



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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(May 22, 2023)

M. Suresh Kumar Reddy Vs. Canara Bank & Ors.

CIVIL APPEAL NO. 7121 OF 2022

Date of Supreme Court Judgement: May 11, 2023

Facts of the Case: -

The Present Appeal is filed by M. Suresh Kumar Reddy (hereinafter referred as 'Appellant') being aggrieved by the impugned order passed by The Appellate Tribunal dated 05.08.2022.

The Canara Bank, being the successor of Syndicate Bank by the way of merger (hereinafter referred as 'Respondent') submitted the application for initiating CIRP against M/s Kranthi Edifice Pvt. Ltd. (hereinafter referred as 'CD') which was admitted by the AA by order dated 27.06.2022. The Appellant in the capacity of suspended director of the CD filed an appeal against the AA's order in the Appellate Tribunal but the same was dismissed by the Appellate Tribunal.

Syndicate Bank sanctioned a secured overdraft facility of ₹12 crores to the CD for one year apart from the Bank Guarantee limit of ₹110 crores. Thus, the facilities granted by the Syndicate Bank to the Corporate Debtor were fund based (Overdraft Facility) and non-fund based (Bank Guarantees). In the CIRP application, Respondent stated that the liability of CD under the Secured Overdraft Facility was approx. ₹74.5 Crores including the liability of approx. ₹19 Crores towards outstanding the bank guarantee.

The appellant submitted that, there were several contracts granted by Telangana Government to CD and various communications is happened between government and syndicate bank about extending the bank guarantees on the request of CD but none of them entertained by the bank and this way the bank is responsible for triggering the default. The Appellant contended on the strength of "**Vidarbha Industries Power Limited v. Axis Bank Limited**" that the NCLT had the discretion that not to admit the petition u/s 7 of IBC even after the existence of debt and default had been proved, the Appellant further stated that under a onetime settlement scheme a sum of ₹6 crore has been deposited with the Respondent but eventually the said proposal was turned down and therefore the present appeal is filed.

The Main issue raised before the Apex Court is that: (i) Whether the AA has the discretion not to admit the CIRP application even after the existence of debt and default?



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Supreme Court Observations:

The Apex Court while placing their reliance on its judgement given in *“Innovative Industries Limited v. ICICI Bank and another”* and *“E.S. Krishnamurthy and others v Bharath HiTecch Builders Pvt. Ltd.”* Stated that the AA only has to determine whether a ‘Debt’ (which may still be disputed) was due and remained unpaid and once AA is satisfied that the default in respect of debt has occurred there is hardly any discretion left with AA to refuse the application u/s 7 of IBC. The Apex Court further stated that even the non-payment of a part of debt, when it becomes due and payable, will also amount to default on the part of CD. Hence the view taken in *“Innovative Industries”* still holds good.

The Apex Court further stated that in the original Recovery Petition filed in DRT by the Respondent, the CD acknowledged the debt dated 05.05.2019, to the extent of ₹ 63.36 and the same was reflected in the balance sheet of CD and in the light of communications exchanged between state government and syndicate bank it is true that Government addressed the letters to Syndicate bank for extending the bank guarantees and if the bank guarantees were not extended then the same are likely to be encashed by the government but the respondent specifically informed the CD by letter dated 18.01.2021, that the competent authority has not considered the proposal and also asked to clear the outstanding dues immediately, thus there is no doubt that CD committed the default, and on the basis of fact of the case there is no good reason on which AA could have denied the CIRP application.

Order/Judgement: The Appeal has no merit and accordingly stands to be dismissed.

Case Review: Appeal is dismissed. No Costs.