



# 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 29

(July 25, 2021)

**NTPC LIMITED, BARH SUPER THERMAL POWER PROJECT VS. RAM RATAN MODI, LIQUIDATOR OF D C INDUSTRIAL PLANT SERVICES PVT. LTD.  
COMPANY APPEAL (AT) (INSOLVENCY) NO. 309 OF 2021  
DATE OF JUDGMENT: JULY 19<sup>TH</sup> 2021**

**“IT IS DUTY OF LIQUIDATOR TO EXAMINE THE CLAIM AS PROVIDED BY REGULATIONS AND REGULATION 25 TO COME AT BEST ESTIMATE OF THE AMOUNT AND GIVE THE BENEFIT TO THE APPELLANT.”**

### Facts of the Case: -

This Appeal was filed by Appellant 'NTPC Limited' against impugned order passed by the Adjudicating Authority 'AA' (NCLT-Kolkata Special Bench). In the impugned order, Appeal filed under Section 42 of the IBC, 2016 by Appellant was partially rejected. The Appellant claimed that it had awarded two contracts to the Corporate Debtor 'CD' - 'DC Industrial Plant Services Pvt. Ltd.'. The Appeal states that the Respondent failed to carry out the contracts awarded to it and the Appellant claims that the Appellant was constrained to terminate the contract and to get balance work executed through third party. Accordingly, CD referred the disputes to adjudication.

The facts of the case are that Application under Section 7 of the IBC, 2016 was admitted against the CD and the Appellant filed proof of claim as an "other creditor" under Form 'F' and the Resolution Professional 'RP' published list of the Creditors. Subsequently, Liquidation order was passed, and the Appellant filed claim under Form 'G' to the Liquidator. The Liquidator however, sent an e-mail rejecting the claim and the Appellant moved AA. The AA recorded that it was partly allowing the claim to the extent mentioned in the impugned order. Further, CD had filed a counter claim on the Appellant and the Appellant had called for Arbitration which was suspended due to CIRP process.

Subsequently the adjudicator in its award rejected the counter claim of the CD. However, with regard to the claim made by the Appellant, the Adjudicator recorded that the "same may further be worked out and exact amount which is assessed at the risk and cost of CD". Thus, the figure only remained to be worked out.

Further, after the Adjudicator gave Award, the matter was referred to the Expert Settlement Council 'ESC' which heard both the parties, but ESC also could not bridge the gap between the parties.



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Referring to the same the Liquidator sent an e-mail and observed that since the claim amount of Appellant has been subjected to dispute by the CD and the books of CD does not show the said claim amounts as claimed by the Appellant, the claim was not admissible.

## **NCLAT's Observations**

The Appellate Tribunal stated that as per IBBI (Liquidation Process) Regulations, 2016, the Liquidator was required to process the claims submitted in Form 'G' by the Appellant as claim by "Other Stakeholder". Regulation 20 provides for processing of claims by other stakeholders and the Appellant was required to prove its claim inter alia based on relevant documents which adequately establish the claim. Under Regulation 23, the Liquidator has power and duty to call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim. Further, Regulation 28 even makes provisions for contingencies where debt is payable at future time and Regulation 29 provides for Mutual Credits and set-off.

Further the Appellate Tribunal stated that it was inappropriate on the part of the Liquidator to inform the Appellant in the e-mail that because the CD had disputed the amount and the same did not reflect in the record of the CD, the claim filed by the Appellant was not admissible. It was his duty to examine the claim as provided by Regulations and Regulation 25 to come at best estimate of the amount and give the benefit to the Appellant.

The Appellate Tribunal found that the Liquidator had avoided performing the duty as was required to be performed under the IBC, 2016 and the Regulations.

## **Order: -**

The Appellate Tribunal disposed the appeal directing the Liquidator to take steps as mentioned in judgment and process claim of the Appellant as 'other creditor' and arrive at best estimate of the amount of claim made by the Appellant and give the necessary benefit to the Appellant. The communication sent by the Liquidator were quashed and set aside.

**Case Review: - Appeal Disposed**