

Once the Resolution Plan is approved, NCLT ceases to have jurisdiction to decide the Avoidance Applications.

CASE TITLE	Madhavi Edible Bran Oils Private Limited vs. Immanesni Eswara Rao (IRP) and Narahari Prasad Narasimha Rao (suspended Director). ¹
CASE CITATION	IA(IBC)/108/2022
SECTIONS/REGULATION	Section 43 & 60 (5) of IBC read with Rule 11 of NCLT Rules
DATE OF ORDER	20.09.2022
COURT/ TRIBUNAL	NCLT Amravati Bench, Mangalagiri
CASES REFERRED	M/s. Venus Recruiter Private Limited vs. Union of India and Ors, (2020)

Brief of the case:

The present application is filed by Trishla Minerals who is an Operational Creditor against the Corporate Debtor, a private limited Company, which was taken into CIRP. The IRP took over the proceeding of RP and received a Resolution Plan from the Successful Resolution Applicant. An avoidance application was filed by the RP and a application was filed by Successful Resolution Applicant.

While the avoidance application was pending, the order approving the Resolution Plan came to be passed by this Tribunal. The issue before Tribunal was whether the avoidance application can be decided after the approval of the Resolution Plan?

Decision:

Hon'ble NCLT relied on the Judgement, M/s. Venus Recruiter Private Limited vs. Union of India and Ors. and dismissed the application, held that:

“10. Once the plan is approved and the new management takes over, it is completely up to the new management to decide whether to continue a transaction or agreement or not. Thus, if the CoC or RP are of the view that there are any transactions which are objectionable in nature the order in respect thereof would have to be passed prior to the approval of the Resolution Plan. Hence it is very clear from the above cited judgment that once the Resolution plan is approved the NCLT ceases to have jurisdiction to decide the avoidance applications.

....Even according to the judgment of the Delhi High Court an avoidance application can be entertained if a provision is made in the Resolution Plan. But when once the Resolution Plan is approved while the avoidance application is pending, saying that then the avoidance application cannot be decided, would make the permission given under section 26, to file the avoidance application redundant. But however, in view of the law which is laid down by various High Courts and the Supreme Court, this Tribunal cannot resolve the said anomaly by going beyond the law laid down by the Supreme Court and various High Courts. Hence, I.A.(IBC) No. 108/2022 and LA (IBC) No.94/2022 in TCP(IB) No. 105/9/AMR/2019 are dismissed.

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¹ <https://ibbi.gov.in/uploads/order/16c60672bbc4399009f7422824ba20db.pdf>