



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

Volume 06 | Number 05

(January 30, 2023)



TATA STEEL BSL LIMITED Vs VENUS RECRUITERPRIVATE LIMITED & ORS
LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021
LPA 43/2021 and C.M. Nos. 3196/2021 & 3198/2021
Date of High Court Judgement: 13.01.23

Facts of the Case: -

The present LPA, no. 37 & 43 of 2021 have been filed by Tata Steel BSL Ltd. and the Union of India (collectively hereinafter as “Appellants”) against the order passed by Ld. Single Judge High court in favour of M/s Venus Recruiter Pvt. Ltd (hereinafter as “Respondent”).

Due to default in repayment of its credit facilities, SBI filed a petition under Section 7 of the IBC before the AA seeking initiation of CIRP of M/s Bhushan Steel Limited (“CD”). The AA admitted CD to CIRP and appointed an RP. On 20.03.2018, the CoC approved the resolution plan proposed by Tata Steel Ltd and accordingly the RP filed the resolution plan with AA on 28.03.2018. Before the approval of the AA, Forensic Auditor of CD, submitted a report to the RP intimating several suspect transactions. One of the suspected transactions was between the Respondent and CD for supply of manpower which inter-alia contained a clause stipulating payment of 10% service charge to Respondent in lieu of the manpower supplied. The allegation was that 10% service charge was paid in lieu of manpower supply could have been preferential in nature.

On 09.04.2018, the RP filed an avoidance application u/s 25(2)(j), 43, 51, 66 of IBC before AA. On 15.05.2018, the AA approved the Resolution Plan of Tata Steel and the new management being Tata Steel BSL Ltd assumed control. Later, The AA admitted the Avoidance Transaction Application and issued notices to the respondent companies for making them party to the application. Aggrieved by the Order of the NCLT, Respondent filed writ petition before the Ld. Single Judge High court seeking relief borne out of avoidance application. The Hon’ble judge of the High Court, observed that RP becomes *functus officio* after resolution of the corporate debtor that’s why avoidance application is “as void and *non-est* since CIRP had concluded”.

The question raised before the High court (Divisional bench) are:-

1. Whether an alternate efficacious remedy existed before the NCLAT?
2. Whether avoidance applications survive CIRP in cases where Resolution Plans are unable to account for such applications?
3. If avoidance applications survive CIRP in such cases, who pursues them? Whether RP is rendered functus officio upon conclusion of CIRP?



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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



High Court's Observations: -

The Hon'ble High court (Divisional bench) referring to the judgement of the Apex court in *“Innoventive Industries Ltd v ICICI Bank”*, *“Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta”*, and *“Titaghur Paper Mills Co. Ltd vs State of Orissa”* held that the phrase “arising out of” or “in relation to” as situated under Section 60(5)(c) of the IBC is of a wide import and it is only appropriate that such applications are heard and adjudicated by the AA, i.e., the NCLT or the NCLAT.

CIRP and avoidance applications, are, by their very nature, a separate set of proceedings and adjudication of an avoidance application is independent of the resolution of the CD and can survive CIRP.

The Court stated that the money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements and therefore, the Adjudicating Authority will continue to hear the application.

The High Court further held that the RP will not be functus officio with respect to adjudication of avoidance applications. The method and manner of the RP's remuneration ought to be decided by the Adjudicating Authority itself.

The amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. The benefit arising out of the adjudication of the avoidance application should be made available to the creditors who are primarily financial institutions.

Order/Judgement: The impugned Judgment is set aside. The NCLT is directed to proceed ahead with the hearing of avoidance application. In accordance with Sections 44 to 51 of the IBC, 2016, the amount which is recovered can be distributed amongst the secure creditors in accordance with law as determined by the NCLT.

Case Review: Appeals are disposed of, along with pending application(s), if any.