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# **DISSENTING FINANCIAL CREDITORS AND THE RESOLUTION PLAN DILEMMA: IMPLICATIONS OF KRISHNA INFOSOLUTIONS RULING**

AUTHORED BY - TEESHA DEB

## **1. Examining the Shifting Rights of Financial Creditors**

The evolution of the Insolvency and Bankruptcy Code, 2016 (IBC) has led to profound changes in the dynamics between creditors and debtors in insolvency proceedings in India. Financial creditors, who hold a central role in the resolution process, have witnessed their rights evolve and undergo intense scrutiny over the years, especially in cases involving dissenting creditors. The decision in *Krishna Infosolutions Pvt. Ltd. v. Anil Anchalia & Anr*<sup>1</sup>. has added a crucial dimension to the ongoing discourse on the rights of dissenting financial creditors under the Insolvency and Bankruptcy Code, 2016 (IBC). This judgment delves into the interplay between the statutory entitlements of dissenting creditors and the discretion exercised by the Committee of Creditors (CoC) in resolving insolvency.

At the heart of the case is a dissenting financial creditor's claim to surplus funds under a resolution plan approved by the CoC. While the National Company Law Appellate Tribunal (NCLAT) upheld the CoC's authority to allocate surplus funds, it unequivocally restricted dissenting creditors to their statutory minimum entitlements as prescribed under Section 30(2) of the IBC<sup>2</sup>. This judgment raises profound questions about the growing judicial trend favouring collective decision-making over individual rights within the insolvency framework. The ruling further underscores the prioritization of corporate debtor revival over equitable treatment of creditors, signalling a potential shift in the way financial creditors' rights are interpreted.

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<sup>1</sup> NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI, Comp. App. (AT) (Ins) No. 279 of 2024

<sup>2</sup> Guest, 'Interpretation of Section 30(2) of the IBC: Rights over Prudence?' (indiacorplaw, 14 February 2024) <<https://indiacorplaw.in/2024/02/interpretation-of-section-302-of-the-ibc-rights-over-prudence.html>> accessed 7 January 2025

## 2. Facts of the Case

The resolution plan for *Krishna Infosolutions Pvt. Ltd.* was approved by the CoC with an overwhelming majority of 81.14% votes. However, UCO Bank, a dissenting creditor holding 18.86% of the voting share, opposed the plan.

The resolution plan which was approved by the CoC and further presented before the NCLT contained a certain clause which explicitly mentioned that dissenting financial creditors would receive liquidation value proportionate to their admitted claims as per Section 30(2) of the IBC. UCO Bank raised a claim of ₹25.96 lakh, arguing that this surplus amount was due to them under the terms of the resolution plan. The key dispute was whether a dissenting creditor could claim an amount exceeding the liquidation value when such surplus existed within the plan opposed by the aforementioned creditor.

The matter escalated to the NCLAT, which was tasked with deciding whether the CoC's allocation of surplus funds to assenting creditors was justified and if the dissenting creditor's claim to the surplus could be upheld.

## 3. NCLAT's Perception on CoC's Role in Surplus Distribution

The NCLAT, in its decision, sided with the CoC, emphasizing that the authority of the CoC to allocate surplus funds should not be interfered with, provided that the dissenting creditors received the minimum liquidation value required by Section 30(2) of the IBC. The tribunal reiterated the principle of majority decision-making in insolvency proceedings while raising concerns about the diminishing protections for dissenting creditors. Specifically, the tribunal stated that dissenting creditors were entitled solely to the liquidation value of their claims, as prescribed under Section 30(2), and that any additional allocation to dissenting creditors could only be made if explicitly provided for in the resolution plan.

The NCLAT further reaffirmed the CoC's discretion in allocating surplus funds, citing the precedent set in *Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd.*<sup>3</sup>, where it was held that any recovery resulting from the resolution process must be distributed among the CoC, and not arbitrarily retained by the resolution applicant or allocated to individual creditors. The tribunal also underscored the principle of finality of resolution plans, stating that once a plan is

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<sup>3</sup> *Tata Steel BSL Ltd. v. Venus Recruiter (P) Ltd.*, 2023 SCC OnLine Del 155

approved, it becomes binding, and cannot be altered to provide additional entitlements to dissenting creditors unless specifically stated within the plan. This approach reflects a clear emphasis on the primacy of collective decision-making in the insolvency process.

#### **4. Undermining Rights of Dissenting Creditors: Emerging Judicial Trends**

The *Krishna Infosolutions* ruling highlights a troubling emerging trend in judicial interpretations that increasingly favour the authority of the CoC, occasionally at the expense of dissenting creditors' rights. This trend raises concerns about the erosion of equitable treatment principles, a cornerstone of insolvency jurisprudence.

In earlier cases such as the *Essar Steel India Ltd. v. Satish Kumar Gupta*<sup>4</sup>, the Supreme Court emphasized the importance of fairness and equitable treatment in resolution plans, ensuring that no class of creditors is unfairly disadvantaged. Similarly, in *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd*<sup>5</sup>, the Court struck a balance between the authority of the CoC and the protection of minority creditors. In contrast, the *Krishna Infosolutions* judgment signals a shift toward prioritizing collective decision-making. While this approach aims to streamline insolvency processes and reduce litigation, it risks undermining the safeguards that dissenting creditors rely upon. By placing significant weight on CoC discretion, the judgment potentially creates an imbalance, limiting the ability of dissenting creditors to challenge unfair outcomes.

By upholding the CoC's discretion in surplus allocation, the *Krishna Infosolutions* ruling potentially creates an imbalance, making it harder for dissenting creditors to challenge inequitable outcomes. The judgment also raises the question of whether the principle of fairness, which has been a cornerstone of insolvency jurisprudence, is being gradually eroded. The NCLAT's decision in this case reflects a shift from protecting the rights of dissenting creditors to focusing on the collective interest, even at the risk of undermining individual entitlements.

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<sup>4</sup> *Essar Steel India Limited v. Satish Kumar Gupta and Others*, (2020) 8 SCC 531.

<sup>5</sup> *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd* AIR ONLINE 2021 SC 224

## 5. The Risk of Unfair Outcomes for Dissenting Creditors

One of the primary concerns arising from the *Krishna Infosolutions* decision is that it may pave the way for further marginalization of dissenting creditors. By placing significant weight on the CoC's discretion, the judgment risks creating a scenario where dissenting creditors are unable to effectively challenge unfair or inequitable outcomes. While the CoC's role is undoubtedly critical in ensuring that the resolution plan is implemented efficiently, the potential exclusion of dissenting creditors from any surplus allocation creates an imbalance in the insolvency framework.

The erosion of creditor rights also raises concerns about the adequacy of judicial oversight in the insolvency process. The IBC was designed to balance the interests of all creditors, but if dissenting creditors are left with limited avenues for recourse, the insolvency system may fail to provide the protections it was intended to safeguard. This could lead to situations where creditors are compelled to accept resolutions that do not reflect their legitimate claims, undermining the principles of fairness and equity.

## 6. Balancing CoC Discretion and Creditor Protections: A Path Forward

To prevent further undermining of creditor rights, several steps can be taken to strike a balance between the discretion of the CoC and the protections afforded to dissenting creditors. One potential solution is to introduce clearer guidelines for the allocation of surplus funds in resolution plans. If resolution plans explicitly address how surplus funds are to be distributed, it could reduce ambiguity and prevent unnecessary disputes among creditors.

Additionally, enhanced judicial oversight is crucial to ensure that the IBC's underlying principles of fairness and equity are upheld. Courts should carefully scrutinize decisions that disproportionately affect dissenting creditors and intervene when necessary to maintain the integrity of the insolvency process.

Finally, it is essential to strengthen the participation of dissenting creditors in the resolution process. By actively engaging in the process, dissenting creditors can better safeguard their interests and ensure that their voices are heard. This would not only enhance transparency but also contribute to achieving more equitable outcomes for all creditors involved in the resolution process.

In conclusion, while the *Krishna Infosolutions* ruling reaffirms the CoC's authority and underscores the importance of collective decision-making in insolvency proceedings, it also raises critical concerns about the erosion of creditor rights, particularly those of dissenting creditors. The judiciary must strike a delicate balance between promoting efficient resolution processes and ensuring that the rights of individual creditors are not undermined. By refining surplus allocation guidelines, enhancing judicial oversight, and encouraging active creditor participation, the insolvency process can better protect the interests of all stakeholders and uphold the principles of fairness and equity that are foundational to the IBC.

