



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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Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited & Ors.

[Civil Appeal No. 2176 of 2020]

DATE OF SUPREME COURT JUDGMENT: 05 August, 2022

Provision of section 7(5)(b) for intimating FC before rejection of a claim, would be attracted even in appeal.

Facts of the Case: -

Kew Precision Parts Private Limited, the Corporate Debtor (CD) carried on business of manufacturer of tempo and tractor components. In 2012-13, the CD decided to expand its business and operations and entered into negotiations with bankers to finance the proposed expansion. By a letter of sanction, the FC sanctioned loan facilities aggregating ₹2036.00 Lakhs to the CD under seven different categories. In the course of time, the CD allegedly defaulted in making repayment of the dues to the FC. Subsequently, the FC declared the account of the CD as NPA, recalled the loan and issued statutory notice under Section 13(2) of SARFAESI Act. The CD, under a One-Time Settlement on December 12, 2018, offered the FC to pay ₹15 Crore. After several rounds of negotiations, both the parties agreed on a One-Time Settlement amounting ₹24.55 Crore.

However, the CD failed to pay the amount. Subsequently, the Appellant filed an Application in the NCLT for initiation of CIRP of the CD. The same was admitted by the Adjudicating Authority (AA)/ NCLT but the suspended directors of the CD filed an appeal to the NCLAT contending that the petition filed by the FC under Section 7 of the IBC was patently barred by limitation. The NCLAT allowed the appeal, quashed the CIRP and asked the Resolution Professional to hand over all the records and documents of the CD to its suspended directors. Besides, the NCLAT also directed the AA to determine the 'Fee and Cost' of the CIRP as incurred, which is to be borne and paid by FC. Aggrieved by this, the FC preferred an appeal to the Supreme Court.



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Supreme Court's Observations:-

Regarding Section 5 of the Limitation Act 1963, the Supreme Court Bench (SC Bench) observed that it may exercise its discretion to condone delay, even in the absence of a formal application. Besides, Section 18 of Limitation Act, provides that 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. In light of the above and several previous judgements of the Apex Court, the SC Bench observed that the NCLT proceeded on the basis of the offer of settlement made by the CD on December 12, 2018, and rejection thereof but had not considered any other settlement. “The NCLAT also did not notice the terms of settlement stated to have been executed on December 20, 2018, possibly because the attention of the NCLAT was not drawn to any terms of the settlement. The NCLAT did not, therefore, have the occasion to consider whether Section 25(3) of the Contract Act would be attracted. The Appellate Tribunal proceeded on the basis that the CIRP proceedings were barred by limitation in the absence of any acknowledgement of debt within the period of limitation, and closed the CIRP proceedings in the NCLT, without considering the question of applicability of Section 5 of the Limitation Act for condonation of delay, to proceedings under Section 7 of the IBC,” observed the SC Bench.

The SC Bench opined that the NCLAT erred in closing the CIRP proceedings without giving the Appellant opportunity to explain if there was sufficient cause for delay in approaching the NCLT. Citing the Supreme Court judgement in the matter of *Dena Bank Vs. Shivakumar Reddy and Anr.*, the SC Bench opined that the documents can be filed at any time until the application for CIRP is finally dismissed.

Order: -

The impugned judgment and order of the NCLAT was set aside to the extent that the CIRP proceedings were closed. The AA was asked to consider the application for CIRP afresh.

Case Review: - *Appeal allowed.*