



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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**The Principal Chief Conservator of Forest & ors. Vs. M/s Wind World (India) Ltd.
Writ Petition No.20083 OF 2022 (GM – RES)
Date of High Court Judgements: April 13, 2023**

Facts of the Case: -

The present writ petition is filed by The Principal Chief Conservators of Forests & Ors. (hereinafter referred as 'Petitioners'), after being aggrieved by impugned order dated 06.07.2022 passed by AA.

M/s Wind World (India) Ltd, (hereinafter referred as 'Respondent') was granted a lease by the Karnataka Renewable Energy Development corporation Ltd. in respect of land measuring 221.80 hectares for period of 15 years under a lease deed dated 03.09.2003. On being due, the leased land was applied for renewal and was pending before the competent Authority.

Meanwhile the Respondent requested state's approval to start the windmill as the same would get damaged if not put into functioning. For safeguarding the interest of Respondent, state gave the permission but was subject to clearance of the forest department. The Respondent, on declaration of it being an insolvent before AA invoked the section 14 of IBC. The proceedings were pending before the AA from 2018 and all the above permissions were granted during the said pendency.

State Government suspended operations of the Respondent in the year 2022 as the forest clearances were not placed before it. The Respondent did not challenge the suspension but approached the AA by filling application u/s 60(5) of the code for passing an interim order. The Tribunal directs the government to permit functioning of the windmill by holding that it was essential to resolve insolvency of the Respondent. Pursuant thereto, the petitioner has filed the current writ petition.

The issue raised before the High court through the writ petition is that whether the AA has exceeded its jurisdiction by passing the Impugned order?



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High Court Observations:

The High Court, referring to the judgment of “*Gujarat Urja Vikas Nigam Limited*”, held that the AA had no jurisdiction to direct functioning/ continuing of the windmill without the forest clearances, merely because the state had granted such permission earlier. The AA cannot overstep its jurisdiction.

The High Court held that the Respondent has been taking undue advantage of indulgence of the State and has not taken any steps to submit a complete forest clearance proposal for renewal of the lease and has been continuing with the operation on ad hoc basis. The Respondent could not have knocked at the doors of the AA as it completely falls beyond the purview of the code.

Order/Judgement: Impugned order dated 06.07.2022 passed by the AA stands quashed.

Case Review: Writ petition is allowed.