



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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V NAGARAJAN VS. SKS ISPAT AND POWER LTD.& ORS.
CIVIL APPEAL NO. 3327 OF 2020
DATE OF SUPREME COURT JUDGMENT: 22ND OCTOBER 2021

“IT IS NOT OPEN TO A PERSON AGGRIEVED BY AN ORDER UNDER THE IBC TO AWAIT THE RECEIPT OF A FREE CERTIFIED COPY AND PREVENT LIMITATION FROM RUNNING. ACCEPTING SUCH A CONSTRUCTION WILL UPSET THE TIMELY FRAMEWORK OF THE IBC.”

Facts of the Case: -

The present appeal arises under Section 62 of the IBC 2016 from the judgement of the NCLAT, Delhi Bench which was dismissed as barred by limitation. The appellant had filed an appeal against the NCLT order which had dismissed the appellant's application in a liquidation proceeding, seeking interim relief against the invocation of a bank guarantee by SKS Power Generation Chhattisgarh Ltd (Respondent no. 10) against Cethar Ltd. (Corporate Debtor 'CD').

The facts of the case are that the appellant (IRP, RP and Liquidator of CD) after an unsuccessful attempt at resolution, instituted proceedings under Sections 43 and 45 of the IBC to avoid preferential and undervalued transactions of the CD in favor of Respondents. The appellant claimed to have discovered that SKS Ispat and Power Ltd (Respondent No 1) and its subsidiary had colluded with the promoters of the CD and defrauded the latter of over INR 400 crores by entering into a fraudulent settlement of only INR 4.58 crores. Further, Respondent No 10, allegedly at the behest of Respondent No 1, sought to invoke certain bank guarantees issued by the CD for its failure to perform its services. Hence, the appellant filed a Miscellaneous Application to resist the invocation of performance guarantee until the liquidation proceedings concluded, which was refused by NCLT.

Further, the Appellant stated that, the free copy of the NCLT order was not issued and on account of the lockdown, the appeal before the NCLAT was delayed and was filed with an application for exemption from filing a certified copy of the order as it was not issued.

The NCLAT in its order stated that the appeal filed was barred by limitation as the statutory time limit of thirty days had expired and an application for condonation of delay had not been filed. Further, Rule 22 of



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the NCLAT Rules provides that every appeal must be accompanied with a certified copy of the impugned order, which had not been annexed and no proof that the same had not been issued, provided by appellant. Further, there were no grounds for interference since a performance guarantee is explicitly excluded from the ambit of a 'Security interest' which is subject to a moratorium under Section 14 of the IBC.

Supreme Court's Observations: -

The Apex Court regarding the issue of when will the clock for calculating the limitation period run for proceedings under the IBC stated that owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of the NCLAT Rules. Further Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.

On the second question of "Is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC?". The Apex court stated that Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While the tribunals, and even Apex Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation.

Order: -

The Apex Court dismissed the appeal stating that the appellant was present before the NCLT when interim relief was denied and no effort on his part was demonstrated to secure a certified copy of the said order and relied on the date of the uploading of the order on the website. The lockdown on account of pandemic and the suo motu order of Apex Court had no impact on the rights of the appellant to institute an appeal in this proceeding and the NCLAT had correctly dismissed the appeal on limitation.

Case Review: - Appeal Dismissed