



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 05 | Number 16

(April 18, 2022)

MANISH JAIN VS. SH. RAKESH BHATIA
COMPANY APPEAL (AT) (INSOLVENCY) NO. 49 OF 2022
DATE OF NCLAT'S JUDGMENT: 19TH APRIL 2022

Facts of the Case: -

This Appeal has been preferred under Section 61 of the IBC, 2016, to challenge the Impugned Order dated 16/11/2021 passed by the NCLT- New Delhi (Adjudicating Authority 'AA') dismissing the I.A. filed by the Appellant Mr. Manish Jain (Ex-Director of M/s. P.K. Sales Company Private Limited (Corporate Debtor 'CD')) under Section 60(5) of the Code for 'Contempt' against the Liquidator/the Respondent alleging wilful disobedience of the Order dated 08/01/2020 passed by the Coordinate Bench of the AA.

The impugned order stated that, vide order dated 08/01/2020 AA had directed the Liquidator to not proceed to confirm the sale of the assets of the company until the permission is obtained. This order was passed on the submission made by the Appellant that a scheme under Section 230- 232 of the Companies Act should be considered before proceeding towards liquidation. Subsequently, the present application for initiation of contempt proceedings was filed on the ground that the liquidator had sold away the assets of the company. The main point was that, even after 2 years the applicant did not proceed to file any scheme and petition under Section 230-232 of the Companies Act and was dragging the matter. As there was no scheme/petition filed by the Applicant, the action taken by the Liquidator in regard to the assets of the company should not be considered as 'contempt' and dismissed the IA.

The Appellant stated that the Liquidation Order was passed against the CD and the Appellant along with the sister concern i.e., M/s. P.K. Industries and Dreamland Realtors Private Limited entered into an OTS with the FC for Rs. 30 Cr. on 17/08/2019. Further the Appellant on indifferent intervals till 20/02/2021 paid a total sum of Rs.11 Crs./- to the FC. He further requested vide email to the Liquidator to file before the AA for necessary approval to revive the CD as he was constrained to file the same before the AA which was opposed by the Liquidator despite the settled law. He also filed an application to bring on record the additional documents pertaining to the payment made to the FC in accordance with the OTS



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



and sent email requesting the Liquidator to forward the Settlement Scheme in the interest of the stakeholders. However, despite the same the liquidator sold the assets of the CD at much lesser price.

The Respondent submitted that the AA had vide its order dated 15/07/2020 had given permission to him to liquidate the assets and subsequently the Appellant had vide email requested the Liquidator to arrange for physical inspection of the property. He complied with the order of the AA and disposed of the assets conducting a public auction.

NCLAT's Observations: -

The Appellate Tribunal was of the view that there was no Scheme which was formalised under Section 230 of the Act. Further the Appellate tribunal raised a query as to whether any 'Scheme' was formalised or 'Debt Restructured' with consent as provided under Section 230(2)(c) of the act and filed before the AA or before Appellate Tribunal, the Appellant drew attention towards the OTS settlement facility. However, the CD did not pay the amount even after extension was granted.

The Appellate Tribunal stated following, that the Scheme under Section 230 of the Act was never formalized, that the date extended by the Hon'ble High Court of Delhi was lapsed, more than two years were lapsed subsequent to the Order of the Appellate Tribunal, that the Order dated 15/07/2020 attained finality, the Liquidator only complied with the terms of the Order dated 15/07/2020 and lastly there is no Scheme which has been filed till date under Section 230-232 of the Act. Hence, it cannot be said that the action of the Liquidator in selling the asset by public auction, be termed as contempt or any breach of the Order of the AA.

Order: -

The Appellate Tribunal in view of the above observations dismissed the appeal.

Case Review: - Appeal Dismissed.

Link of IBC case Law Capsule on IIPI Website: - <https://www.iiipicai.in/ibc-case-law-capsules/>