



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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Westcoast Infraprojects Private Limited, Vs. Mr. Ram Chandra Dallaram Choudhary
Company Appeal (AT) (Insolvency) No. 1258 of 2022
Date of NCLAT Judgements: April 28, 2023

Facts of the Case: -

The Present Appeal is filled by the Westcoast Infra projects Private Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 06.09.2022 passed by AA.

The Liquidation Proceedings commenced against the Anil Limited ("CD") by order dated 25.10.2018 passed by AA, the Liquidator (hereinafter referred as 'Respondent') was appointed and e-auction was held in regard to a property in question. The Appellant emerged as highest bidder for consideration of Rs. 373 Crores. The Appellant remitted an amount of Rs. 15 Crores as EMD (Earnest Money Deposit) before participating in the e-Auction.

The Respondent informed the Appellant vide letter dated 28.03.2022 to deposit the balance amount of ₹358 Crores within 30 days from the confirmation of sale i.e. on or before 27.04.2022 but the Appellant only deposited an additional amount of ₹ 1.6 Crore. Multiple communications were sent to the Appellant regarding the payment of balance amount within extended period of 90 days, i.e. on or before the 26.06.2022.

Vide communication dated 17.06.2022, the Appellant prayed to the Respondent to extend the interest free period of 30 days till such time revenue entries are mutated in the name of Anil Limited. Denying the same, the Respondent stated that granting such permission is beyond his power and duties. Thereafter, the Appellant filed the IA in AA praying for extension of interest free period of 30 days.

In the meantime, the Respondent informed the Appellant that as the balance amount was not paid, the sale process stands cancelled and the EMD and part payments deposited by appellant stand forfeited as per the Liquidation Process Regulation 2016 and as per Tender document also.

The AA passed an order dated 06.09.2022 that there is no ground to interfere with the liquidator working; IA application was consequently rejected by AA.



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NCLAT Observations:

The Appellate Tribunal placing its reliance on the judgment delivered in *Potens Transmissins & Power Private Ltd. v. Gian Chand Narang* held that as per the Liquidation Process Regulations 2016 the 90 days extended time is the maximum period provided for making the deposits failing to which the sale shall be cancelled and the Liquidator is empowered to forfeit the EMD and part payments made thereof.

The Appellate Tribunal further held that neither there was any defect in the title nor the process of change of the name in the revenue record was any reason for the Appellant to delay the balance consideration. The Appellate Tribunal didn't find any defect in title of the CD and held that the issues related to permission of the Deputy Collector for sale were raised by the Appellant only to avoid payment of balance amount and to buy time in which Appellant failed.

Order/Judgement: The AA did not commit any error in rejecting the IA and there is no merit in appeal.

Case Review: Appeal is dismissed.