

Tribunals can't interfere with CoC's commercial decisions: SC

CASE TITLE	Kalpraj Dharamshi & Anr. Vs.Kotak Investment Advisors Ltd. & Anr. ¹
CASE CITATION	CIVIL APPEAL NOS.2943-2944 OF 2020
DATE OF ORDER	10 th March 2021
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<ul style="list-style-type: none">• <i>Central Inland Water Transport Corporation Limited and another vs. Brojo Nath Ganguly and another</i>• <i>Maharashtra Seamless Limited vs. PadmanabhanVenkatesh and others</i>• <i>K. Sashidhar vs. Indian Overseas Bank & Ors</i>
SECTION/REGULATION REFERRED	Sections 30(2), 31 or 61(3) of IBC

Brief of the case:

The resolution plan was approved by the COC and thereafter approved by the Adjudicating Authority. The approved resolution plan was challenged and the Adjudicating Authority had directed certain modifications to the resolution plan. The present appeal was filed against the order of NCLAT, New Delhi directing changes to the approved resolution plan on the basis of lack of jurisdiction and power of Hon'ble Adjudicating Authority to order changes in an already approved plan.

Decision:

This is for the third time since March 2019 that the apex court has ruled against the attempts by the National Company Law Tribunal (NCLT) and appellate body NCLAT to interfere with the merits of the CoC's majority business decisions regarding distribution of the proceeds of resolution among various classes of stakeholders.

Hon'ble Supreme Court disposed of the appeal and held that,

"...the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis... the appellate authority ought not to have interfered with the order of the adjudicating authority (CoC) by directing the successful resolution applicant to enhance their fund inflow upfront."

...The legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code"



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¹<https://ibbi.gov.in/uploads/order/09d6ec71f2defd0e1011ae0c57e3e38.pdf>