



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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Rahul Arunprasad Patel Vs. State Bank of India (774)
Amit Dineshchandra Patel Vs. State Bank of India (781)
Company Appeal (AT) (Insolvency) No. 774 & 781 of 2022, respectively
Date of NCLAT's Judgement: November 21, 2022.

Facts of the Case: -

Appeal has been filed by the Personal Guarantors hereinafter referred as ("Appellant") against the orders dated 19th July 2021 and 17th August 2021, wherein the application under Section 95 of the IBC filed by State Bank of India, hereinafter referred as ("Respondent"), was admitted by the AA and consequently RP was appointed.

Appellant challenging the Impugned Orders passed in these two Appeals submits that Application which has been filed in Form-C does not have signature of the RP in Part-IV of the said form. Hence, it proves that the application has been filed by the Respondent and not by the RP. The appellant further submits that although consent form under Form-A has also been filed but the same is contemplated only when the Application is not filed by the RP.

Further, Appellant submitted that as per Section 97(3), the RP is to be nominated by the Board whereas AA has appointed the RP on the basis of the application filed and therefore the Impugned Order is violative of Section 97(3) of the Code. The appellant relying on "*Perkins Eastman Architects DPC Vs. HSCC (India) Ltd.*" and "*Voestalpine Schienen GMBH Vs. DMRC*" requested the removal of the appointed RP and stated that when an Application is filed by/through RP, it is difficult to presume that he would recommend the rejection of the Application as the RP becomes interested person in his own Application and become judge in his own case which is not permissible in law.

Respondent refuting the claims of the Appellant submitted that Appeal has been filed with delay and laches. The Respondent submitted that the appellant didn't raise any objection at the time when order was passed, and the said appeal is abuse of process and an attempt to delay the Resolution Process. The Respondent admitted that the defect of RP not signing the application is curable and the fact that the RP has submitted its consent form before the AA has cured the defect.

The question raised before the Appellate Tribunal is that whether the application submitted before the AA shall be treated to be filed by the creditor or by the RP on the fact that the same is not signed by the RP.



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NCLAT's Observations: -

The Appellate Tribunal held that the difference to find out whether the Application filed by the RP or Creditor himself is the difference with regard to the filing of Part-IV. When Part-IV is not filled up in an Application, Application is clearly by Creditor himself but when Part-IV is filled up, Application is not by the Creditor himself but through RP. Part-IV of the Application being filled up, the conclusion is irresistible that Application was filed through RP. Part-IV not containing the signature of the RP and containing the written communication is a minor irregularity/defect which cannot have any adverse effect since the written communication given by the RP was a part of the Application in Form C.

The Appellate Tribunal, referring to its judgment in "*Pologix Infrastructure Pvt Ltd Vs. ICICI Bank Ltd.*" held that if there is any defect in the name and address and position of the authorized representative the Application cannot be rejected and the Applicant is to be granted time to remove the defect. In the present case only defect pointed out by Appellant is that there is no signature of RP but it is clear that instead of signature there was a written consent of the RP, thus defect if any stood removed.

On the judgements referred by the appellant in the appeal, the Tribunal held that the mere fact that details of RP are provided by the Applicant himself, no bias can be read into the said procedure. An RP plays a pivotal role in Insolvency Resolution Process and is expected to perform his function and duties as per the IBC and the Rules. Hence, both the appeals lack merit and should be disposed of.

Order: - Both the Appeals are dismissed. No costs.

Case Review: - Appeal Dismissed.