



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

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**SANDEEP KHAITAN, RP FOR NATIONAL PLYWOOD INDUSTRIES LTD. VS JSVM PLYWOOD INDUSTRIES LTD. & ANR.**

**CRIMINAL APPEAL NO.447 OF 2021  
DATE OF JUDGMENT: APRIL 22<sup>nd</sup>, 2021**

**“SECTION 14 IS EMPHATIC, SUBJECT TO THE PROVISIONS OF SUB SECTION (2) AND (3). THE IMPACT OF THE MORATORIUM INCLUDES PROHIBITION OF TRANSFERRING, ENCUMBERING, ALIENATING OR DISPOSING OF BY THE CORPORATE DEBTOR OF ANY OF ITS ASSETS.”**

### Facts of the Case: -

This appeal was filed against the order of the Hon'ble High Court of Guwahati. In the impugned order, the High Court had allowed an interlocutory application filed by the Respondent to allow it to operate its bank account maintained with the ICICI Bank Bhubaneswar and to unfreeze the bank account of its creditors over which the lien had been created and the accounts frozen pursuant to the lodging of an FIR by the appellant.

The Appellant claimed that the former Managing Director of the CD in conspiracy with the Respondent engaged in an illegal transaction to the tune of Rs. 32.50 lakhs without authority from the Appellant and in violation of Section 14 of the IBC, 2016. He complained that initially, the Managing Director made a transaction of Rs. 500. Thereafter, he proceeded by virtue of four consecutive transactions to transfer a sum of Rs. 32.50 lakhs to the Respondent. Further the Appellant also claimed that the former Managing Director proceeded to transfer another sum of Rs. 3.29 lakhs from another account and the amount were transferred to his close associate.

### Supreme Court's Observations: -

The Apex court stated that the contours of the jurisdiction under 482 of the Cr.P.C. are far too well settled to require articulation or reiteration. Undoubtedly, in this appeal an application was filed and admitted under section 7 of the IBC, the appellant was appointed as the IRP and what is more a moratorium declared.



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With the declaration of the moratorium the prohibitions as enacted in section 14 came into force. The assets of the company would include the amounts lying to the credit in the bank accounts. There cannot be any dispute that well after the order under section 14 was passed, a sum of Rs. 32.50 lakhs were remitted into the account of Respondent company. Further it is definite that the Respondent has had business relations with the CD for more than 15 years and that the amount remitted in its account represented the price of the materials supplied to the CD. Apart from this amount a sum of rupees more than Rs.39 lakhs is still due. It was noticed that though an appeal was filed against the order admitting the petition under Section 7 the same was dismissed by the NCLAT. The appellate order was undoubtedly set aside by this court and the appeal remanded to the AA for its consideration. The Court thought that setting aside the appellate order of the NCLAT and remanding the appeal would not have the effect of setting aside the order admitting the application. The ambiguity created by the said order was removed by the subsequent order of the Tribunal. The Court further stated that it need not say anything further particularly in view of the fact that an FIR is pending consideration in the High Court also. It is significant only for Court to notice that the Appellant is essentially aggrieved by the transactions representing a sum of Rs. 32.50 lakhs all of which took place after order of the High Court.

### **Order: -**

The appeal was allowed with modification to the order passed by the High Court. The Respondent was allowed to operate its account subject to first remitting the amount in the account of the CD, which stood paid to it by the management of the CD. The assets of the CD to be managed strictly in terms of the provisions of the IBC. The Appellant as RP will bear in mind the provision of Section 14 (2A) and the object of IBC. The apex court further stated that the order shall not be taken as pronouncement on the issues arising from the FIR including the petition pending under Section 482 of the Cr.P.C. Further, the judgment will not stand in the way of the Respondent pursuing its claim about its entitlement to the said amount and any other sum from the CD or any other person in the appropriate forum and in accordance with law.

***Verdict- Appeal Allowed***