



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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(June 19, 2023)

Arun Agarwal Vs. Mr. Ram Ratan Kanoongo & Ors.
Comp. App. (AT) (CH) (Ins.) No. 109 of 2023
Date of NCLT Judgement: June 08, 2023

Facts of the Case: -

The present appeal is filled by the Arun Agarwal (hereinafter referred as 'Appellant') in the capacity of suspended Director of Suryajyothi Spinning Mills Ltd. ('CD') after being aggrieved by the impugned order dated 18.04.23 passed by the AA.

M/s State Bank of India filed application u/s 7 of IBC for initiating CIRP against the CD and the same was admitted by the AA vide order dated 05.09.2019. Accordingly, invitation for expression was issued on 30.11.2019, which was extended to 26.12.2019 and last date for submission of the Resolution plan was fixed till 30.01.2020.

After multiple extensions the resolution plan was finally received on 31.07.2020, but the CoC did not accept the Plan as it was not compliant with the conditions under the RFRP (as it was a 'Conditional Plan').

The CoC members informed the RP that they have received the One Time Settlement (OTS) proposal from one of the Corporate Guarantors of the CD and accordingly application u/s 12A was moved for considering the same. During the 18th CoC meeting, the SBI informed that the OTS proposal was under active consideration and directed the RP to seek another extension of 60 days of the CIRP period. The AA disposed of the Application as not maintainable as there were no resolution plans pending before RP and CoC and also stated that an OTS proposal was a matter between the CD and SBI.

Further, IA application for the liquidation u/s 33(1) was allowed as AA observed that the CIRP period had already expired on 13.01.2021 and there were no resolution plan for consideration. Hence, this appeal is filed by the suspended director of the company in Appellate Tribunal.

NCLAT Observations:-

The Appellate Tribunal draws their reference to the order given by the Apex Court in *Arun Agarwal Vs. Ram Ratan Kanoongo & Arn.* in which the liberty was granted to the Appellant to approach the Appellate Tribunal and seek such relief as may be available to him under law and also directed that the Liquidator shall not take



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action adverse to the interest of the Appellant.

Further, the Appellate Tribunal, on the basis of minutes of 18th CoC meeting and letter issued by Corporate Guarantor stating that they are ready to pay the funds of SBI, held that in the event of any such settlement is able to be executed, with funds infused, keeping in view the spirit and intent of the Code, the AA shall proceed in accordance with the law giving 14 days' time peremptorily from the date of this 'Order', failing which, the Appellate Tribunal does not find any tangible ground to interfere with the 'Order of Liquidation' as 'more than sufficient time' was granted by the AA to the Appellant herein to settle the matter.

Order/Judgement: The Appeal stands disposed of. No costs. The connected pending 'Interlocutory Applications', if any, are closed.

Case Review: Appeal Disposed of.