



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 26

(June 27, 2022)

AMIT GUPTA Vs. ANIL KOHLI & ANR.
COMPANY APPEAL (AT) (Ins) No. 445 of 2021
DATE OF NCLAT'S JUDGMENT: 10TH JUNE 2022

Facts of the Case: -

This Appeal was filed by Mr. Amit Gupta, the Appellant, in his capacity as the Successful Resolution Applicant (SRA), under Section 61 of the IBC, 2016 against the order passed by the National Company Law Tribunal (NCLT) Mumbai Bench, the Adjudicating Authority (AA), on April 30, 2021.

The SRA was required a loan amounting ₹77 Crore to satisfy the conditions of the Resolution Plan for which he approached the HDFC Bank. The HDFC Bank asked the assets of the Corporate Debtor to be free from all sorts of encumbrances to approve the loan. Subsequently, the SRA approached the AA with a prayer that he should be permitted to make payments of the balance amount within two months after the lifting/ removing all attachments, charges, encumbrances, and liens from the assets & properties of the Corporate Debtor and imposing commercial interest @12% per annum from the date it become due & payable. The AA dismissed the application on the ground that it was not vested with the jurisdiction to entertain the prayer.

Further, it was also submitted that the Resolution Plan was approved by an order of AA dated November 26, 2019. However, due to an inadvertent typographical error in the Order, a rectified order was issued on January 27, 2020. In this rectified order the time for making the total payment from the date of approval of the Resolution Plan was reduced from 30 months to three months about which the Appellant was informed on February 11, 2022. Accordingly, the Appellant requested the NCLT to pass an order directing that the time period mentioned for making full payment be reckoned from the date of rectified order i.e., January 27, 2020. The Appellant was also aggrieved with the AA as it had directed him to pay interest @12% per annum from the date it become due and payable as per the Resolution Plan, which, according to him, was contrary to the terms of the Resolution Plan and also contrary to the Magnate of the IBC, 2016. The Appellant also cited disruptions caused by Covid-19 pandemic to seek relief from the Appellate Tribunal. However, citing several previous orders of the Supreme Court, the respondents contended that the relief sought by the Appellant amounts to amendment in the Resolution Plan and it is the responsibility of the SRA to get the properties of the CD free from charges and attachments etc.



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NCLAT's Observations: -

The NCLAT observed that the liability for prior offences etc., particularly removing/lifting attachments/liens/charges/encumbrances existing prior to commencement of CIRP needs to be dealt with in accordance with the provisions of Section 32(A) of the IBC, which says that such liabilities of a Corporate Debtor shall cease. It observed that the object of the IBC would be defeated if the responsibility for prior offences is put on the SRA, and he should get a clean slate. Citing the judgement in the matter of “*CoC Essar steel India Ltd. Vs. Satish Kumar Gupta & Ors.*”, the Court concluded that the SRA cannot suddenly be faced with undecided claims. It further observed, “After the Resolution Plan submitted by him is accepted. It is the responsibility of the Resolution Professional to compile the claims submitted to him or observed from record and put the same in the Information Memorandum, so that the Prospective Resolution Applicant have a full idea of its own liability”.

On the issue of whether the interest rate be reduced to be made at par with RBI (Reserve Bank of India) base rate for lending to banks with additional 2% margin subject to a limit of 12% per annum or otherwise, the NCLAT observed that since the appellant had already paid the full amount by then there was no question of going back. Hence, the NCLAT approved a rate of interest of RBI base rate for lending to Banks + 2% margin as per the rate of interest applicable between January 27, 2020, to November 15, 2021, subject to a limit of 12% per annum.

Order: - The Resolution Professional and the representatives of the Committee of Creditors (CoC) who are the Chairman/ Members of the Monitoring Committee should assist the Resolution Applicant in sorting out the issues pending at various forums be it Excise Authority, Enforcement Directorate etc. The SRA will pay rate of interest of RBI Base rate for lending to banks + 2% margin as per the rate of interest applicable between January 27, 2020, to November 2021 subject to a limit of 12% p.a.

Case Review: - Appeal is partially allowed.