



# 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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**BANK OF INDIA & ORS. VS. BHUBAN MADAN  
COMPANY APPEAL (AT) (INSOLVENCY) NO. 590 OF 2020 & I.A. NO. 156 OF 2020  
DATE OF JUDGMENT: MAY 28<sup>th</sup>, 2021**

**“Section 31 of the Code provides that the terms of the ‘Resolution Plan’ is binding on the Company, its employees, creditors and all stakeholders.”**

### **Facts of the Case: -**

The Appellants (Bank of India, Central Bank of India, Syndicate Bank and State Bank of India) preferred an appeal 590 against the Impugned Order passed by the Adjudicating Authority ‘AA’ whereby the AA allowed the application filed by the Resolution Professional ‘RP’ under Section 14 read with Section 17 and Section 60(5) of the IBC, 2016 with the directions to the banks to reverse the due amount.

The Respondent (Resolution Professional) had earlier filed an application in AA seeking direction against the Appellant Banks and Financial Institutions to reimburse all the amounts appropriated by them after the Insolvency Commencement Date, together with the amount appropriated towards interest payments and further to resume the working capital limits as available to the Corporate Debtor ‘CD’ as on the Insolvency Commencement Date.

### **NCLAT’s Observations: -**

The Appellate Tribunal stated that in its various Judgements it has held that Banks cannot debit any amounts from the account of the CD after the order of moratorium, as it amounts to recovery of amount. Further the Banks cannot freeze accounts nor can they prohibit the CD from withdrawing the amount as available on the date of moratorium for its day-to-day functioning. Section 14 of the IBC, 2016 overwrites any other provision contrary to the same and any amount due prior to the date of CIRP cannot be appropriated during the moratorium period.

Further, merely because the CD had enough liquidity to run the Company as a going concern, the act of the Appellant Banks to adjust the credit balance in the Cash Credit Account towards the debit balance



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after CIRP commenced, cannot be justified. Appellate Tribunal held that the Claims were already preferred by the Appellant Banks and filed before the RP, hence they are not entitled to recover the amounts otherwise available in the Credit Accounts or Working Capital Accounts of the CD. (Para 15, 16)

An I.A 506 was filed by new management of the CD seeking release of the title deeds of the Immovable Properties of the Company which are in possession of Bank of India. The appellate tribunal stated that Section 31 of the IBC, 2016 provides that the terms of the Resolution Plan is binding on the Company, its employees, creditors and all stakeholders. A perusal of the Resolution Plan evidences issuance of non-convertible Debentures to the Financial Creditors which was required to be secured inter-alia by creating security interest over all Immovable Properties of the CD. It is significant to mention that Clauses of the Plan contemplate that title deeds are required to be released immediately upon distribution of Resolution Process. It was of the view that the debt has been legally extinguished and therefore withholding of the title deeds preventing the Company from being able to create security interest for securing the non-convertible Debentures issued to the Debenture Holders, in terms of the Plan, is unjustifiable.

### **Order: -**

The Appellate Tribunal dismissed the appeal stating that adjusting the Claims by the Appellant Banks during the CIRP out of the funds of the CD results in unjust enrichment of the Banks and further, crediting amounts towards non-fund and fund-based accounts during the moratorium period is against the provisions of Section 14 of the Code. Further it allowed the instant appeal stating that the Resolution Plan had been implemented earlier and directed the non-Applicants to release the title deeds for effective implementation of the terms of the Resolution Plan as provided for under Section 31 of the IBC, 2016.

**Case Review: - Appeals Dismissed and I.A 506 Allowed.**