



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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NATIONAL SPOT EXCHANGE LTD. VS. MR. ANIL KOHLI, RP FOR DUNAR FOODS LTD.

CIVIL APPEAL NO 6187 OF 2019

DATE OF SUPREME COURT JUDGMENT: SEPTEMBER 14, 2021

“We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India.”

Facts of the Case: -

This appeal was filed by Appellant (National Spot Exchange Limited) under Article 142 of the Constitution of India against the judgement of NCLAT. It is pertinent to note that the Appellant had earlier filed a money suit against one PD Agro Processors Pvt. Ltd. (PD Agro) and later through investigation it was revealed that PD Agro had siphoned off funds to the Corporate Debtor 'CD' (Dunar Foods Limited) and the High Court of Bombay had passed a decree against PD Agro. When NCLT commenced the CIRP against the CD under the provisions of the IBC, the IRP invited the claims from the creditors of the CD and the Appellant herein submitted its claim citing the decree of the High Court.

IRP rejected the claim of the Appellant on the ground that there is no privity of contract between the Appellant and the CD. The decision of IRP was challenged by the appellant before NCLT which rejected the said application and upheld the decision of the IRP. Subsequently, being aggrieved and dissatisfied with the order passed by the NCLT, the appellant preferred an appeal before the NCLAT. However, there was a delay of 44 days in filing of the mentioned appeal and the learned Appellate Tribunal dismissed the same on the ground that it has no jurisdiction to condone the delay beyond 15 days and thereby the appeal was barred by limitation. The appellant challenged the order of NCLAT in the present appeal by stating that it had failed to uplift the corporate veil as PD Agro is the sister concern of CD and had committed “fraud and collusion” by syphoning off funds.



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Supreme Court's Observations: -

The Supreme Court stated that the Appellant had preferred an appeal before the NCLAT under S. 61(2) of IBC which requires an appeal to be preferred within prescribed limitation period of 30 days. The Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed 15 days. Therefore, the Appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated under Section 61(2) of the IBC. The Appellant in the present appeal preferred the appeal after 44 days of delay and hence the appeal was dismissed by NCLAT as it was barred by limitation.

The Apex court further cited the case of *Popat Bahiru Goverdhane v. Special Land Acquisition Officer* and held that, "it is a settled legal position that the law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the Statute so prescribes". The Court observed that it has no power to extend the period of limitation on equitable grounds and that the statutory provision may cause hardship or inconvenience to a particular party, but the Court has no choice but to enforce it by giving full effect to the same. It further observed that what cannot be done directly under S. 61(2) of IBC i.e., condonation of delay not exceeding 15 days from the completion of 30 days, cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India.

Order: -

The Apex Court dismissed the appeal stating that no interference was called for in the matter. The order passed by NCLAT was in confirmation with the law as the appeal was barred by limitation and the Appellate Authority has no jurisdiction to condone delay extending 15 days. The present appeal failed and was accordingly dismissed.

Case Review: - *Appeal Dismissed.*