



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Volume 04 | Number 28

(July 16, 2021)



**HYTONE MERCHANTS PRIVATE LIMITED VS. SATABADI INVESTMENT CONSULTANTS PRIVATE LIMITED
COMPANY APPEAL (AT) (INSOLVENCY) NO. 258 OF 2021
DATE OF JUDGMENT: JUNE 30TH 2021**

“THE ADJUDICATING AUTHORITY SHOULD BE VERY CAUTIOUS IN ADMITTING THE APPLICATION SO THAT CORPORATE DEBTOR CANNOT BE DRAGGED INTO CIRP WITH MALA FIDE FOR ANY PURPOSE OTHER THAN THE RESOLUTION OF THE INSOLVENCY.”

Facts of the Case: -

This Appeal was filed by Appellant (Hytone Merchants Private Limited) aggrieved by the order of the Adjudicating Authority ‘AA’ (NCLT-Kolkata Bench) whereby the AA rejected the Application filed under Section 7 of the IBC, 2016. The facts of the case are that the Appellant had given an unsecured loan of Rs.3 lakhs to the Respondent / Corporate Debtor ‘CD’ (Satabadi Investment Consultants Private Limited) for six months carrying interest @ 15% per annum under the request for financial assistance by the Respondent. The Appellant being Financial Creditor ‘FC’ of the Respondent filed the Section 7 Application against the Respondent on account of default committed by the Respondent in repaying loan amount advanced by the Appellant.

The Respondent acknowledged receipt of the unsecured loan amount and also issued a demand promissory note. However, the Respondent defaulted to repay the dues. Subsequently, the Appellant issued a demand notice recalling the unsecured loan, but the Respondent failed to clear the outstanding dues despite the same.

The Section 7 Application filed was complete in all respects and met all requirements under IBC, 2016 and regulations thereunder. However, in the impugned order, despite finding and ascertaining that there was indeed the existence of default, and that the Application was complete in all respects, the AA dismissed the Application stating that on perusal of the master debt of the CD, it has a corporate guarantee of Rs. 480 crore approx. and on perusal of the financial statements of the CD, it has networks of Rs. 15 crore approx. Hence It is hard to convince oneself that the Company having a network of Rs. 15 crore approx. would not be able to make a payment of Rs. 3 lacs. It appears that the petition at hand has been filed in collusion with the CD.



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NCLAT's Observations

The Appellate Tribunal stated that based on the law laid down by Hon'ble Supreme Court in *Swiss ribbons (P) Ltd v Union of India*, (2019), it is clear that even if the Application filed under Section 7 meets all the requirements, then also the AA has to exercise discretion carefully to prevent and protect the CD from being dragged into the CIRP mala fide. Therefore, the Code prescribes penalties under Section 65 and 75. Furthermore, Section 65 explicitly says that if any person initiates the CIRP or liquidation proceedings fraudulently or with malicious intent for any purpose other than for resolution of Insolvency or liquidation the AA may impose a penalty. Thus, the AA should be very cautious in admitting the Application so that CD cannot be dragged into CIRP with mala fide for any purpose other than the resolution of the Insolvency. Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency.

The Appellate Tribunal was of the view that even if the petition complies with all requirements of Section 7 of the IBC, 2016, it is filed collusively, not with the intention of Resolution of Insolvency but otherwise. Therefore, it is not mandatory to admit the Application to save the CD from being dragged into CIRP with mala fide.

Further in the instant case, in the light of the observations of the AA and that the CD is also a Corporate Guarantor and has extended the Corporate Guarantee of a considerable amount therefore such plausible contention cannot be ruled out that the CD colluded with the FC to escape its liability as a corporate guarantor.

Order: -

The Appellate Tribunal dismissed the appeal stating that the appeal had no merit.

Case Review: - *Appeals Dismissed.*