



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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Sunit Suri Vs. Ahsan Ahmed (RP) & CoC of SDU Travels Pvt. Ltd.
Company Appeal (AT) (Insolvency) No. 392 of 2022
Date of NCLAT's Judgement: November 07, 2022.

Facts of the Case: -

Appeal has been filed by Mr. Sunit Suri, hereinafter referred as ("Appellant") against the orders dated 20.07.2022 passed by the AA. The appellant, being the suspended director of CD-"SDU Travel Pvt Ltd.", filed application under section 22(3) of the IBC to replace the IRP stating that the IRP is not acting independently and is working under the influence of the other Suspended Directors towards their benefits. The appellant supporting his claim stated that the IRP had allocated share in the CoC to the entities/persons related to the CD.

AA dismissed the application of the appellant stating that it has no merit and moreover the application for replacement of IRP was not filed by the CoC, as required under the IBC.

The Appellant, relying on the judgment of the Tribunal on *Kanakabha Ray V Narayan Chandra Saha & ors*, and in the case of *State Bank of India Vs. M/s Metenere Ltd*, filed appeal in the Appellate Tribunal and contended that the application filed by him is maintainable before the AA and accordingly the order shall be set aside.

The question raised before the Appellate Tribunal is that whether the application submitted before the AA shall be allowed even when the provision of IBC confers power to CoC to replace the IRP.

NCLAT's Observations: -

The Appellate Tribunal highlighted the submission of the appellant that except seeking the aid of Rule 11 of the National Company Law Appellate Tribunal Rules 2016, no other provision of IBC empowers the appellant to prefer an appeal in the given case.

The Tribunal held that, as per the Principle of Interpretation, the language employed in the relevant Section towards a Provision /Act /Statute should be read in a simple, plain, and harmonious manner without causing any volatile harm to the



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language used therein. Further, Section 22(3) of the IBC clearly confers power to the CoC to replace the IRP by preferring appeal before AA.

The Appellate Tribunal held that when the Section 22(3) (b) of the IBC explicitly spells for the appointment of the proposed RP then the invocation of Rule 11 of the National Company Law Appellate Tribunal Rules 2016 cannot be pressed into service, showering power only to CoC to replace the IRP.

Referring to the judgements on which the appellant relied, the Tribunal stated that based on the available facts and materials on record, the same is inapplicable to the present case. Hence, the order of the AA is free from any legal flaw.

Order: - Appeal lacks merit and should be dismissed.

Case Review: - Appeal Dismissed. No Costs.