



# 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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(February 21, 2022)

Standard Surfa Chem India Pvt. Ltd Vs. Kishore Gopal Somani.  
Company Appeal (AT) (Insolvency) No. 684 of 2021  
Date Of NCLAT Judgment: 14<sup>th</sup> February 2022

**“SATISFACTION OF CREDITOR CLAIMS WHILE ENSURING ASSET MAXIMIZATION IS THE UNDERLYING PRINCIPLE OF THE IBC, WHICH CANNOT BE OVERRIDDEN ON ACCOUNT OF MEAGRE DELAYS INDUCED BY A FORCE MAJEURE EVENT.”**

### Facts of the Case: -

This Appeal was preferred by Standards Surfa Chem India Private Limited (Appellant), who is successful auction purchaser of the Pondicherry unit of the property of Advanced Surfactants India Ltd (Corporate Debtor 'CD') in liquidation. The Appellant in this appeal was concerned with the auction sale of only the 'Pondicherry unit' of the CD in an E-Auction. In the E-Auction conducted the Appellant had emerged as the successful bidder in the proceeding with a bid of ₹ 3.3 crores and the Liquidator had issued a letter of intent dated 05<sup>th</sup> March 2021 stipulating 90 days timeline for making the full payment to complete the auction proceeding expiring on 03<sup>rd</sup> June 2021. Before the expiry of the said 90 days the Appellant preferred an IA before the NCLT (Adjudicating Authority 'AA'), seeking time extension in complying with auction proceedings, under Rule 11 of the NCLT Rules, 2016. However, the AA dismissed the IA vide impugned order, which stated that the application had become infructuous.

The Appellant stated that the grounds of this appeal are that the Liquidator refused to grant any extension of time for completion of the auction process, despite being empowered to do so and despite recognizing the difficulties faced by the Appellant on account of the 2nd wave of Covid 19 outbreak, in securing the loan from its bankers within the stipulated timelines. Further, the Liquidator also failed to take note of Regulation 47 A of the Liquidation Process Regulation 2016 according to which the Appellant was entitled to complete exclusion of the period from May 2021 on account of Lockdown.

The Appellate Tribunal raised two points for decision in this Appeal, Firstly, Whether the NCLT and Liquidator were justified in refusing extension to the Appellant without considering Regulation 47 A of the



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Liquidation Process Regulation 2016? and Secondly, Whether the Appellant is entitled to the exclusion/extension of time for the period of Lockdown due to Covid 19 as stipulated under Regulation 47 A of the IBBI (Liquidation Process) Regulation, 2016?

## **NCLAT's Observations: -**

The Appellate Tribunal in view of the observations of Hon'ble Supreme court in the matter of *Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019)* stated that the applicant had sought an extension of 3 months on the ground of the 2nd wave of the Covid 19 outbreak. Regulation 47 A provided that the period of Lockdown imposed by the central government in the wake of the Covid 19 outbreak shall not be counted for computation of timeline for any task that could not be completed due to Lockdown in relation to any liquidation process. Hence the Appellate was doubtful about the relevance of Regulation 47 A in the instant case because Lockdown was declared by Tamil Nadu State.

However, it mentioned that Regulation 47 deals with the Model Timeline for Liquidation Process and is only directory in nature. It cannot be considered a deadline. It is provided under Regulation as a guiding factor to complete the liquidation process in a timebound manner. In exceptional circumstances it can be extended. Further, Hon'ble Supreme Court, while dealing with the timeline provided under Section 7 of IBC 2016, has held that the timeline provided under Section 7 of the IBC is directory in nature and in special exceptional circumstances, it can be extended.

Further, it stated that E-Auction Process Information Document also provided discretion to the Liquidator to extend the timeline. The impact of the 2nd wave of Covid 19 was everywhere in India, of which judicial notice can be taken. In the special circumstances, the Liquidator ought to have sought permission of the AA to extend the timeline. However, the AA did not consider that the satisfaction of creditor claims while ensuring asset maximization is the underlying principle of the IBC, which cannot be overridden on account of meagre delays induced by a force majeure event.

## **Order: -**

The Appellate in view of the above observations allowed the appeal and dismissed the impugned order passed by the AA.

**Case Review: - Appeal Allowed.**

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