



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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Asset Reconstruction Company (India) Limited Vs. Tulip Star Hotels Limited & Ors.

Civil Appeal Nos. 84-85 of 2020

Date of Supreme Court's judgement: August 01, 2022

Entries in Financial Statement/s are acknowledgment of Debt liability of the Corporate Debtor.

Facts of the Case: -

The account of V. Hotels Ltd., the Corporate Debtor (CD) in which Tulip Star Hotels Ltd (Respondent No. 1) and Tulip Hotels Pvt. Ltd. (Respondent No. 2) has 50% share each, was declared a Non- Performing Asset (NPA) on December 1, 2008. Through a letter dated February 7, 2011, written within three years to the Appellant i.e., Asset Reconstruction Company (India) Ltd., the CD acknowledged the debt and proposed a settlement. This was followed by several requests of extension of time to make payment and revised settlements. On April 6, 2013, the CD again sought extension of time to pay the amount. Subsequently, on April 19, 2013, the CD made part repayment of the aggregate assigned debt. Thereafter, on May 29, 2013, another request was made by the CD for extension of time which was granted by the Appellant. On June 17, 2013, the Appellant revoked the settlement and in terms of the default obligations under the Settlement Agreement and the rate of interest under the Deed of Variation was revised to 22%. Furthermore, by its letter dated July 01, 2013, the CD acknowledged its obligation to repay the debt along with interest. Thus, the CD apparently acknowledged its liabilities towards the Appellant in its Financial Statements from 2008-09 to 2016-17.

On April 03, 2018, the Appellant, in his capacity as a Financial Creditor (FC), filed an application under Section 7(2) of the IBC, 2016 before the Adjudicating Authority (AA)/ NCLT, Mumbai for initiation of the CIRP against the CD. The same was admitted by the AA. Aggrieved by the order of the AA, an appeal was preferred before the Appellate Tribunal (NCLAT). NCLAT held that CIRP initiated against the CD was barred by limitation as the FC failed to bring on record any acknowledgment of debt in writing by the CD. The Books of Account cannot be treated as an acknowledgement of liability in respect of debt payable to the FC.

This order of the NCLAT was challenged in the present appeal before the Supreme Court.



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Supreme Court's Observations:-

The Supreme Court noted that the IBC is a beneficial legislation for equal treatment of all creditors and also the protection of livelihood of its employees. Citing the case of *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd*, the Apex Court stated that, “Legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in NCLT/NCLAT, but consciously used the words ‘as far as may be’... The Courts would not give an interpretation to those words which would frustrate the purposes of making the Limitation Act applicable to proceedings in the NCLT/NCLAT ‘as far as may be’”. It is, therefore, imperative that the provisions of the IBC be construed liberally, in a purposive manner to further the objects of enactment of the statute.

Further, it was observed, as per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired. Referring to *Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff*, the Court opined that “The balance-sheet contains admissions of liability; the agent of the company who makes and signs it intends to make those admissions. The admissions do not cease to be acknowledgements of liability merely on the ground that they were made in discharge of a statutory duty.”

In light of the above, the Apex Court, taking into account the object of IBC and the judgments referred, held that Entries in Books of Account/Balance sheet of a company can be treated as acknowledgement of liability in respect of debt payable to a FC. Accordingly, it was held that the CD acknowledged its liabilities in its Financial Statements from 2008-09 to 2016-17. Thus, the CIRP application was well within extended period of limitation.

Order: - The impugned judgement and order of the NCLAT was set aside.

Case Review: - *Appeals were allowed.*