



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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SUNIL KUMAR JAIN AND ORS. VS. SUNDARESH BHATT AND ORS.
CIVIL APPEAL NO. 5910 OF 2019

DATE OF SUPREME COURT'S JUDGMENT: 19TH APRIL 2022

“WAGES/SALARIES OF ONLY THOSE WORKMEN/EMPLOYEES WHO ACTUALLY WORKED DURING THE CIRP ARE TO BE INCLUDED IN THE CIRP COSTS.”

Facts of the Case: -

The Appellant (Workmen/employees of M/s ABG Shipyard Limited (Corporate Debtor 'CD')) filed present appeal feeling aggrieved and dissatisfied with the impugned order dated 31.05.2019 passed by the National Company Law Appellate Tribunal, New Delhi 'NCLAT' by which the NCLAT dismissed the appeal preferred by the appellants, which was filed against the order passed by the National Company Law Tribunal - Ahmedabad Bench (Adjudicating Authority 'AA') dated 25.04.2019 not granting any relief to them with regard to their claim relating to salary, which were claimed for the period involving the CIRP and the prior period.

The CD was admitted to CIRP process vide order dated 01.08.2017 and on 23.10.2017, Company Application No. 348 of 2017 was filed before the AA, to direct the Resolution Professional to make payment to the employees and the workmen. Subsequently, on 09.3.2018, the appellants filed Company Application No. 78 of 2018 in the above before AA, to direct the RP to utilize the amount of Rs.9.75/- crores approx. to be received from the Indian Coast Guard solely for employees/workmen whereby the AA directed to deposit Rs. 2.75 crores out of the above amount with the Registry of the NCLT towards disbursement of the outstanding salaries/wages to the appellants, subject to the final outcome of IA No. 348/2017 and disposed of Application No. 78/2018.

Subsequently, as no resolution plan could be agreed upon, the RP filed an application for liquidation which was approved by the AA and simultaneously while disposing of Application No. 348/2017 did not grant the relief claimed by the appellants.

Aggrieved by the order passed of the AA, the appellants filed appeal before NCLAT, who by its order



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disposed of the appeal declining to interfere with the order passed by the AA, however, allowed the appellants to file their individual claims before the Liquidator. Further if claim of one or other workmen/employee is rejected, it will be open to them to move before the AA.

Supreme Court's Observations: -

The issue before the Court was with respect to wages/salaries of the workmen/employees during the CIRP period and the amount due and payable to the respective workmen/employees towards Pension Fund, Gratuity Fund and Provident Fund. The Apex Court while referring to the provisions of the Code, observed that while considering the claims of the concerned workmen/employees towards the wages/ salaries payable during CIRP, first of all it has to be established and proved that during CIRP, the CD was a going concern and that the concerned workmen/employees actually worked during the CIRP.

Further, considering Section 36(4) of the IBC whereby the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds.

Order: -

The Apex Court in view of the above observations partly allowed the appeal and directed the Appellants to submit their claims before the Liquidator and establish and prove that during CIRP, IRP/RP managed the operations of the CD as a going concern and that they actually worked during the CIRP. The Liquidator was directed to adjudicate such claims in accordance with law and on its own merits, irrespective of the fact whether the RP who himself is now the Liquidator. If the above is found to be true then the wages and salaries to be considered and included in CIRP costs and they will have to be paid as per Section 53(1)(a) of the IBC in full before distributing the amount in the priorities as mentioned in Section 53 of the IBC.

Case Review: - Appeal Dismissed.

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