



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 43

(October 25, 2022)



Punjab National Bank Vs. Mr. Ashish Chhauwchharia, RP JetAirways & Ors.

Company Appeal (AT) (Insolvency) No. 584 of 2021

Date of NCLAT's Judgement: October 21, 2022.

Facts of the Case: -

The Appellant - Punjab National Bank (PNB) had extended various loans credit to Jet Airways (India) Limited (Corporate Debtor) in 2016-17. After the Company committed default in repayment of the loan, the Promoter of the Corporate Debtor executed a Share Pledge Agreement in favour of the Appellant to secure their outstanding dues and 2,95,46,679 equity Shares were Pledged in favour of the Appellant. Meanwhile, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) on an application filed by another creditor – State Bank of India (SBI). During CIRP, the Appellant filed a claim of ₹956.21 crore, which was admitted by the Resolution Professional.

On September 19, 2020, the RP issued an email to the Appellant stating that its claim would be reduced by the Fair Market Value of the Pledged Shares. Accordingly, the claim of PNB was reduced by approx. ₹202 crores. The Appellant also raised this issue during the e-voting on Resolution Plan through its representative in the CoC who 'requested the RP to minutise its dissent as PNB's claim of approx. ₹202 crores was rejected and they would suffer twice if such distribution methodology was allowed'. However, the Appellant voted in favour of the Resolution Plan. The Adjudicating Authority (AA) also rejected Interlocutory Application (IA) and approved the Plan. Subsequently, PNB preferred this appeal before the NCLAT.

The two questions before the NCLAT were (a) whether reduction of the claim of financial creditor by resolution professional was valid? and (b) whether a member of the CoC that has voted in favour of the Resolution Plan can question the Resolution Plan for his claims?

NCLAT's Observations: -

The Court observed that there was no dispute between the parties regarding facts and sequence of the events. The RP in its reply affidavit filed in this Appeal has categorically stated that reduction of the claim of the Appellant was on the basis of the judgment of NCLAT in the cases of *India Power Corporation Ltd. Vs. Meenakshi Energy Ltd.*



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



and *PTC India Financial Services Ltd.* However, the NCLAT observed that the Supreme Court has set aside NCLAT's decision in the matter of *PTC India Financial Services Ltd* and upheld that 'registration of the pawn, that is the dematerialised shares, in favour of PIFSL as the 'beneficial owner' does not have the effect of sale of shares by the pawnee. The pledge has not been discharged or satisfied either in full or in part. PIFSL is not required to account for any sale proceeds which are to be applied to the debt on the actual sale'. Therefore, NCLAT concluded that in view of the law laid down by Supreme Court in *PTC India Financial Services Ltd.*, the reason for reduction of the claim of the Appellant by RP is knocked out.

Regarding second question, the Court observed that the Appellant never acquiesced to the reduction of their claim and agitated it before the CoC and AA. Besides, apart from reduction of claim, no other part of Resolution Plan has been objected by the Appellant. The Appellant is not praying for setting aside the impugned order on any other ground and their prayer in essence is only to accept the entire admitted claim and direct for distribution of assets under the Plan accordingly. Accordingly, the Court concluded that the 'Appellant is entitled to the relief as prayed and it is not necessary to issue any direction for modifying the Resolution Plan'.

Order: - Reduction of the claim of Financial Creditor by Resolution Professional is set aside. The liability of payment of additional amount to the Appellant shall be borne by Resolution Applicant from amount reserved under the Resolution Plan.

Case Review: - Appeal Disposed of.