



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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**DAMODAR VALLEY CORPORATION VS. KHARKIA STEELS PVT. LTD & ORS.
COMPANY APPEAL (AT) (INSOLVENCY) NO. 119 OF 2022
DATE OF NCLAT'S JUDGMENT: 15TH MARCH 2022**

Facts of the Case: -

This Appeal was filed by Appellant under section 61 of the IBC, 2016 which arised out of the order dated 25.11.2021 passed by the Adjudicating Authority 'AA' (NCLT, Kolkata Bench). On an IA filed by the Successful Resolution Applicant of Kharkia Steels Pvt. Ltd. 'KSPL' (Corporate Debtor 'CD') for a new connection on temporary basis the AA directed by its Order that KSPL shall deposit the requisite security deposit amount for the new connection to Appellant, whereafter Appellant shall process the application within ten days and provide the new connection for electricity supply to KSPL. The Appellant was aggrieved by this order, that while his appeal was pending for consideration before the NCLAT, wherein he assailed the approval of the resolution plan, the AA provided a final relief in the form of direction for providing new connection to the successful resolution applicant.

The facts of the case are that the Appellant entered into a Power Purchase Agreement with CD and due to large quantum of unpaid dues, a notice of disconnection of power supply was sent by the DVC to the CD. Thereafter in September 2019, by filing an application under section 7 of the IBC by Dena Bank, a Financial Creditor 'FC' CIRP was initiated. Upon completion of the CIRP, the Resolution Plan proposed by Amritvani Exim Private Limited 'AEPL' (Successful Resolution Applicant) was approved by the Committee of Creditors 'CoC' and subsequently approved by the AA vide order dated 21.9.2020.

Subsequently, AEPL applied for reconnection of power supply to the premises of the CD through the IA and aggrieved by the Order in the IA, the Appellant filed the present appeal. The Appellant contended that by allowing the IA the AA gave final and substantive relief to AEPL through an interim order when the appeal assailing the resolution plan approval was pending, which is not proper. Further the legality of the approval of the resolution plan should have been decided first before granting any relief in this matter to AEPL

Further, the payment of past dues and reconnection of electricity supply after depositing security deposit are covered under the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations made under the Electricity Act, and thus the AA exceeded its jurisdiction by approving a resolution plan



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which, inter alia, takes away the right of the Appellant available under the Electricity Act and WBERC Regulations.

NCLAT's Observations: -

The Appellate Tribunal stated that the main issue in the present appeal is whether the relief granted by the AA directing the DVC to provide new connection to AEPL after payment of the security deposit could have been given by the AA while the main appeal was pending before Appellate Tribunal and whether the jurisdiction under IBC is not proper in granting such a relief?

The NCLAT considered the legal validity of the resolution plan as approved by the AA which was assailed by Appellant and upheld the approval of resolution plan. NCLAT noted that the Successful Resolution Plan has to be implemented in a certain time frame as contained therein and as the pending appeal has been disposed upholding the legality of the approval of resolution plan. Therefore, the plan has to be implemented in letter and spirit. Further the plan directs DVC to ensure availability of continuous power to the plant at the same rate at which it is supplied power to the adjoining units. However, it needs slight modification since the conditions that are applicable for supplying power to the CD under a new agreement shall be at the tariff rate and conditions that would prevail at the time of signing of the agreement for a fresh connection by DVC with AEPL.

Order: -

The Appellate Tribunal in view of the above observations disposed the appeal and modified the clause of the plan as follows: (i) AEPL to apply for fresh connection, payment of security deposit and any other charges that may be admissible under WBERC Regulations will have to be paid by AEPL, and (ii) The supply of electricity to the CD should be in accordance with the WBERC Regulations made under the Electricity Act.

Further the direction given by the AA to DVC to provide temporary connection to the SRA is in accordance with a legally approved resolution plan and therefore suffers from no illegality.

Case Review: - Appeal Disposed.

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