



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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(September 19, 2022)

John Cockerill India Ltd. Vs. JSW Steel Coated Products Ltd. and Anr.
Company Appeal (AT) (Insolvency) No. 189 of 2021
Date of NCLAT's Judgement: September 14, 2022.

Facts of the Case: -

The Corporate Debtor, M/s. Asian Colour Coated Ispat Ltd, defaulted in payments and the outstanding dues amounting ₹21.89 Crore to John Cockerill India Ltd., which was its Operational Creditor. As part of the settlement, the CD issued 12 post-dated cheques to the Appellant which were finally dishonoured on which the Appellant initiated legal action.

Thereafter, another settlement was arrived at, and the CD assured to pay the dues of ₹18.66 Crore by September 2019. As a security, the then Promotor of the 'CD', executed a registered Mortgage Deed creating a mortgage over a piece of land, which was his personal property. Meanwhile, the CIRP of the CD commenced and the Appellant submitted total claims amounting ₹ 42.72 Crore to the Resolution Professional (RP). During the CIRP, the RP, with a view to keep the CD as a going concern approached the Appellant for providing requisite operational services which was provided by the Appellant for, he was assured the payment of ₹ 18.65 which was the principal amount. Subsequently, the RP made a payment of ₹10.69 Crore and amount of ₹7.98 Crore was outstanding. However, the Resolution Plan, which was approved by NCLT on October 19, 2020, provided only 2.21% for the Operational Creditor. Hence the Appellant received only ₹17,40,287. The Successful Resolution Application (SRA) / *JSW Steel Coated Products Limited* took over the management and custody of the Corporate Debtor with effect from October 27, 2020.

Aggrieved with such a treatment, the Appellant challenged the Resolution Plan on the ground that as the Mortgage Deed, which was personal property of the promoter, should not be considered included in the Resolution Plan as it was not the property of the CD.



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Supreme Court's Observations: -

The salient points which need to be considered in this Appeal, which are peculiar to the facts of this case are that the Mortgage Deed, which was entered into on March 27, 2018, between Mr. Pradeep Agarwal, the Promoter of 'Corporate Debtor' and the Appellant/ 'Operational Creditor' prior to the initiation of CIRP.

Appellant filed this belated Appeal on February 19, 2021, challenging the impugned Order, after the Plan was already implemented. The Respondent also cited the Supreme Court judgement in the matter of *K. Sashidhar Vs. Indian Overseas Bank*, (2019) 12 SCC 150 in support of his argument that the commercial decision of the CoC is non-justiciable. It was submitted that in the present case, the CoC approved the Plan with a majority of 79.3% and the 'Operational Debt' owed to the Appellant and all rights incidental and ancillary thereto including the security, mortgages, encumbrances, and collaterals were assigned to the purchaser in lieu of the payments made under the Resolution Plan. Hence, the 'Operational Debt' would be deemed to be permanently extinguished after the approval of the Resolution Plan.

The stand of the RP that the land is in possession of the 'Corporate Debtor' and is part of the land where the factory is located, the *contra rival* stand by the Appellant that the subject land is owned by Mr. Pradeep Agarwal and not by the 'Corporate Debtor'; that the land was never in possession of the 'Corporate Debtor'.

Finally, the NCLAT relied on the Supreme Court judgement in the matter of *Arun Kumar Jagatramka' Vs. 'Jindal Steel and Power Limited'*, (2021) 7 SCC 474, which highlights that the "need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC".

Order: - NCLAT granted liberty to the Appellant to proceed in accordance with law in an appropriate forum.

Case Review: - Appeals partly allowed.