



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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DEEPAK PARASURAMAN & ORS. VS. SRIPRIYA KUMAR & ORS.
COMPANY APPEAL (AT) (INSOLVENCY) NO. 349 OF 2020
DATE OF NCLAT JUDGMENT: 21st SEPTEMBER 2021

Facts of the Case: -

This Appeal has been filed by the Deepak Parasuraman 'Deepak' and Ingenium Advisory LLP 'IA' 'Appellants' aggrieved and dissatisfied by the order passed by the NCLT, Special Bench, Chennai (Adjudicating Authority 'AA') whereby the AA allowed the appeal filed by the Resolution Professional 'RP' (Respondent No.1) under Section 43 and 66 read with 60(5) of the IBC, 2016. The AA held that the impugned transfer of the funds of Perfect International Private Limited (Corporate Debtor 'CD') to IA was for fraudulent purpose and further directed to Deepak and P R Venkatesh (Promoter MD) jointly and severally to contribute Rs. 65 lacs to the CD within fifteen days from order.

The facts of the case are that Deepak and CD entered in to two agreements, one for arranging long term and working capital debt for CD and second to facilitate the procurement of purchase order/supply contract from windmill manufacturing companies for supply of tubular steel towers of the CD. In the course of the business, CD made a total payment of Rs. 65 lacs to IA in three tranches.

Subsequently, AA admitted the petition on an Application under Section 9 of the IBC, 2016 filed by M/s Jotun India Private Limited (Operational Creditor 'OC') and appointed IRP who was later confirmed as RP. Thereafter, RP preferred an Application before the AA under Section 43 and 66 of the IBC, 2016 alleging the transfer of payments made by the CD to IA in three tranches as part of ordinary course of business to be preferential and fraudulent in nature. Thereafter, the AA passed the impugned order resulting in this Appeal.

NCLAT's Observations

The Appellate Tribunal was of the considered view that the following facts were admitted in the instant appeal: -

- That all together 65 Lacs were received by IA from the CD in three tranches.



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- That RP during the course of CIRP while reviewing the books of accounts of the CD noticed the payments made by the CD to IA.
- That the details of payments were sought from P R Venkatesh through email but there was no response or justification in support of such payments made to the Appellants. The books of accounts reflected this money as advance to the Appellants.
- That the Office of the IA is located at the residence of P R Venkatesh.
- That P R Venkatesh have common interest in a company called Udveka Engineering Private Limited where P R Venkatesh and his wife are directors.
- That the Appellants hold 10,000 equity shares in Udveka Engineering Pvt. Ltd. with balance 250 shares held by P R Venkatesh. Hence, the Appellants are shareholders and P R Venkatesh is Director acting on instructions of the Appellants.
- That the payment was made pursuant to two letters of engagement and the letter between P R Venkatesh and IA, wherein both are not a party to the said engagement.
- That no Invoice was raised by IA on the CD for payment. There was no service tax charged and there was no TDS deducted by the CD for payment.
- All the above facts stated that Agreements were suspicious documents and cannot be relied upon.

Order: -

The Appellate Tribunal after taking into consideration all the above facts and provisions of the law, was of the considered view that there was no illegality committed by the AA while passing the impugned order. The Appellate Tribunal affirmed the impugned order passed by the AA and stated that there was no merit in the instant Appeal. The instant Appeal was dismissed.

Case Review: - Appeal Dismissed