



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Volume 06 | Number 30

(July 24, 2023)



**Paschimanchal Vidyut Vitran Nigam Ltd. Vs Raman Ispat Private Ltd. & ors.**

**Civil Appeal No. 7976 OF 2019**

**Date of Supreme Court Judgement: July 17, 2023**

### Facts of the Case: -

The Present appeal is filed by the Paschimanchal Vidyut Vitran Nigam Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the order of the Appellate Tribunal. The Appellate Tribunal rejected the Appellant's appeal against the order of AA which directed the District Magistrate and Tehsildar, Muzaffarnagar to release the property in favour of the liquidator.

Raman Ispat Pvt. Ltd. (hereinafter referred as 'Respondent') and the Appellant entered into power supply agreement on dated 11.02.2010. The Respondent failed to pay the electricity bills generated throughout the times, and therefore as per the agreement, the Appellant attached the properties. The Tehsildar Muzaffarnagar, by its order restrained the sale and transfers of the property and created a charge on them. The Respondent underwent the resolution process but upon its failure, the Respondent was later subjected to liquidation.

The total arrears from the Respondent amounted to ₹4,32,33,883/-, the District Collector issued a notice for recovery of dues to the tune of ₹2,50,14,080/-. The liquidator alleged that the attachment orders of the District Collector and of Tehsildar, Muzaffarnagar, needs to be set aside by the AA as the potential buyers were uncertain about the liquidator's authority to sell the property and hence making it difficult to find buyers. Additionally, the liquidator submitted that the Appellant claim would be classified in order of priority under Section 53 of the IBC.

The Appellate Tribunal instructed the DM and Tehsildar, Muzaffarnagar, to release the attached property in favor of the liquidator. The Appellate Tribunal also agreed with the AA's reasoning that the Appellant fell within the definition of 'operational creditor' and could recover its dues through the liquidation process.

The Appellant stated that the Section 173 & 174 of the Electricity Act 2003 has an overriding effect over other laws including IBC and therefore the Appellant could opt to stay out of liquidation and recover its dues. Alternatively, the Appellant submitted that the electricity dues were also 'security interest' in favor of electricity service provider and therefore should be considered as Secured Creditors.

The issue raised before the Apex court are: -

1. Whether IBC will override Electricity Act?
2. Whether the Appellant was a secured creditor?



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



## Supreme Court Observations: -

The Supreme Court relying on the Bankruptcy Law Reforms Committee Report, 2015 and the Preamble of IBC observed that the government dues have been given lower priority in waterfall mechanism under Section 53.

Placing its reliance on its judgment delivered in '*Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs*' and '*Duncans Industries Ltd. v. AJ Agrochem*' the Apex Court held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e. Section 173 and 174).

Further, the Apex Court held that in the present case, dues payable to the Appellant do not fall within Section 53(1)(f) of IBC. The Appellant, which is undisputedly a secured creditor in the case, is entitled to its dues in accordance with the IBC mechanism.

**Order/Judgement:** The Supreme Court held that the appeal deserves to fail and directed the Liquidator to decide the claim exercised by the Appellant in the manner required by the law. Further, the court directed to complete the process within 10 weeks from the date of pronouncement of the decision.

**Case Review:** The appeal was dismissed, without order on costs.