



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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INDIAN OVERSEAS BANK. VS. M/S RCM INFRASTRUCTURE LTD. AND ANR.
CIVIL APPEAL NO. 4750 OF 2021
DATE OF SUPREME COURT'S JUDGMENT: 18TH MAY 2022

"SARFAESI PROCEEDINGS CANNOT BE CONTINUED AGAINST CORPORATE DEBTOR ONCE CIRP IS ADMITTED AND MORATORIUM IS ORDERED"

Facts of the Case: -

This appeal was filed against the judgment passed by the NCLAT - New Delhi dated 26th March 2021 whereby it dismissed the appeal filed by the appellant - Indian Overseas Bank, which was in turn filed challenging the order dated 15th July 2020 passed by NCLT - Hyderabad Bench in an Interlocutory Application, vide which the NCLT had allowed the application filed by the former Managing Director of the M/s RCM Infrastructure Ltd. (Corporate Debtor 'CD') and set aside the sale of the assets of the CD.

The Facts of the case are that the Indian Overseas Bank had extended certain credit facilities to the CD, which it failed to repay and eventually, SARFAESI proceedings were initiated against the CD. The Bank took symbolic possession of two secured assets mortgaged exclusively with it in exercise of powers conferred on it under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002. An E-auction notice came to be issued by the Bank to recover the public money availed by the CD. At this stage, the CD filed a petition under Section 10 of the IBC before NCLT. NCLT, on 3rd January 2019, admitted the petition and a moratorium was also notified. But even thereafter, the Bank continued the auction proceedings and accepted the balance 75% of the bid amount and completed the sale. NCLT, allowing the application filed by Corporate Debtor, passed an order setting aside the sale. NCLAT dismissed the appeal filed by the Bank and therefore it approached the Apex Court.

The bank contended that (1) the sale in question was complete on its confirmation on 13th December 2018 and as such, the admission of the petition on 3rd January 2019 by the learned NCLT would not affect the said sale (2) merely because a part of the payment was received subsequently after initiation



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of CIRP, it will not deprive the Bank from receiving the said money in pursuance to the sale which has already been completed.

Supreme Court's Observations: -

The Apex Court made reference of its decisions in *Vidhyadhar v. Manikrao & Another*, *Arvind Kumar v. Govt. of India & Others* and *Kaliaperumal v. Rajagopal & Another* and stated that however the balance amount was accepted by the appellant Bank on 8th March 2019, the sale under the statutory scheme as contemplated under Rules 8 and 9 of the Rules would stand completed only on 8th March 2019, which date falls much after 3rd January 2019, i.e., on which date CIRP commenced and moratorium was ordered. As such, the Apex court was unable to accept the argument on behalf of the appellant Bank that the sale was complete upon receipt of the part payment.

Further in view of the provisions of Section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the SARFAESI Act is prohibited. It was of the view that the appellant Bank could not have continued the proceedings under the SARFAESI Act once the CIRP was initiated, and the moratorium was ordered.

Order: -

The Apex court dismissed the present appeal in view of the above observations and upheld the orders passed by NCLAT and NCLT.

Case Review: - *Appeal Dismissed.*