



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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TATA CONSULTANCY SERVICES LIMITED VS. VISHAL GHISULAL JAIN, RESOLUTION PROFESSIONAL, SK WHEELS PRIVATE LIMITED.
CIVIL APPEAL NO 3045 OF 2020
DATE OF SUPREME COURT JUDGMENT: 23RD NOVEMBER 2021

Facts of the Case: -

The present appeal arises from judgment of the National Company Law Appellate Tribunal 'NCLAT' which upheld the interim order of the National Company Law Tribunal 'NCLT or AA' which stayed the termination by the Appellant of its Facilities Agreement with SK Wheels Private Limited (Corporate Debtor 'CD').

The facts of the case are that Appellant and CD entered into a Facilities Agreement which obligated the CD to provide premises with certain specifications and facilities to the Appellant for conducting examinations for educational institutions and whereby the Agreement stated that either party can terminate the agreement immediately by written notice to the other party provided that a material breach committed by the latter is not cured within thirty days of the receipt of the notice. Subsequently, the Appellant issued a termination notice and thereafter the parties contested the facts leading up to the issuance of the notice.

The Appellant stated that there were multiple lapses by the Corporate Debtor in fulfilling its contractual obligations, which it failed to remedy satisfactorily including issues of power supply and shortage of housekeeping staff, among other deficiencies. Whereas CD submitted that certain routine operational requirements were highlighted by the appellant from time to time, which were rectified within a reasonable duration and the termination notice wasn't issued on the ground that material breaches had occurred, and a thirty days' period was to be given to cure the defects before the agreement was terminated.

Supreme Court's Observations: -

The Supreme Court considered two issues arising in the appeal, Firstly, whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate upon the contractual dispute between the parties and secondly, whether in the exercise of such a residuary jurisdiction, it can



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impose an ad-interim stay on the termination of the Facilities Agreement.

The Apex Court stated that it is evident that the appellant had time and again informed CD that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the CD and the alleged breaches noted in the termination notice were not a smokescreen to terminate the agreement because of the insolvency of CD. Thus, the Apex Court was of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen de hors the insolvency of the CD. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice and the NCLAT has incorrectly upheld the interim order of the NCLT.

The Apex Court issued a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP and the termination of the contract should result in the corporate death of CD. Further, the narrow exception crafted in the matter **Gujarat Urja** must be borne in mind by the NCLT and NCLAT even while examining prayers for interim relief.

Order: -

The Supreme Court in view of the above disposed of the Appeal and set aside the judgment of the NCLAT and the proceedings initiated against the Appellant were dismissed for absence of jurisdiction.

Case Review: - Appeal Disposed