



# 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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**PARTHA PAUL (ERSTWHILE DIRECTOR OF M/s. MULTIPLE HOTELS PVT. LTD.)  
Vs. KOTAK MAHINDRA BANK LTD. AND ANR.  
COMPANY APPEAL NO. 1138 OF 2019  
DATE OF NCLAT'S JUDGMENT: 10<sup>TH</sup> JUNE 2022**

### Facts of the Case: -

The present appeal was preferred by the Appellant 'Partha Paul' (Erstwhile Director of the Corporate Debtor namely Multiple Hotels Pvt. Ltd.) under Section 61 of the IBC, 2016, against the impugned order dated October 04, 2019, passed by the NCLT, Kolkata Bench (the Adjudicating Authority or AA). Kotak Mahindra Bank (Respondent-1/ R-1 or Bank) had sanctioned facilities for amount of ₹ 3 crore to M/s. Camelia Educate Services Ltd. (CESL) and ₹ 8.5 crore each to M/s. Multiple Educational & Manpower Development Trust (MEMDT) and Camellia Educate Trust (CET) respectively in 2012 to further the objectives of the Trust in development of educational services. On disbursement of the loan, an agreement dated November 11, 2012, was executed by and between the borrowers and the bank to the tune of ₹ 20.80 crore. Furthermore, the CD executed a Corporate Guarantee Agreement in lieu of the above said loans apart from offering its properties in mortgage.

The appellant contended that despite regular payments of Equated Monthly Installments (EMI), the R-1 failed to provide them the statement of accounts and started disputing on the order of satisfaction of the EMIs in terms of the agreement executed in respect of the financial facilities. He also alleged that the Bank did not honoured orders of settlement passed by the Debt Recovery Tribunal (DRT), Kolkata on December 14, 2018, but initiated multiplicity of proceedings in different avenues of law for the purpose of fulfilling their own mala fide intention and to take over the management of the trust and also of the Appellant's company. However, the R-1, argued that the CD had defaulted the payment of the loan therefore a petition was filed under Section 7 of the IBC, 2016 for initiating insolvency process. As the CD did not turn up despite several opportunities, the NCLT passed an *ex-parte* judgement for commencement of CIRP.



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## NCLAT's Observations: -

NCLAT observed that the impugned order of NCLT dated October 04, 2019, was passed *ex parte*. Furthermore, the loan facility was granted to the Trust at an extremely high rate of 25% per annum. The amount was sanctioned to the borrowers for the furtherance of the objective of the Trust for development of education services, and that the Corporate Guarantee Agreement was executed apart from properties being mortgaged for ₹ 20.80 crore. Further, the Court observed that the CD had paid to the Bank ₹ 28 crore from 2013 to December 2018.

NCLAT observed that the Bank/R-1 was engaged in forum shopping to the multiple 'Courts/ Tribunals' just to harass the Guarantor as it has moved the High Court of Calcutta to coerce the trust into paying of its debts and involving the Appellant in time consuming and expensive litigation. Citing previous judgements of the Supreme Court, the NCLAT said, "it is a settled law that the practice of Forum Shopping be condemned as its is an abuse of law". Citing the Supreme Court judgement in the matter of *Transmission Corporation of Andhra Pradesh Ltd. Vs. Equipment Conductors and Cables Limited* (2018), the NCLAT stated, "the provision of the IBC, 2016 is not intended to be a substitute to be a recovery forum,".

## Order: -

NCLAT set aside the order of the NCLT and ordered to remand back the matter with a direction to the AA to give a patience hearing to the Appellant. Additionally, there would be no order as to costs, and interim order, if any, passed by the Tribunal would stand vacated.

**Case Review: - Appeal Allowed.**