



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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GUJARAT URJA VIKAS NIGAM LIMITED VS MR. AMIT GUPTA & ORS.

CIVIL APPEAL NO. 9241 OF 2019

DATE OF ORDER: MARCH 08, 2021

“While interpreting the provisions of the IBC, care must be taken to ensure that the regime which Parliament found deficient and which was the basic reason for the enactment of the new legislation is not brought in through the backdoor by a process of disingenuous legal interpretation.”

Facts of the Case: -

The AA by its judgment had stayed the termination by the appellant of Power Purchase Agreement “PPA” with Corporate Debtor. The order of the AA was passed in applications moved by the RP of the CD under Section 60(5) of the IBC, 2016. Further, the NCLAT dismissed the appeal by the appellant under Section 61 of the IBC, 2016. The decision by the NCLAT was called into question in this appeal. The appellant assailed the order of the NCLAT.

The two issues for determination in the appeal were, firstly whether the AA/NCLAT can exercise jurisdiction under the IBC over disputes arising from contracts such as the PPA; and secondly whether the appellant’s right to terminate the PPA in terms of its Articles is regulated by the IBC.

Supreme Court’s Observations: -

The Supreme court was of the view that the dispute in the present case has arisen solely on the ground of the insolvency of the Corporate Debtor and AA is empowered to adjudicate the dispute under Section 60(5)(c) of the IBC and further the apex court agreed with the view taken by the AA as Section 238 is prefaced by a non-obstante clause. The court held that Section 238 does not state that the instrument must be entered into by operation of law; rather it states that the instrument has effect by virtue of any such law. NCLT’s jurisdiction could be invoked in the present case because the termination of the PPA was sought solely on the ground that the Corporate Debtor had become subject to an insolvency resolution process under the IBC.



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The court further observed that it holds the question of the validity/invalidity of ipso facto clauses as one which ought not to resolve exhaustively in the present case. Rather, the court stated its desirability in earnest to the legislature to provide concrete guidance on this issue, since the lack of a legislative voice on the issue will lead to confusion and reduced commercial clarity.

Regarding termination of PPA the Court stated that its continuation assumes enormous significance for the successful completion of the CIRP. The termination of the PPA will have the consequence of cutting the legs out from under the CIRP. The basis of Courts intervention in this case arised from the fact that if the termination of the PPA is allowed, which is the sole contract of the Corporate Debtor, governing the supply of electricity which it generates, it will pull the rug out from under the CIRP, making the corporate death of the Corporate Debtor a foregone conclusion.

It further ordered appellant to pay for the electricity procured, since the termination of the PPA was set aside.

Order: -

The Supreme Court dismissed the appeal stating that no merit was found in appeal. The honorable court stated AA /NCLAT could have exercised jurisdiction under section 60(5)(c) of the IBC to stay the termination of the PPA by the appellant, since the appellant sought to terminate the PPA under Article only on account of the CIRP being initiated against the Corporate Debtor.

The court further held that AA/NCLAT correctly stayed the termination of the PPA by the appellant, since allowing it to terminate the PPA would certainly result in the corporate death of the Corporate Debtor due to the PPA being its sole contract. The broader question of the validity/invalidity of ipso facto clauses in contracts for legislative intervention was left open.

Appeal Dismissed.