



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 VISTRA ITCL (INDIA) LTD & ORS. Vs. MR. DINKAR VENKATASUBRAMANIAN & ANR.
CIVIL APPEAL NO.3606 of 2020
Date of Supreme Court Judgements: May 04, 2023

Facts of the Case: -

The Present appeal is filed by M/S Vistra ITCL (India) Ltd. & Ors. (hereinafter referred as 'Appellants') after being aggrieved by the impugned order dated 24.08.2020 by the NCLAT.

Amtek Auto Ltd. ("CD") approached the Appellants to extend a short term loan facility of ₹ 500 crores to its group of companies i.e. Brassco Engineers Ltd. and WLD Investment Pvt. Ltd. for the ultimate end use of the CD. Thereafter, two Security Trustee Agreements were executed, first between the appellant and WLD Investment Pvt. Ltd and second between the appellant and Brassco Engineers Ltd. The Board of the CD passed resolution to create security over the shares of JMT Auto Ltd. held by it. (Pledged Shares).

Meanwhile an application under Section 7 of the IBC, 2016 was admitted against the CD and an RP was appointed (hereinafter referred as 'Respondent'). The Appellant, in the capacity of secured creditor submitted Form C claiming a principal amount of INR 500 crores but the same was rejected by the RP which was not challenged by the Appellants. The RP received two resolution plans and the plan by M/s LHG was approved by the CoC. The Resolution plan was approved by the AA but as the LHG did not fulfil its commitment, the AA passed an order directing reconsideration of the CoC for consideration of DVI's plan.

The Appellants filled application u/s 60(5) of IBC claiming the right on the basis of the pledged shares, the AA dismissed the application filed by the appellants. The Appellate Tribunal observed that the Appellants have not lend any money to the CD and the CD did not owe any financial debt to the appellants except the pledge of shares to be executed. Therefore, the Appellants would not be coming under the purview of financial creditor of the CD.

Supreme Court Observations:

The Apex court placing its reliance on Judgments in *Anuj Jain Interim Resolution professional for Jaypee Infratech Ltd. vs. Axis bank Ltd.* and *Phoenix ARC Pvt. Ltd. vs. Ketulbhai Ramubhai Patel* held that the CD is not



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liable to repay the loans advanced, in respect of which there were detailed and separate agreements executed by the lenders with Brassco and WLD.

Further, the Apex Court held that the present plea of the Appellant to be treated as a financial creditor of the CD should be dismissed on the grounds of delay, laches and acquiescence. The Appellant had not objected to the resolution plan submitted by the erstwhile applicant – LHG and as a sequitur, its non-classification as a financial creditor in the CoC of the CD.

The Apex court observed that the Appellant, a secured creditor is being denied the rights u/s 52, 53 of the code in respect of pledge shares. The Apex Court provided two options, first is to treat the secured creditor as a financial creditor of the CD to the extent of the estimated value of the pledged share on the date of commencement of CIRP or second is to treat the Appellant as a Secured Creditor in terms of Section 52 read with Section 53 of the Code.

Order/Judgement: The order of the NCLAT affirming the view taken by NCLT is partly modified in terms of Apex Court's directions holding that the Appellant would be treated as a secured creditor, who would be entitled to all rights and obligations as applicable to a secured creditor in terms of Section 52 and 53 of the code and in accordance with the pledge agreement.

Case Review: The Appeal is disposed of without any order as to costs.