



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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CFM Asset Reconstruction Pvt. Ltd. Vs. SABIC Asia Pacific Pte. Ltd. & JBF Industries Ltd
Company Appeal (AT) (Insolvency) No. 1231 and 1232 of 2022
Date of NCLAT's Judgement: November 14, 2022.

Facts of the Case: -

CFM Asset Reconstruction Pvt. Ltd. hereinafter referred as ("Appellant") filed appeal after being aggrieved by the orders dated 06.09.2022 passed by the AA that prohibited the appellant to intervene in the insolvency proceedings under Section 9 initiated by SABIC Asia Pacific Pte. Ltd hereinafter referred as ("Operational Creditor") against the JBF Industries Ltd. hereinafter referred as ("Corporate Debtor")

All the Financial Creditors of the Corporate Debtor assigned their rights and interest to the Appellant. There being default on part of the Corporate Debtor, the Appellant initiated proceedings under SARFAESI Act, 2002. After knowing about the initiation of insolvency proceedings under Section 9 initiated by an Operational Creditor, the Appellant prayed before the AA to intervene in the Petition as claim of the Operational Creditor is in excess of Rs.100 Crores whereas the amount outstanding to the Appellant is in excess of Rs.3,600 Crores and any order of admission will impact the Appellant.

The Operational Creditor relying on *Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. and L&T Infrastructure Finance Company Ltd. vs. Gwalior Bypass project Ltd.* case (7) submitted that the Appellant cannot be allowed to intervene in the present proceeding as even if Appellant holds debt of 99.1% of the Corporate Debtor, the Appellant should file its claim before the RP and NCLT cannot exercise its residuary inherent powers in the case. Permitting intervention by the Financial Creditor in Section 9 application will be contrary to the IBC which does not contemplate intervention by Financial Creditor prior to admission of application.

The Appellant apprehended that the Operational Creditor has not disclosed about the insurance taken with respect to the goods supplied and the fact that the insurance claim has been fully received by the Operational Creditor is also not disclosed. The Operational Creditor submitted that even if the amount of insurance claim has been received by the Operational Creditor, application under Section 9 can be proceeded with.

The question raised before the Appellate Tribunal is that whether Financial Creditor is entitled to intervene in proceedings initiated by Operational Creditor under Section 9 or not?



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NCLAT's Observations: -

The Appellate Tribunal held the present case is different from the referred L&T Infrastructure Finance Company Ltd case on two facts, Firstly Intervention Application was filed by the L&T after order was reserved on the application filed under Section 7 and Secondly, L&T had challenged both order rejecting his Intervention Application and order admitting the Section 7 application but in present case, application under Section 9 is yet to be heard and admitted. Further, referring to the judgment of the Hon'ble Supreme Court in Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. & Anr, case wherein a Financial Creditor was permitted to intervene in Section 9 Application, the Tribunal held that ordinarily a Financial Creditor cannot be allowed to intervene in the Section 9 proceedings, however, if there are reasons and allegations which require consideration by the AA intervention can be allowed.

The Tribunal further referring to a document titled as "Form of Acceptance Claim Discharge & Subrogation Form", which indicates that the Operational Creditor has received the insurance claim from the Insurance Company, was of view that when the Operational Creditor has received the claim amount and has fully discharged the Insurance Company of the liability the said document is relevant material to be examined by the AA as to whether on the basis of the claim raised by the Operational Creditor, insolvency proceeding be initiated against the Corporate Debtor or not.

The Appellate Tribunal held that on account of exceptional facts and circumstances, Appellant be permitted to intervene in the proceedings initiated under Section 9 by the Operational Creditor. Hence, order dated 06.09.2022 passed by AA prohibiting the appellant to intervene in the insolvency proceedings is hereby set aside.

Order: - The appellant is permitted to intervene in the application filed by the Operational Creditor under Section 9.

Case Review: - Appeal Allowed.