



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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VIVEKANAND JHA (SUSPENDED MANAGEMENT OF TELSTAR INDUSTRIES PVT. LTD.) VS. PUNJAB NATIONAL BANK & ORS.

COMPANY APPEAL (AT) (INSOLVENCY) NO. 407 OF 2021

DATE OF JUDGMENT: JUNE 14TH 2021

Facts of the Case: -

This Appeal was filed by the Appellant who was on suspended management of the Corporate Debtor 'CD'. The Appeal was filed against impugned order passed by Adjudicating Authority (NCLT-Ahmedabad Bench) 'AA'. The AA via Impugned Order admitted Application under Section 7 of IBC, 2016 filed by the Respondent (Punjab National Bank) against the CD-Telstar Industries Pvt. Ltd. Respondent claimed before the AA that it had approved various financial facilities and disbursed Loan in the form of Cash/ Credit and overdraft facilities, but the CD did not pay the instalments as per the agreement. The Bank had to resort to proceedings before Debts Recovery Tribunal. The Bank claimed that Notice under Section 13(2) of SARFAESI Act, 2002 was issued to the CD when the Loan Account became Non-Performing Assets. The AA heard the defense raised by the CD and after consideration admitted the Application by the Impugned Order resulting in this Appeal.

NCLAT's Observations & Order:

The Tribunal dismissed the Appeal stating that they did not find any substance in the Appeal. It stated that the Bank had made an offer of settlement and another offer by way of OTS. The Bank relied on the OTS offer and OTS as acknowledgments and thus claimed before AA that Application was in Limitation. Further, the Appellate Tribunal agreed with the AA about finding that the application was within Limitation stating that it cannot accept the submissions made that date of default would have to shift to period post OTS.

Case Review: - Appeal Dismissed.



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NARESH KUMAR VS. DURGESH KUMAR SHARMA & ORS. COMPANY APPEAL (AT) (INSOLVENCY) NO. 400 OF 2021 DATE OF JUDGMENT: JUNE 11TH 2021

Facts of the Case: -

This appeal has been filed by a third party claiming to have ownership of the properties which are shown/stated to be of the CD. An application under Section 9 of the IBC, 2016 was filed before the AA (New Delhi Bench) by the Respondent against the CD (M/s North Rajasthan Buildwell Pvt. Ltd.) claiming that the CD had defaulted about operational debt about the material supplied and services rendered. The same was admitted by the AA after hearing the parties. The present appeal has been filed stating that this is a case of fraudulent and malicious initiation of insolvency proceedings, which was done by Respondents in collusion to usurp the right of the Appellant in property.

According to the Appellant, he was allotted a plot of land under Housing Scheme. He recently came to know that the respondents through forgery and vide a sham sale deed of the plot got the same registered in the name of CD. Further, the CD was a defunct company and non-operative and its last AGM was held on 26th September 2016. Hence, its name was struck off from the records of ROC by public notice. Thereafter, the Respondent sent notice under Section 8 of IBC, 2016 to the CD and the same admitted by the AA. Subsequently, the CD admitted the claim made by Respondent and sought time to make payment. Thus, Appellant claimed that there is a collusion to deal with the plot which he claimed belonged to him. Further it was argued that value of the Plot is much more than the operational debt claimed.

NCLAT's Observations & Order:

The Appellate Tribunal dismissed the Appeal stating that the Appellant is unable to show any documents showing entry in any Government Records prima facie to show ownership as claimed. Further, if Appellant had dispute of title, it does not appear to have been raised anytime earlier. Hence, it declined to entertain the appeal as the Appellant merely showed an Allotment Letter and receipt issued by a Co-operative Society more than 25 years back and it did not wish to get into decision of title. It further stated that at the instance of such third party it declines to enter into the allegations of collusion between Respondents with regard to initiation of Corporate Insolvency Resolution Process.

Further, the Appellant may pursue appropriate remedy in appropriate forum.

Case Review: - Appeal Dismissed.