



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY Vs SHRI PRAMOD AGRAWAL & MR. ANIL MATTA.

COMPANY APPEAL (AT) (INSOLVENCY) NO. 55 OF 2021

DATE OF JUDGMENT: JUNE 21ST 2021

Facts of the Case: -

This appeal has been filed by Greater Noida Industrial Development Authority (Appellant) being aggrieved by impugned order filed by one of the Suspended Directors (Respondent 01) of the Corporate Debtor 'CD' of 'M/s Primrose Infratech Pvt. Ltd.'. While passing the impugned order, the Adjudicating Authority 'AA' (NCLT- New Delhi Bench) held that the Appellant claim cannot be treated as having a financial claim and being aggrieved of such impugned order this appeal was filed. The Appellant claimed that it had leased the land by Registered Lease Deed in favor of the CD. The CIRP started against the CD at the behest of one Operational Creditor 'OC'. The Appellant claimed that earlier it was treated as Financial Creditor 'FC' as stated in the Minutes of Meeting of CoC. Respondent 01 had earlier filed an appeal to exclude the Appellant as Member of the CoC claiming it was not a FC. Further Appellant claimed that above appeal was decided by the AA without hearing it. Appellant argued that the CoC did not take any decision by voting to exclude the Appellant from CoC and referred to the Order passed by the AA.

The Appellant submitted that he was aggrieved as he was excluded from CoC and was not allowed to participate which caused serious prejudice to Appellant because the RP did not let it participate in the said CoC meeting as Appellant was Member of the CoC.

The Respondent 02 (Resolution Professional of CD) submitted that both Appellant as well as Respondent 01 are not making correct statement that AA had not heard the parties while passing earlier orders and the impugned order.

NCLAT's Observations

The Appellate Tribunal stated that it has heard the Appellant even about the Lease Deed where Appellant stated that the recitals for the Lease Deed show that the land has been leased for 99 years



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with recitals showing that rights incidental to ownership have been given to the CD and that as per the 'Indian Accounting Standard' the Lease Deed is required to be categorized as financial lease. It was argued that the lease transferred all the risks and rewards incidental to ownership of the underlying asset. The Appellate Tribunal referred to the impugned order of AA where it had unequivocally categorized the claim of Appellant as Operational Debt after considering the matter. Hence the reconstituted CoC had right to exclude Appellant.

The Appellate Tribunal stated that it had examined a similar Lease Deed in the matter of "New Okhla Industrial Development Authority vs. Mr. Anand Sonbhadra (RP)", Company Appeal (AT) (Ins.) No. 1183/2019 dated 16.04.2021 and the Lease Deed was threadbare discussed in that matter. It had already held in that matter that such Lease Deed does not constitute the Financial Lease. For similar reasons it did not find that Appellant is able to show Financial Lease in its favor. Further rewards incidental to ownership of the underlying asset-land were not transferred, in the Lease Deed if contents are considered reading the same with Indian Accounting Standards.

Further, in the present matter, the Appellant was earlier treated as FC for the dues claimed but later the Appellant has been treated as OC. The Tribunal Stated that it will not deal with issue if such lease constitutes, even operational debt in this matter. The Order of the AA directed the RP to consider if debt of Appellant is a Financial Debt and place it before CoC and the same was done. On the face of it, the Lease Deed does not appear to be Financial Lease. As the Resolution Plan is already approved, where it appears that the Appellant is not a FC, it did not wish to go into the technicalities of the manner in which it was excluded from the CoC.

Order: -

The Appellate Tribunal did not find any substance in the appeal and dismissed it accordingly.

Case Review: - Appeal Dismissed.