



INSOLVENCY & BANKRUPTCY

Locus Standi of Dissenting Financial Creditors Post-Resolution Plan Approval: An Analysis of the NCLT Kochi Order

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The jurisprudence surrounding the Insolvency and Bankruptcy Code, 2016, consistently reinforces the supremacy of the Committee of Creditors' commercial wisdom and the binding nature of an approved resolution plan. A recent pronouncement by the **National Company Law Tribunal, Kochi Bench**, in the matter of M/s. Samson and Sons Builders and Developers Pvt. Ltd., serves as a critical reaffirmation of these principles.

Introduction

The Tribunal was tasked with determining the **locus standi of a dissenting financial creditor** seeking to implead itself in post-approval execution proceedings. This order underscores the judiciary's reluctance to entertain dilatory tactics that impede the timely implementation of a successful resolution plan.

Factual Background of the Dispute

Initiation of the Corporate Insolvency Resolution Process

The genesis of the dispute traces back to the initiation of the **Corporate Insolvency Resolution Process** against M/s. Samson and Sons Builders and Developers Pvt. Ltd., the Corporate Debtor. The process was triggered by an operational creditor, M/s. V.J. Constructions, under Section 9 of the Code, leading to admission by the Adjudicating Authority on November 3, 2021.

Subsequently, Mr. K. Parameswaran Nair was appointed as the Resolution Professional on January 10, 2022. During the course of the resolution process, a Resolution Plan for the "Sharon Hills" project was proposed by the **Sharon Hill Residents Association**, acting as the Successful Resolution Applicant.

Approval of the Resolution Plan and Dissent

The Committee of Creditors approved the aforementioned plan in its seventeenth meeting on July 30, 2024, with a requisite **voting share of 71.30%**. Notably, Kerala Financial Corporation, a financial creditor holding a 19.48% voting share, dissented to the plan.

Despite this dissent, the Adjudicating Authority formally approved the resolution plan on **December 20, 2024**. Aggrieved by the approval, Kerala Financial Corporation preferred an appeal before the Hon'ble National Company Law Appellate Tribunal, Chennai, which remains pending without any interim stay.

The Impleadment Controversy

The immediate controversy arose when the Successful Resolution Applicant filed an Interlocutory Application, seeking the removal of practical impediments in the implementation of the approved plan. In response, **Kerala Financial Corporation** filed an Interlocutory Application under Rule 11 of the National Company Law Tribunal Rules, 2016, praying to be impleaded as the fifth additional respondent in the implementation application.

Rival Contentions of the Parties

Arguments of Kerala Financial Corporation

Kerala Financial Corporation anchored its impleadment application on the assertion that the **approved resolution plan flagrantly violated the mandatory provisions of the Code**. Specifically, the applicant raised the following contentions:

- The plan contravened **Section 30(2)(b) read with Section 53(1)**, as it allegedly failed to guarantee the minimum liquidation value payable to a dissenting financial creditor.
- The legality of the physical possession claimed by certain homebuyers who constituted the Successful Resolution Applicant was challenged.
- Such possession was assumed without *valid allotment letters*, explicit consent, or a No Objection Certificate from the dissenting financial creditor.

Arguments of the Successful Resolution Applicant

Conversely, the Successful Resolution Applicant vehemently opposed the impleadment. It advanced the following arguments:

- The approved resolution plan remained **legally binding and enforceable**, given that the appellate tribunal had not granted any stay on the Adjudicating Authority's approval order.
- The impleadment application was a calculated manoeuvre to delay and obstruct the execution of a lawfully approved plan.
- A dissenting financial creditor lacks the **locus standi** to interfere in post-approval execution matters, which are strictly an administrative and legal interaction between the Successful Resolution Applicant and the Resolution Professional.

Legal Framework and Tribunal Analysis

Judicial Discretion in Impleadment

The Adjudicating Authority meticulously evaluated the competing claims against the backdrop of established legal frameworks and judicial precedents. The Tribunal placed significant reliance on the landmark judgment of the Hon'ble National Company Law Appellate Tribunal in the case of ***Union of India v. Oriental Bank of Commerce***.

This precedent unequivocally establishes that the impleadment of parties is a matter of **judicial discretion**, which must be exercised on sound legal principles rather than in a cavalier or whimsical manner.

Finality of an Approved Resolution Plan

Applying this principle, the Tribunal observed that Kerala Financial Corporation had failed to demonstrate any compelling necessity or legal justification to be joined as a party in the implementation proceedings.

The Adjudicating Authority reiterated the settled legal position that once a resolution plan receives **judicial sanction under the Code**, it attains finality and binds all stakeholders, explicitly including dissenting financial creditors. Consequently, such dissenting creditors are legally precluded from enforcing their original, pre-insolvency contractual rights outside the four corners of the approved plan.

Sanctity of the Committee of Creditors' Commercial Wisdom

Furthermore, the Tribunal emphasized the **sacrosanct nature of the Committee of Creditors' commercial wisdom**. It noted that a dissenting financial creditor possesses no statutory right to question this collective wisdom before the Adjudicating Authority during execution proceedings.

While the Code provides a limited statutory right of appeal against the approval of a plan, which the applicant had already exercised, it does not grant a dissenting creditor the liberty to embed itself into distinct, post-approval execution applications to stall structural progress.

Conclusion and Final Decision

The Adjudicating Authority took a stringent view of the applicant's conduct, classifying the impleadment application as an apparent attempt to derail and slow down the **post-approval machinery of the Code**. Categorising such practices as an abuse of process that cannot be appreciated, the NCLT Kochi Bench decisively concluded that Kerala Financial Corporation was neither a necessary nor a proper party to the proceedings.

In its final verdict, the Tribunal **dismissed the impleadment application**, for being completely devoid of merit. To deter such dilatory tactics and highlight the gravity of the misuse of judicial time, the Tribunal imposed a strict cost of *Rupees Five Thousand* on Kerala Financial Corporation.

The applicant was directed to remit this penalty to the **National Defence Fund** and submit a formal compliance memo before the Tribunal's Registry within fifteen days of receiving the order.

Ultimately, this ruling stands as a robust precedent safeguarding the execution phase of successful resolution plans against unwarranted and strategic interference by dissenting stakeholders.

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