



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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BANK OF BARODA & ANR Vs. MBL INFRASTRUCTURES LIMITED & ORS.
CIVIL APPEAL NO. 8411 OF 2019
DATE OF SUPREME COURT JUDGMENT: 18TH JANUARY 2022

Facts of the Case: -

This Appeal was filed to seek the judicial interpretation of Section 29A(h) of the Insolvency and Bankruptcy Code, 2016 'IBC', as amended by the Act 26 of 2018 from the Hon'ble Supreme Court.

The brief facts of the case are that M/s. MBL Infrastructures Limited (Respondent No.1) 'MBL' set up by Mr. Anjaneer Kumar Lakhotiya (Respondent No. 3) availed loans/ credit facilities from consortium of banks. On the failure of MBL to act in tune with the terms of repayment, forced few banks to invoke the personal guarantees extended by the Respondent No.3. Subsequently RBL Bank issued a notice under Section 13(2) of the SARFAESI Act, after duly invoking the personal guarantee which was followed by a similar action at the hands of other banks. Later in the context of above, RBL Bank filed an application under Section 7 of IBC before the NCLT, Kolkata (Adjudicating Authority 'AA') to initiate CIRP against MBL which was admitted, and two resolution plans were received of which one was by Respondent No. 3 which was prior to the introduction of Section 29A of the Code.

Thereafter the CoC in its meeting deliberated upon the impact of the amendment and the eligibility of Respondent No. 3 in submitting a resolution plan, who in view of the same filed an application praying for a declaration that he was not disqualified from submitting a resolution plan under sub-section (c) and (h) of Section 29A of the Code, whereby the AA, vide its order held that it was eligible for the same. It ruled that since the personal guarantee having not been invoked and the Respondent No.3 merely having extended his personal guarantee, as such there is no disqualification per se under Section 29A(h) of IBC as the liability under a guarantee arises only upon its invocation.

The resolution plan was approved by more than 75% of voting share after considering the technoeconomic viability and feasibility of the plan and the same was approved by the AA as well. Further the other appeals and IAs including that of Appellant were dismissed on the above grounds by AA as well as Appellate Tribunal. The Appellate Tribunal further confirmed the order of the AA.

Meanwhile the IBC went further amendments. The Appellant challenged the order of the Appellate Tribunal confirming the order of the AA in this appeal.



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Supreme Court's Observations: -

The Apex Court was of the view that the Respondent No.3 executed personal guarantees which were invoked by three of the FCs even prior to the application filed which attracted Section 29A(h) of the Code. The eligibility can never be restricted to the aforesaid three creditors, but also to other financial creditors in view of the import of Section 7 of the Code. Thus, in the interpretation of Section 29A(h), the plan submitted by the Respondent No.3 ought not to have been entertained. The AA and the Appellate tribunal were not right in rejecting the contentions of the appellant on the ground that the earlier appeals having been withdrawn without liberty, the issue qua eligibility cannot be raised for the second time.

However, the very resolution plan submitted by the Respondent No. 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved and majority of the creditors have given their approval to the resolution plan. The AA rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan has also put into operation and as of now MBL is an on-going concern. Further the interest of over 23,000 shareholders and thousands of employees of MBL needs to be taken in Consideration and Rs. 300 crores (approx.) has also been approved by the shareholders to be raised by MBL.

The Apex court further stated that the ultimate object of the Code is to put the CD back on the rails and no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, the Court did not wish to disturb the resolution plan leading to the on-going operation of the MBL.

Order: -

The Apex Court in view of the above observations disposed of the case.

Case Review: - *Appeal Disposed*