



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 38

(September 28, 2021)

**K.N. RAJAKUMAR VS. V. NAGARAJAN & ORS.
CIVIL APPEAL NO 1792 OF 2021 WITH.2901 OF 2021
DATE OF SUPREME COURT JUDGMENT: SEPTEMBER 15, 2021**

"ONE OF THE PRINCIPAL OBJECTS OF THE IBC IS PROVIDING FOR REVIVAL OF THE CORPORATE DEBTOR AND TO MAKE IT A GOING CONCERN."

Facts of the Case: -

The present appeal was filed by D. Ramjee 'Appellant', an ex-employee of the Corporate Debtor 'CD' (M/s Aruna Hotels Ltd.). The facts of the case are that the business of CD was shut down for more than 7 years and D. Ramjee filed application under Section 9 of the IBC for settlement of dues after the new management of CD disowned itself from the admissions of settlement of arrears of salary pertaining to previous management. The application was admitted by NCLT and thereafter being aggrieved by the order passed by NCLT, the CD filed an appeal before NCLAT which was allowed setting aside order of NCLT. The NCLAT also recorded the assurance given by the Corporate Debtor that they will be paying three years' arrears of salary to the three employees including D. Ramjee, who had initiated CIRP proceedings against the CD and the same was not challenged by D. Ramjee.

Meanwhile, one other ex-employee of the CD, N. Subramanian also filed an application under Section 9 of the IBC, initiating CIRP against the CD. The CD approached NCLAT being aggrieved by the order of NCLT and the appeal was allowed by NCLAT. Subsequently, being aggrieved by the order of NCLAT, N. Subramanian filed appeal before the Supreme Court which restored order of NCLT and thereafter the CD filed miscellaneous application requesting for compromise with N. Subramanian and the court granted such request to approach CoC for settlement under Section 12A of the IBC. Thereafter, NCLT directed RP to convene a meeting of CoC consisting of the members, who originally constituted CoC.

Being aggrieved by the above order of NCLT, K.N. Rajakumar (Suspended Director of CD) preferred an appeal in NCLAT, which was dismissed. Thereafter, K.N. Rajakumar and D. Ramjee filed the present civil appeals before the Hon'ble Court being aggrieved by the respective order passed by NCLAT with regards to withdrawal of proceedings.



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Supreme Court's Observations: -

The Apex Court citing the cases of *Vidya Charan Shukla v. Purshottam Lal Kaushik and K.I. Shephard and Ors. v. Union of India and Ors.*, stated that it is a settled principle of law that the Court should not go into the academic issues and seek to interpret the provisions of laws when it is not necessary for deciding the issues in the appeal. Further, the Court observed that it was not in dispute that resolution of COC approving withdrawal of CIRP Proceedings was supported by requisite majority therefore AA after considering the resolution passed by COC had allowed the application filed by K.N. Rajakumar.

The Apex court cited the case of *Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company* with regards to aim and objective of IBC and observed that one of the principal objects of the IBC is providing for revival of the CD and to make it a going concern. Every attempt has to be first made to revive the concern and make it a going concern, liquidation being the last resort. The court further observed that the CD has already settled the issue with the erstwhile financial creditors, who have resolved to withdraw the CIRP proceedings and by virtue of withdrawal of CIRP proceedings, the CD became a going concern. The Court also observed that when the appeal filed by CD was allowed by NCLAT setting aside order passed by AA in D. Ramjee's application under S. 9 of IBC, the said order of NCLAT was not challenged by D. Ramjee and in pursuance of the NCLAT order an amount was also paid to D. Ramjee towards arrears of salary by the CD.

It was further observed by the Hon'ble Court that the matter had attained finality when the appeal filed by the CD came to be allowed by NCLAT. After the withdrawal of CIRP proceedings, the powers and management of the CD were handed over to the Directors of the CD and from that date RP and CoC in relation to the CD had become *functus officio*.

Order: -

The Apex Court disposed of the appeals stating that no interference was called for in the matter.

Case Review: - Appeal Disposed.