

Supreme Court Examines Whether a CIRP Initiated Through Fraud or Collusion Can Continue

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Introduction

The Hon'ble Supreme Court of India, in *Orris Infrastructure Private Limited v Rakesh Kumar Gupta & Ors.*, 2026 INSC 1070 (Orris Infrastructure), examined the consequences of a fraudulent and collusive initiation of corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC).

The court considered whether the Adjudicating Authority (AA) has the power to recall an order initiating CIRP where the debt and default are subsequently found to have been fraudulently manufactured through collusion between the operational creditor and the corporate debtor. The court also considered whether such a finding necessarily requires termination of the CIRP or whether it may continue for other stakeholders' benefit.

The judgment is significant for affirming the AA's power to revisit an admission order procured through fraud or collusion. It also clarifies that a fraudulent initiating creditor must be excluded from the process, and an otherwise viable CIRP should not be terminated once it has become *in rem*.

Factual Matrix

Orris Infrastructure Private Limited (Orris), entered into a development agreement with Three C Shelters Private Limited (Corporate Debtor) to develop a residential project. Following substantial delays, the homebuyers approached the Haryana Real Estate Regulatory Authority, which directed the Corporate Debtor to complete the project and use escrow funds exclusively for that purpose. The Haryana Real Estate Appellate Tribunal upheld the directions, holding Orris and the Corporate Debtor responsible for completing the project and handing over possession expeditiously.

Subsequently, Straight Edge Contracts Private Limited (Straight Edge) filed an application under Section 9 of the IBC. Based on the Corporate Debtor's admission of the alleged operational debt through an affidavit filed by its director, the AA admitted the application.

The homebuyers challenged the admission of Section 9 application of Straight Edge before the National Company Law Appellate Tribunal (NCLAT), alleging fraud and collusion between Straight Edge and the Corporate Debtor. The NCLAT initially upheld the admission. Thereafter, Orris and the resolution professional (RP) of a shareholder of the Corporate Debtor approached the AA, alleging that the CIRP had been fraudulently initiated in collusion with the Corporate Debtor's erstwhile management. Upon detailed examination, the AA found collusion but held that it lacked the power to recall the admission order after commencement of CIRP.

On appeal, the NCLAT held that the AA could recall an order procured by fraud and set aside the CIRP in its entirety. Orris, homebuyer associations and individual homebuyers challenged this decision before the Supreme Court, arguing that the CIRP had substantially progressed and should not be terminated solely because its initiation was fraudulent.

Findings on Fraud and Collusion

The AA had recorded detailed findings establishing that the alleged operational debt was not real and that the CIRP was plotted through collusion. The NCLAT and then the Supreme Court affirmed these findings. It observed that the conduct of Straight Edge was “anything but straight” and that the CIRP had been initiated on the basis of a debt that did not exist, fraudulently projected to enable the AA to assume jurisdiction and impose a moratorium.

Issues for Determination

The Supreme Court considered two principal issues:

- 1) Whether the AA has the power and jurisdiction to recall CIRP by dismissing a Section 9 application admitted at the instance of a collusive operational creditor.
- 2) If such power exists, whether dismissal of Section 9 application necessarily requires recall of the CIRP, or whether the CIRP can be continued without the original applicant.

Jurisdictional Facts and Fraud on the Statute

The Supreme Court observed that the existence of a debt and default is a jurisdictional fact for the purposes of admission of an insolvency application under the IBC. A jurisdictional fact is a fact whose existence is a condition precedent to the exercise of statutory jurisdiction.

The court held that where the existence of a debt is fraudulently manufactured, the foundation for exercise of jurisdiction is absent. Such an order is not merely erroneous in the exercise of jurisdiction but is vitiated at its inception.

Accordingly, the court held that if jurisdiction is invoked through fraud or collusion, the AA can withdraw or recall the CIRP at any stage. Jurisdictional facts tainted by fraud cannot form, or continue to sustain, the basis for the AA's jurisdiction.

CIRP after Admission: From *In Personam* to *In Rem*

The Supreme Court nevertheless emphasised that insolvency proceedings fundamentally change character after admission of an application under Sections 7, 9 or 10 of the IBC. Before admission, the proceedings are *in personam*, involving principally the applicant creditor and the corporate debtor. However, once the CIRP commences, the process is intended to resolve the collective insolvency of the corporate debtor, preserve and maximise asset value, and serve the broader objectives of the IBC.

No Automatic Termination of CIRP

The Supreme Court held that, although the AA has the power to recall an admission order obtained through fraud and collusion, it is not duty-bound to terminate the CIRP in every such case. Where the CIRP has progressed and multiple independent creditors have lodged claims, the AA must consider whether continuation of the process would serve the broader objective of resolving the corporate debtor's insolvency.

The court held that an AA may permit CIRP to continue despite the fraudulent initiation of the proceedings, provided that it is satisfied that the process can be conducted with integrity, probity, transparency and confidence. In making this determination, the AA must consider, among other matters, the stage and progress of the CIRP, the views and commercial wisdom of the committee of creditors (CoC), submissions of the RP, the interests of other creditors and stakeholders and whether the CIRP can be continued independently of the collusive original applicant. The court clarified that the AA may still decide not to continue CIRP where the circumstances demonstrate that continuation would not be appropriate.

Principles laid down by the Supreme Court

The Supreme Court laid down the following principles:

- (i) The existence of debt and default are jurisdictional facts for initiation of CIRP under Sections 7, 9 and 10 of the IBC. If such jurisdictional facts are subsequently established to be fraudulent or collusive, the AA is entitled to recall the admission of the insolvency application.
- (ii) The party invoking the IBC has a public law obligation not to mislead the AA on jurisdictional facts. A fraudulent or collusive initiating applicant must be prevented from participating in the CIRP, and the AA may initiate action under Section 65 of the IBC.
- (iii) The AA may continue a CIRP notwithstanding fraud in its initiation, if continuation serves the larger objective of resolving the corporate debtor's insolvency and can be conducted with integrity and transparency.

Directions

The Supreme Court set aside the NCLAT's order which had terminated the CIRP solely on account of the collusive initiation. It restored the CIRP proceedings to the file of the AA and directed the AA to determine whether the CIRP should continue in light of the conclusive findings of fraud and collusion against Straight Edge.

For this purpose, the AA was directed to consider all relevant facts and events, including stand of the RP, the CoC, homebuyers and other stakeholders.

Comments

Orris Infrastructure is an important decision on the limit of jurisdiction and power of the AA and the consequences of fraud at the stage of CIRP commencement. The Supreme Court has unequivocally recognised that the AA may recall an admission order where the debt or default, being jurisdictional facts, is fraudulently engineered or presented through collusion. However, as the court has also left it to the AA's discretion to determine such issues which may warrant recall of its order or continuation of the CIRP.

The judgment adopts a logical and stakeholder-oriented approach. It recognises that, after admission, CIRP transcends the bilateral dispute between the initiating creditor and the corporate debtor, becoming a collective process involving the CoC, RP, creditors, employees, homebuyers and other stakeholders. Accordingly, fraud by the initiating creditor need not necessarily warrant the termination of an advanced CIRP that otherwise offers a viable resolution mechanism.

The decision therefore strikes a balance between two objectives: preserving the integrity of the insolvency process by excluding parties that misuse it, and protecting the interests of genuine stakeholders who have become part of a statutory collective process. It also reinforces that the IBC cannot be used as a device by a corporate debtor's management to create a strategic moratorium, obstruct other remedies or engineer an insolvency process for collateral purposes.

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