



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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M/s Shekhar Resorts Limited v. Union of India & Ors.
Civil Appeal No. 8957 of 2022
Date of Supreme Court Judgement: January 05, 2023

Facts of the Case: -

M/s Shekhar Resorts Limited (hereinafter referred as “Appellant”) has preferred the appeal before the Supreme Court after the High Court dismissed the writ petition through impugned order dated 24.06.2021.

The Appellant was engaged in providing hospitality services and was registered with the Service Tax Department. The Service Tax Department conducted an investigation evasion of service tax by the appellant and issued the show cause notice demanding payment of dues. Meanwhile, the Financial Creditors of the appellant submitted application under Section 7 of IBC and the AA vide its order dated 11.09.2018 admitted the application and declared moratorium under section 14 of IBC. The CoC approved the resolution plan on 04.06.2019.

On 01.09.2019, “Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019’ under section 125 of the Finance Act 2019 was introduced. The Appellant (through its RP) submitted an application (Form No.1) within the prescribed period and thereafter the Designated Committee issued Form No.3 to the Appellant determining the amount of Rs 1,24,28,500 as due and payable under the Scheme. The AA approved the resolution plan on 24.07.2020 and subsequently, the appellant expressed its willingness to pay the full amount as ascertained by the Designated Committee but the same was rejected by the Joint Commissioner on the ground that the last date of payment was 30.06.2020. The Appellant filed the writ application in High Court but the same was dismissed on the ground that (i) High Court shall not issue direction contrary to the scheme; (ii) the relief sought cannot be granted as the Designated Committee is not existing.

The Appellant citing the judgements in “*Principal Commissioner of Income Tax vs. Monnet Ispat & Energy Ltd.*” and “*Union of India vs. Asish Agarwal*”, contended that High Court has seriously erred in dismissing the writ petition as even after 30.06.2020, as per the instructions issued by the CBEC, the respective Designated Committees continued to function and process the declarations manually. The Appellant asserted that he bonafidely could not deposit the settlement due, on or before 30.06.2020, by virtue of the moratorium period which ended on 24.07.2020. Further, as per the Resolution Plan, the Applicant was required to deposit all statutory dues within 6 months from the effective date into an escrow account. Effective date being 24.07.2020, Service Tax dues along with other statutory dues were deposited in an escrow account on 08.01.2021 i.e. before the expiry of the period of six months.

The question raised before the Appellate Tribunal is that the whether the appellant can be punished for no fault of its own and be denied the relief even though it was impossible to deposit the settlement amount during the moratorium?



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Supreme Court Observations:

Citing the judgement of '*Calcutta Iron Merchants' Association v Commissioner of Commercial Taxes*' and '*Gyanichand v State of Andhra Pradesh*' the Supreme Court held that no law can compel a person to do the impossible. It would be unfair on the part of the court to give a direction to do something impossible and if a person fails to do so, he cannot be held guilty. Even if the appellant wanted to deposit the settlement amount within the stipulated time, it could not do so in view of the bar under the IBC.

The Supreme Court held that to some extent the High Court is right as, while exercising the powers under Article 226 of the Constitution of India, it cannot extend the Scheme. However, the present case is not about extending the scheme, it is about taking remedial measures as the appellant was unable to make the payment due to the legal impediment and the bar in view of the provisions of the IBC. Further, in reference to the ground given that Designated Committees are not in existence, the Supreme Court held that it is required to be noted that the CBCE has issued a circular that in a case where the Court have passed an order setting aside the rejection of the claim under the Scheme after 30.06.2020, the applications can be processed manually.

The Supreme Court stated that as the Appellant has submitted the Form No.1 within the stipulated time and Form No. 3 has been issued, the High Court has erred in refusing to grant any relief to the Appellant.

Order/Judgement: The Impugned Order is quashed and set aside and the payment of Rs.1,24,28,500/- already deposited by the appellant be appropriated towards settlement dues under "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019" and the Appellant be issued discharge certificate.

Case Review: - Appeal is Allowed. No cost.