



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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RAJEEV R. JAIN, DIRECTOR (SUSPENDED). Vs. AASAN CORPORATE SOLUTIONS PRIVATE LIMITED & ORS.

COMPANY APPEAL (AT) (INSOLVENCY) NO. 1085 OF 2021

DATE OF NCLAT JUDGMENT: 12TH JANUARY 2022

Facts of the Case: -

This Appeal has been filed against the judgment passed by the National Company Law Tribunal, Mumbai Bench (Adjudicating Authority 'AA') whereby the application filed by Respondent- Financial Creditor 'FC' under Section 7 of the Insolvency and Bankruptcy Code, 2016 'IBC' has been admitted. The Appeal has been filed by Rajeev R. Jain, Director (Suspended) of the Corporate Debtor 'CD' challenging the impugned judgment.

The brief facts of the case are that the CD obtained two loans from the FC by means of two deposits agreements for an approx. amount of Rs. 500/- crore. The deposits were secured by deed of mortgages and other security documents. As per the terms of the first deposit agreement, the first loan was repayable on the expiry of three months from the date of first loan. Further the date for payment was extended, by which the CD was liable to repay the outstanding principal amount and interest to the tune of approx. Rs. 241/- crores.

Failing the above an application under Section 7 of IBC was filed by the FC claiming default of debt of approx. Rs. 258/- crores. After issuance of notice by the AA, the CD appeared and opposed the application and objected to the petition on the grounds that, firstly the FC committed breach of contract in not fully making the payment of advance amount of Second Deposit Agreement and Secondly, the amounts under both the deposits are secured. The AA by the impugned judgment admitted the application resulting in this appeal.

The Respondent refuting the submission of the Appellant stated that application filed under Section 7 by the FC was well within the jurisdiction and fully maintainable. Further, even under the terms and conditions of the mortgage deed, it was right of the Mortgagee to seek remedy by realising his dues from security or to take any other remedy available in law. Hence, the terms and conditions of the loan Agreement as well as the Mortgage Deed did not put any embargo on the right of the FC to take recourse of Section 7 of the IBC.



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NCLAT's Observations: -

The Appellate Tribunal was of the view that from pursuing the clauses of the Mortgage Deed, no kind of embargo has been put on the mortgagee to necessarily realise his dues from the secured assets. Further, the deed specifically reserves other remedies available to the Mortgagee which clearly mentioned that the rights and remedies conferred upon the Mortgagee under this indenture shall not prejudice any other rights or remedies, to which the Mortgagee may, independently of this Indenture, be entitled. Hence, if the law provides any other remedy to Mortgagee the same can very well be availed by him. It is the choice of the mortgagee to recover his dues from secured assets or to take other recourse of remedy as provided under law.

Further the submission of the Appellant that the AA should have followed the judgment of the co-ordinate Bench in "*Beacon Trusteeship Limited*" and reject the Section 7 application and the AA was bound by the judgment of the coordinate Bench & the principle of Stare Decisis. The reason given by the AA in not following the coordinate Bench judgment was that the same Judicial Member had taken a contrary view in another matter i.e. "*IDBI Trusteeship Services Ltd. V. Ornate Spaces Pvt. Ltd*". Thus, the judgment of the co-ordinate Bench in "*Beacon Trusteeship Limited*" was not a binding precedent to be followed by any other coordinate Bench. The Appellate Tribunal was of the view that the FC has full right to initiate action under Section 7 for non-payment of dues. Hence no error has been committed by the AA in admitting Section 7 Application filed by the FC.

Order: -

The Appellate Tribunal Court in view of the above observations found no merit in the appeal and dismissed the same.

Case Review: - Appeal Dismissed