



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

Case-Snippets

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**RAMESH KYMAL. VS. Ms. SIEMENS GAMESA RENEWABLE POWER PVT. LTD.
CIVIL APPEAL NO. 4050 OF 2020 (SUPREME COURT)
DATE OF JUDGEMENT: 09TH FEBRUARY 2021**

“Correct interpretation of Section 10A of IBC, 2016 cannot be merely based on the language of the provision; rather it must take into account the object of the Ordinance and the extraordinary circumstances in which it was promulgated.”

Facts of the Case: -

The appellant invoked the appellate jurisdiction of the Court under Section 62 of the IBC, 2016 to challenge the judgment and order of the NCLAT. The NCLAT had affirmed the decision of the AA, stating that in view of the provisions of Section 10A, which have been inserted by Amendment with retrospective effect, the application filed by the appellant as an operational creditor under Section 9 was not maintainable.

The appellant had claimed that a sum of INR 104,11,76,479 is due and payable to him pursuant to his resignation from all capacities (Chairman and Managing Director) held by him in the respondent. He had filed an application under Section 9 of the IBC on the ground that there was a default in the payment of his operational dues but during the pendency of the application, an Ordinance was promulgated by the President of India by which Section 10A was inserted into the IBC.

The respondent filed an application seeking the dismissal of the appellant's application on the basis of the newly inserted provisions of Section 10A. The AA upheld the submission of the respondent, holding that a bar has been created by the newly inserted provisions of Section 10A. The decision was also upheld in appeal by the NCLAT.



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The issue involved raised a question of law. In this appeal the issue which had to be determined was whether the provisions of Section 10A stand attracted to an application under Section 9 which was filed before 5 June 2020 (the date on which the provision came into force) in respect of a default which has occurred after 25 March 2020.

Supreme Courts Observations: -

The Hon'ble Supreme Court stated that, Section 10A does not contain any requirement that the AA must launch into an enquiry into whether, and if so to what extent, the financial health of the corporate debtor was affected by the onset of the Covid-19 pandemic. Parliament has stepped in legislatively because of the widespread distress caused by an unheralded public health crisis. It was cognizant of the fact that resolution applicants may not come forth to take up the process of the resolution of insolvencies, which would lead to instances of the corporate debtors going under liquidation and no longer remaining a going concern. Hence, the embargo contained in Section 10A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision. Therefore the Court was unable to accept the contention of the appellant.

The Court affirmed the conclusion of the NCLAT and dismissed the appeal accordingly.