptcy Code, 2016 (“**IBC**”) was enacted with the principal objective of consolidating and streamlining the legal framework relating to insolvency and bankruptcy¹. Prior to IBC, insolvency proceedings were fragmented across multiple laws leading to delays, uncertainty and diminished asset values. The IBC aims to establish a time-bound and creditor-driven resolution process thereby enhancing the ease of doing business and improving investor confidence².

The recent Supreme Court judgment in *Independent Sugar Corporation Limited v. Girish Sriram Juneja*³ marks a significant shift in the jurisprudence surrounding the approval of resolution plans under IBC. The judgment mandated prior approval from the Competition Commission of India (“**CCI**”) before Committee of Creditors (“**CoC**”) for any resolution plan involving combinations. This marks a crucial shift from the earlier practice of seeking CCI approval post the CoC approval, aligning IBC with competition law to ensure regulatory compliance and safeguard market integrity during the Corporate Insolvency Resolution Process (“**CIRP**”).

In the present judgment, the Supreme Court interpreted the proviso to Section 31(4) of IBC, which mandates that, in cases involving combinations, the resolution applicant must obtain approval from CCI prior to the approval of the resolution plan by the CoC. This interpretation brought into question the prevailing practice of securing CCI approval post CoC approval, a divergence that the Supreme Court sought to clarify⁴.

Overview of the Case

The case stems from a CIRP initiated against Hindustan National Glass & Industries (“**HNGIL**”) under section 7 of IBC. In the CIRP, AGI Greenpac Ltd. emerged as the successful resolution applicant, with a proposal of 100% acquisition of HNGIL. However, the combination of the two businesses raised anti-trust concerns, as it would lead to the potential concentration of 80 to 85% market share in the F&B packaging markets and 45-50% market share in alco-beverages packaging markets.

However, the Successful resolution plan was challenged by a competing resolution applicant named Independent Sugar Corporation Limited (“**INSCO**”) before the NCLT, citing grounds of preferential

¹ *The Insolvency & Bankruptcy Code, 2016, No. 31 Acts of Parliament, 2016 (India).*

² *Srijan Anant & Aayushi Mishra, A Study of Insolvency and Bankruptcy Code and Its Impact on Macro Environment of India, 7 IJEDR 2019 1, 28_35 (2019).*

³ *Independent Sugar Corporation Limited v. Girish Sriram Juneja, 2025 SCC OnLine SC 181.*

⁴ *Rajat Sethi & Akanksha Agrahari, "Prior" CCI Approval of Resolution Plans: A Case for Legislative Amendment, INDIACORPLAW (visited on May 10, 2025, 12:50 PM), <https://indiacorplaw.in/2025/05/prior-cci-approval-of-resolution-plans-a-case-for-legislative-amendment.html>.*

treatment by the CoC and non-compliance with CCI requirement.

At the issuance of Expression of Interest (“**EoI**”), CCI’s approval was condition precedent before CoC approval. However, the resolution professional later clarified that CCI approval could be obtained after the CoC’s approval. AGI Geenpac’s initial compliances with CCI were held invalid, but it still emerged as a successful resolution applicant with approval from the CoC. Subsequently, the AGI Greenpac filed fresh compliances with the CCI, with certain voluntary divestures.

The NCLT rejected INSCO’s challenge, as the CCI’s approval of the fresh compliances had been obtained while the challenge was sub-judice. NCLAT further upheld the dismissal of INSCO’s challenge upon appeal. In view thereof, the INSCO filed an appeal before the Supreme Court, framing the question as to “Whether Section 31(4) of the IBC mandates prior approval from the CCI before a resolution plan is approved by the CoC”

Evolving Jurisprudence on the Issue

Before the Supreme Court’s judgment in this matter, the legal position as reflected in various decisions of the NCLAT endorsed a pragmatic and liberal interpretation of the proviso to Section 31(4) of the IBC. While it was consistently held that obtaining approval from CCI in cases involving combinations was a mandatory requirement, a more flexible approach regarding the timeline for securing such an approval was allowed⁵.

Previously, it was observed that mandating CCI clearance prior to the approval of the resolution plan by the CoC could result in procedural bottlenecks, thereby delaying the completion of the CIRP. Such delays were considered antithetical to the time-bound framework and the broader objectives of the IBC, which prioritizes the swift resolution of insolvency cases to preserve the value of the corporate debtor and ensure economic continuity⁶.

Accordingly, the jurisprudence, at the time, permitted the approval of resolution plans by the CoC even in the absence of a prior CCI clearance, with the understanding that such approval must be obtained before the final sanctioning of the plan by NCLAT⁷. This approach sought to strike a balance between ensuring regulatory compliance with competition laws and maintaining the efficacy and timeliness of the resolution process under the IBC.

Supreme Court Ruling and the shift in Jurisprudence

The Supreme Court decisively overruled the NCLAT’s interpretation regarding the timeline for obtaining approval from the CCI under

⁵ *Arcelor Mittal India Pvt. Ltd. v. Abhijit Guhathakurta*, 2019 SCC OnLine NCLAT 920; *Makalu Trading v. Rajiv Chakraborty*, 2020 SCC OnLine NCLAT 643.

⁶ *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets*, Institut international pour l’unification du droit privé, 9th March 2012 <<https://www.unidroit.org/instruments/security-interests/space-protocol/>>

⁷ *Hima Lawrence*, *SC solves competition-insolvency conundrum-or is there more to come?*, SUPREME COURT OBSERVER (visited on May 8, 2025, 10:30 AM), <https://www.scobserver.in/journal/sc-solves-competition-insolvency-conundrum-or-is-there-more-to-come/>.

Section 31(4) of the IBC. It was observed that in resolution plans involving combinations, the approval of the CCI must be obtained prior to such plans are even placed for consideration before the CoC.

The Court's analysis was rooted in the principle of statutory interpretation, emphasizing the importance of adhering to the plain and literal meaning of legislative text when the language of the text is unambiguous. The proviso to Section 31(4) explicitly uses the term «prior approval,» and the Court reasoned that this language leaves no room for interpretive flexibility. In such instances, judicial creativity or purposive reading cannot override the legislative mandate⁸. If the legislature intended to provide any flexibility or leeway in the timing of such approvals, it would have expressly done so.

The majority judgment further underscored the regulatory significance of the CCI's role in the insolvency resolution process, particularly in cases involving proposed combinations. According to the Court, it is imperative that only those resolution plans that are legally compliant be allowed to proceed to the CoC for voting and approval. This ensures that no resolution plan that might cause an AAEC in the relevant market is prematurely approved, potentially undermining both the objectives of the IBC and the Competition Act.

The judgment warned against the consequences of permitting the CoC to approve resolution plans in the absence of prior CCI clearance. If a resolution plan is later found to violate competition norms, it could lead to regulatory rejection or require structural remedies, such as divestitures, after the plan is approved, thereby disrupting the resolution process and rendering the CIRP effort redundant or inefficient. To prevent such outcomes and safeguard the integrity of the insolvency framework, the Court declared that prior CCI approval is a mandatory precondition for consideration of the resolution plan by the CoC.

Implications of the Shift in Jurisprudence

By mandating that CCI approval be obtained prior to the resolution plan being placed before the CoC, the Hon'ble Supreme Court has effectively embedded competition compliance as a precondition to the exercise of the CoC's commercial wisdom. This means that the CoC can no longer evaluate or vote on a resolution plan unless it has first cleared regulatory scrutiny under the Competition Act. The decision draws a clear boundary around the scope of commercial wisdom, emphasizing that it must operate within the confines of existing legal and regulatory frameworks.

Beyond clarifying the procedural sequence, the judgment also serves as a cautionary directive to resolution applicants and professionals alike. It places a heightened responsibility on resolution professionals to ensure that only legally compliant plans are admitted for CoC consideration, thereby upholding the integrity of the CIRP. From a practical standpoint, it may extend timelines in cases involving combinations, as resolution applicants will need to factor in the time

⁸ *R.S. Nayak v. A.R. Antulay*, AIR 1984 SC 684; *Grasim Industries Limited v. Collector of Customs, Bombay*, (2002) 4 SCC 297.

required for CCI approval before submitting their plans. While this could affect the pace of resolution in certain cases, the judgment prioritizes regulatory consistency over speed, aiming to avoid downstream complications that may arise if plans are later found non-compliant.

Moreover, this decision strengthens the role of regulatory authorities like the CCI within the insolvency ecosystem, fostering a more structured and legally robust resolution process. It also sends a clear message that the IBC does not operate in isolation and that commercial decisions must be preceded by and subject to legal compliance across all relevant statutes.