



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Volume 04 | Number 14

(April 09, 2021)

OFFICE OF THE ASST. STATE TAX COMMISSIONER STATE TAX DEPARTMENT, GOVERNMENT OF
MAHARASHTRA VS SHRI PARTHIV PARIKH & ORS.
COMPANY APPEAL (AT) (INS) NO.583 OF 2020
DATE OF JUDGMENT: MARCH 26, 2021 (NCLAT-DELHI BENCH)

“THE IBC STIPULATES THAT CIRP IS A TIME-BOUND PROCESS MEANT FOR RESOLUTION OF THE CORPORATE DEBTOR, WHICH IS IN THE THROES OF INSOLVENCY.”

Facts of the Case: -

This appeal has been filed under Section 61 of the IBC, 2016 by the Appellant aggrieved by the order of AA. The facts of the case are that the CD is a company registered with the Maharashtra Sales Tax Department. In the course of its business, the CD defaulted in payment of the State Tax approx. Rs.5.26 Crores and thereby created liability in accordance with the provisions of Maharashtra Value Added Tax Act, 2002, which were due and payable to the Appellant. An application was filed by an OC under Section 9 of IBC, 2016 against the CD and the case was taken up for consideration by the AA. The Appellant claimed that he was unaware of these proceedings and the insolvency proceedings against the CD came to knowledge only when the Joint Commissioner of Sales Tax forwarded the order of the AA to him. In order to secure the interest of the State Tax Department, the Appellant filed a claim with RP which was rejected by the same on the ground of delay in filing the claim stating that as the Resolution Plan had already been submitted for approval to the AA after approval by the COC of the CD.

NCLAT Observations: -

The Tribunal noted that Regulation 36(2)(d) mentions that the Information Memorandum shall contain ‘a list of creditors containing the name of creditors, the amounts claimed by them, the amounts of their claims admitted and the security interest, if any, in respect of such claims;’ among other particulars. Further, in the same Regulations, very clear timeline has been prescribed under



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Regulation 12(2) for submission of claim with proof by financial and corporate debtor, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalization.

In the present case the appellant submitted its claim, more than about 1.1 year after the invitation of claims through public notice. The extended time period for submission of claims with proof is ninety days from the date of initiation of the CIRP which also expired. The RP had already filed the Resolution Plan as approved by the COC to the AA, much before the said claim was preferred before the RP, and the AA was considering the Resolution Plan for necessary approval.

The Tribunal stated that it cannot be ruled out that if the claim of the State Tax Department was accepted at such a late stage, there could have been other such applicants too, who would have demanded accommodation on the same ground allowing late submission of their claims once this window would have opened. It would be trite to emphasize the fact that this would have meant complete disruption of the CIRP and the timelines stipulated therein. Delay would defeat Resolution as this would have resulted in the CIRP and approval of successful Resolution Plan to continue for an indefinite period of time, which is certainly not the intention of IBC. A real hazard in such an event could be liquidation and the death of the corporate.

Order: -

The petition was disposed of by the Tribunal stating that AA has dealt with the issue of approval of the resolution plan submitted by the RP and inter alia, rejecting the claim of the Appellant in accordance with the requirements of the statute, and in keeping with the overall objective and scheme of the IBC. The Tribunal found no ground and reason for interfering with the Impugned Order and consequently dismissed the appeal.

Verdict- Appeal Dismissed