



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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**HERO FINCORP LTD. VS. LIQUIDATOR OF TAG OFFSHORE LTD.
COMP. APP. (AT) (INS.) NO. 908 OF 2020
DATE OF NCLAT'S JUDGMENT: 29TH APRIL 2022**

Facts of the Case: -

This appeal has been filed by the Appellant, a financial creditor of TAG Offshore Limited (Corporate Debtor 'CD'), under section 61 of the IBC, 2016 assailing the judgment of the NCLT-Mumbai Bench (Adjudicating Authority 'AA') passed in Miscellaneous Application filed by Appellant.

The facts of the case are that after the order for liquidation of the CD dated 26.9.2019, Mr. Sudeep Bhattacharya (liquidator) informed the Appellant (Hero Fincorp Ltd.) vide e-mail dated 2.10.2019, which had charge of vessel Tag 22, that two vessels, namely Tag 6 and Tag 22, assets in the liquidation estate, came close to each other and cause damages. This email was also sent to United Bank of India, which had the charge of vessel Tag 6. The liquidator also mentioned in the email that he contacted a salvage company, namely K.E. Salvage for securing the two vessels for protection. The Appellant submitted that vide e-mail dated 3.10.2019 it communicated to the liquidator its willingness to contribute fund for securing the vessel tag 22 and to initiate the job. After completion of the securing operation, K.E. Salvage submitted tax invoice dated 9.10.2019 amounting to Rs. 14.75 lacs for services provided.

The Appellant further submitted that it had issued a notice dated 9.10.2019 to the liquidator indicating its intention to exit from the liquidation process and realise its charge in Tag 22 since it had obtained the statutory remedy for enforcement of mortgage for the vessel by invoking the Admiralty Jurisdiction of the High Court of Bombay and High Court of Andhra Pradesh before the initiation of CIRP of the CD. After issuing the notice and on not receiving any response from the liquidator, the Appellant preferred Misc. Application on 13.11.2019 seeking directions from the AA to allow the Appellant to exit the liquidation process and keep the vessel Tag 22 out of liquidation estate and also for including the expenses incurred in securing the two vessels. The Appellant stated that subsequently the AA passed orders in Misc. Application on 6.2.2020 holding that the expenses incurred for securing the vessel cannot be treated as liquidation process expenses and the Appellant should bear the entire expenses incurred by the liquidator in protecting the charge of the Appellant. However, the AA allowed the Appellant to keep its charge of Tag 22 out of the liquidation estate



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as requested under section 52 of the IBC subject to clearance of proportionate CIRP costs and payment of expenses incurred by the liquidator in securing the vessel Tag 22. On being aggrieved by the said order the Appellant has preferred this Appeal.

NCLAT's Observations: -

The Appellate Tribunal was of the view that the liquidator took action after receiving consent from the Appellant for preservation and protection of vessels much after the Appellant had invoked Admiralty Jurisdiction of Hon'ble Bombay High Court to realise its security charge in vessel Tag 22. Subsequently, when invoice received from K.E. Salvage Company was sent for payment to the Appellant by the liquidator, the Appellant went for litigation against making payment of said invoice. The Appellate Tribunal did not consider this action of the Appellant logical and in accordance with the actions taken by it to realise its charge in Tag 22. NCLAT did not find any error in the Impugned Order regarding payment to be made by the Appellant, of its proportionate share in the expenses incurred in securing vessel Tag 22 along with securing vessel Tag 6.

Further after the salvage operation was undertaken, the Appellant not only refused to pay the cost of securing and protecting the vessel Tag 22 and engaged the liquidator in protracted litigation. The Appellate tribunal noted that the action taken by the liquidator in protecting and preserving Tag 22 was for the benefit of the Appellant and the litigation undertaken by the Appellant caused expenditure which has ultimately cut into the value of the liquidation estate, thereby affecting the financial interest of the creditors/stakeholders.

Order: -

The Appellate Tribunal in view of the above observations dismissed the appeal and passed order that the Appellant shall pay a cost of Rs. One Lakh as litigation expenses to the liquidator, which shall go into the liquidation estate. Both, the proportional share of the Appellant in securing the two vessels Tag 22 and Tag 6 and the litigation cost shall be paid by the Appellant within 15 days of this judgment.

Case Review: - Appeal Dismissed.