



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 26, 2023)



**Santoshi Finlease Private Ltd. Vs. Mothers Pride Dairy India Pvt. Ltd. And
State Bank of India Vs. Santoshi Finlease Pvt. Ltd. & Mothers Pride Dairy India Pvt. Ltd.
Company Petition No. (IB)-662 (ND)/2022, IA. No. 1695/ND/2023
Date of NCLT Judgement: June 12, 2023**

Facts of the Case: -

The present Petition is filed by the Santoshi Finlease Pvt. Ltd. (hereinafter referred as 'Petitioner') u/s 7 of IBC for initiating CIRP against Mothers Pride Dairy India Pvt. Ltd. (hereinafter referred as 'Respondent/CD') in this reference an IA were filled by the State bank of India (hereinafter referred as 'Applicant Bank') against the Petitioner and CD, fact of IA application and CIRP petition are overlapping, for the sake of convenience they are taken up together for adjudication.

Promoters of the CD, Mr. Anant Kumar Choudhary and Smt. Shalini Choudhary, transferred 90% holdings to Mr. Navneet Jain. They resigned from the board and moved to Hong Kong, becoming NRIs. As per MCA data the current Directors Mr. Navneet Jain and Sh. Sushil Kumar singh changed the management of CD without taking prior NOC form the Applicant bank, Director Navneet Jain sought vending jobs from reputable companies to revive the CD, for that purpose a MOA dated 14.03.2018 were signed with Mother Dairy.

In 2019 the Directors of CD entered into an investment arrangement with a group of individuals (Mostly family members) called as 'Mittal Family members' and all of them were Directors of the CD from July to September 2019, being a majority on the Board of the CD, One Mr. Kaushal Mittal who is also the current director of Petitioner's company (i.e. Respondent No.1 in IA application) from 02.08.2005 to till today passed an alleged board resolution dated 30.07.2019 on behalf of CD and Mr. Yug Mittal the then director of CD and existing Director of the Petitioner executed the alleged loan agreement dated 17.08.2019 with Petitioner's Company on behalf of CD. The CD was admitted in to CIRP by order dated 13.11.2019 passed by AA on an application filed by the Ex-Director, Smt. Shalini Chaudhury and claims were collected during the CIRP, the Petitioner and its sister concern filed claims as Financial Debt and were listed as financial creditors without voting rights due to their status as related parties to the CD, later on the Appellate Tribunal set aside the CIRP by order dated 05.08.2022

Subsequently, the Applicant Bank re-initiated action against CD under the SARFAESI Act 2002 by reviving the Original Application of 2019 before the DRT in Delhi, as sole secured financial creditor and arranged a fresh valuation of properties of CD and sought for redirection of CMM/DM orders which were issued 03 years back. The reserve price for e-auction was approved at ₹28.68 crore, Applicant bank also took physical possession of the plant on 22.02.2023.

The Applicant Bank argues that the Section 7 Application under IBC filed by the Petitioner is an attempt to impede the recovery proceedings under the SARFAESI Act 2002. The Applicant Bank has already lost three years because of earlier CIRP order dated 13.11.2019 against CD.



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NCLT Observations:-

The AA observed that the alleged loan was disbursed and defaulted during the Directorships of Ms. Kaushal Mittal and Mr. Yug Mittal in the CD, who are the 'Current Directors' in the Petitioner Company and at whose behest the CIRP application u/s 7 of IBC has been filed. Placing reliance on the judgment given by Hon'ble Supreme court in **West Bengal State Electricity Board Vs. Dilip Kumar Ray, 2006**, wherein the term 'malicious' has been discussed, the court said it is evident that the CIRP application is not filed with an intent of seeking resolution of the CD but for causing injury to the CD by its own Ex- Directors.

The AA further stated, while placing reliance on the judgment given by the Appellate tribunal in **Wave Megacity Centre Pvt. Ltd. vs. Rakesh Taneja & Ors, 2022**, that Section 10 application can be rejected even if debt and default is proved but was filed with fraudulent and malicious intention. Thus, Section 10 should be read along with Section 65 before deciding the fate of an application under Section 10. The aforesaid observations are squarely applicable to a petition filed under Section 7 with malicious and fraudulent intent, said the Court.

Order/Judgement: It was concluded that the CIRP application is filed with malicious intent. A penalty of ₹10,00,000/- (Ten Lakhs) was imposed on the Petitioner (Respondent No. 1 in IA Application) which shall be deposited in the Prime Minister's Relief Fund within 15 days.

Case Review: The IA was allowed and the CIRP application was dismissed.