



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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**S. RAJENDRAN VS. MR. B. M ANAND & ORS.
COMPANY APPEAL (AT) (CH) (INSOLVENCY) NO. 37 OF 2022
DATE OF NCLAT'S JUDGMENT: 11TH MARCH 2022**

Facts of the Case: -

This Appeal was filed by Appellant being aggrieved of the order dated 07.01.2022, passed by the NCLT-Chennai (Adjudicating Authority 'AA') whereby, the AA disposed of the Application filed by the Respondents herein. The Appellant herein is the Resolution Professional of M/s Vasan Healthcare Pvt. Ltd. (Corporate Debtor 'CD'). He stated that the AA vide impugned order directed the Appellant to pay to the Respondents a sum of ~Rs. 1.13 crores from the CIRP cost within a period of 14 days from the date of order. Further, the AA directed the Appellant to pay monthly rent to the Respondents during the CIRP Period till such time the CD is in occupation of the premises. However, AA rejected the prayer of the Respondents seeking handing over of vacant possession of the property.

The Appellant submitted that the CD was admitted into CIRP on 21.04.2017 to which he was appointed as IRP and subsequently confirmed as the RP. He took necessary steps to take control of the CD and to ensure increase in the revenues generated by the CD to meet the CIRP Costs. Subsequently due to lockdown, the revenue generation was adversely impacted and only 50% of the payments to the Landlords towards rental dues could be paid for the month of May 2021. However, from June 2021 onwards due to the improvement in the pandemic situation and increase in the operations of the CD, he was able to meet the 100% of payment towards CIRP Costs. Further the CIRP of the CD was dependent on the revenues generated from its business.

Appellant submitted that the CD operates its business, out of leased premises wherein substantial amount towards interior development has been invested and it is important to retain the leased premises to continue the CD as a going concern based on which the Resolution Plans were received. In view of the above the Appellant prayed to allow the Appeal by setting aside the impugned order.

The Respondent submitted that the Appellant is duty bound to pay the CIRP Costs as per the provision of Section 5 (13) (c) read with regulation of 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and that the Appellant instead of implementing the impugned order and in order to overcome the obligation arising out of the above impugned order, is merely seeking to state that



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the other Landlords would also claim such legitimate dues based upon the order which would entail huge outlay on the part of the CD.

NCLAT's Observations: -

The Appellate Tribunal stated that the main issue in the present appeal for consideration is whether the impugned order passed by the AA is sustainable in law or not. Keeping in view that the Appellant is in obligation to pay the dues to the Respondents, the Appellate Tribunal was of the view that the issue for consideration is mixed question of fact and law. The fact remains that the premises in which the CD is carrying on its business belongs to the Respondents and the Appellant is duty bound to pay the dues to the Respondents. Therefore, it stated on facts, that the AA did not commit any error while passing the impugned order. Further, in so far as the law is concerned, the status quo is to be maintained with respect to the premises which the business of the CD is carrying on, when the CD went into CIRP. After admitting the Application, the AA would declare moratorium as per Section 14 of the IBC. Admittedly the CD was into CIRP and declared moratorium by the AA on admission of the Application against the CD. In pursuance of clause (d) of Sub- Section 1 of Section 14, which provides that during the moratorium period the lesser or an owner of the property cannot recover the possession of the property from the CD. In view of the law, the CD continuing its business in the premises leased to it. For the above reason the AA had rejected the prayer of the Respondents seeking handing over of vacant possession of the premises.

Order: -

The Appellate Tribunal in view of the above observations dismissed this appeal and upheld the order passed by AA and directed the Appellant to implement the order of the AA within a period of two weeks from passing of this order and report compliance before the AA.

Case Review: - *Appeal Dismissed.*

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