



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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**R.V. TYAGARAJAN VS. R. RAGHAVENDRAN
COMPANY APPEAL (AT) (CH) (INS) NO. 59 OF 2021
DATE OF JUDGMENT: MAY 19TH, 2021**

**“THE DECISION OF THE COMMITTEE OF CREDITORS TAKES A PIVOTAL SEAT BASED ON
COMMERCIAL WISDOM.”**

Facts of the Case: -

This appeal was filed by the Appellant (Chairman and MD of the CD) against the Impugned Order passed by the Adjudicating Authority ‘AA’ whereby the Liquidation of the Corporate Debtor ‘CD’ was ordered. The Appellant submitted that the COC had rejected the Resolution Plan submitted to it as the same was lower than the RP’s assessed ‘Liquidation Value’. Further, as the plan was rejected, the Promoters of the CD submitted offer for ‘One Time Settlement’ of dues to the ‘Secured Creditors’ which was later revised, but as the upfront payment was not made by the promoters, the offer was not approved by the COC, resulting in the impugned order of the AA.

The Appellant further submitted that his real grievance is that the AA had failed to consider the efforts at resolving the debt of the CD in the teeth of the IBC, which provides for ‘Liquidation’ in the event of failure of ‘CIRP’ or nonreceipt of any ‘Resolution Plan’ within the specified period.

NCLAT’s Observations & Order: -

The Appellate Tribunal dismissed the appeal stating that the claim of the Resolution Applicant was rejected by 76.02% of voting share by the FC in the COC meeting, after considering the feasibility and viability, etc., as mentioned in CIRP Regulations. Further keeping in mind of a primordial fact that the decision of the COC takes a pivotal seat based on Commercial Wisdom, the Tribunal came to an irresistible conclusion that the ‘impugned order of Liquidation’ in respect of the CD passed by the AA was free from legal infirmities.

Case Review: - Appeal Dismissed.



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LAKSHMI NARAYAN SHARMA VS. PUNJAB NATIONAL BANK COMPANY APPEAL (AT) (CH) (INSOLVENCY) NO.01 OF 2021 DATE OF JUDGMENT: MAY 12TH, 2021

Facts of the Case: -

This appeal was filed by the Appellant against the Impugned Order passed by the Adjudicating Authority 'AA'. The AA while passing the Impugned Order filed by the Bank (Respondent in this appeal) under Section 7 of the IBC, 2016 had among other things observed that the Financial Creditor 'FC' had established the 'debt and default' through various documents filed along with the Applications and ultimately, admitted the same by declaring the 'Moratorium' and issued necessary directions thereto.

The Appellant (Promoter/Suspended Director of Corporate Debtor 'CD') of Saptarishi Hotels Private Limited (CD) submitted that the CIRP Application filed by Respondent was barred by limitation and that the AA had no Jurisdiction to admit the CD in CIRP as the same was barred and further the impugned order is a 'nullity' in the eye of Law, because the AA had not decided the 'issue of limitation'.

NCLAT's Observations & Order: -

The Appellate Tribunal dismissed the appeal stating, that on a careful consideration of respective contentions projected on either side, the prime fact was that the Guarantor(s) in respect of the accounts of the CD had executed the 'Balance and Security Confirmation Letters' for the due amount and another fact was that a sum was paid by the CD and there was balance amount which came to an irresistible, inevitable and inescapable conclusion that in respect of the loan account of the CD there was an 'Acknowledgement of Debt' as per Section 18 and 19 of the Limitation Act, 1963. In fact, the CIRP application filed by the Respondent was perfectly maintainable in Law, well within the period of Limitation.

As such, the Contra Plea taken on behalf of the 'Appellant' that the CIRP Application filed by the Respondent is barred by limitation was legally untenable and was rejected. In the case, the Respondent had proved the existence of 'Debt and Default' (vide documents) filed along with the Application under Section 7 of the Code against the CD and that the conclusion arrived at in admitting the 'Application' by the AA was free from legal infirmities.

Case Review: - *Appeal Dismissed.*