

If the successful resolution applicant fails to furnish the performance guarantee or otherwise fails to comply with the plan process, forfeiture of the earnest money deposit in terms of the RFRP is valid, particularly where the non-compliance does not arise from non-receipt of the LoI or imposition of additional terms outside the resolution plan process

The **Supreme Court** in the case of **Sanjay Dave vs Andhra Bank [Civil Appeal Nos.12264-12266 of 2024] dated May 26, 2026**, has held that once a resolution plan has been approved by the CoC, the successful resolution applicant is bound by it and cannot seek to evade implementation by raising objections to LoI stipulations that are either inherent in the process, already known to it, or expressly accepted by it. The Court reaffirmed that after CoC approval, there is no scope under the IBC for the successful resolution applicant to negotiate further, modify the plan, or withdraw from it at its own instance; the only surviving statutory contingency is adjudicatory approval under Section 31, subject to the limits of Section 30(2).

The Court further held that where the successful resolution applicant fails to furnish the performance guarantee or otherwise fails to comply with the plan process, forfeiture of the earnest money deposit in terms of the RFRP is valid, particularly where the non-compliance does not arise from non-receipt of the LoI or imposition of additional terms outside the resolution plan process. The Court also affirmed that under Section 33(2), read with its Explanation, the CoC is entitled, at any time before confirmation of the resolution plan, to resolve to liquidate the corporate debtor, and such commercial decision is not amenable to judicial review except within the narrow statutory framework.

In short, the Court reinforced the binding and irrevocable character of a CoC-approved resolution plan as between the CoC and the successful resolution applicant, the permissibility of EMD forfeiture for non-compliance, and the primacy of CoC commercial wisdom in opting for liquidation when the applicant defaults. It clarified that all interim orders would stand vacated upon dismissal of the appeals, and further directed respondent No. 3, the Liquidator, to proceed with the remaining part of the liquidation in accordance with the Code.

The Court observed that the appellant's contention that the Letter of Intent (LoI) were "conditional" was without merit. The stipulation that the LoI would remain subject to the final decision in pending judicial proceedings involving prospective resolution applicants did not convert it into a conditional LoI in any legally objectionable sense, because any adjudicatory order would in any event govern the process.

The Court also found, from the minutes of the CoC meetings, that the appellant was fully aware of the pending litigation and the relevant stipulations before insisting on issuance of the LoI, and therefore his later objection was an afterthought. As regards litigation risk relating to workers and employees, the Court noted that the appellant had expressly agreed in the CoC discussions that such risk and cost would be borne by the resolution applicant, and therefore could not subsequently disown that position.

On the issue of timeline for performance guarantee, the Court accepted that though 45 days had been relaxed during the pandemic in an earlier meeting, the appellant had later agreed to

submit the performance guarantee within seven days as prescribed in the RFRP, and thus could not rely on the earlier relaxation. The Court repeatedly characterised the appellant's conduct as an impermissible attempt to approbate and reprobate, or to blow hot and cold, and held that the appellant had acquiesced in the stipulations and could not indirectly withdraw from a CoC-approved plan by calling the LoI conditional.