

IBC Case Laws

Supreme Court of India

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 (Appellant) being aggrieved by the impugned order passed by The Appellate Tribunal dated 05.08.2022. Canara Bank, being the successor of Syndicate Bank by the way of merger (Respondent) submitted the application for initiating CIRP against M/s Kranthi Edifice Pvt. Ltd. (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, whether the AA has the discretion not to admit the CIRP



application even after the existence of debt and default?

Supreme Court's 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 Crores 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: The Appeal has no merit and accordingly stands to be dismissed.

Case Review: Appeal dismissed.

M/s Vistra ITCL (India) Ltd & Ors. Vs. Mr. Dinkar Venkatasubramanian & Anr. Civil Appeal No.3606 of 2020. Date of Supreme Court Judgement: May 04, 2023.

Facts of the Case

The Present appeal is filed by M/S Vistra ITCL (India) Ltd. & Ors. (Hereinafter, referred as 'Appellants') after being aggrieved by the impugned order dated 24.08.2020 by the NCLAT. Amtek Auto Ltd. ("CD") approached the Appellants to extend a short-term loan facility of ₹ 500 crores to its group of companies i.e. Brascos Engineers Ltd. and WLD Investment Pvt. Ltd. for the ultimate end use of the CD. Thereafter, two Security Trustee Agreements were executed, first between the appellant and WLD Investment Pvt. Ltd and second between the appellant and Brascos Engineers Ltd. The Board of the CD passed resolution to create security over the shares of JMT Auto Ltd. held by it. (Pledged Shares).

Meanwhile an application under Section 7 of the IBC, 2016 was admitted against the CD and an RP was appointed (hereinafter referred as 'Respondent'). The Appellant, in the capacity of secured creditor submitted Form C claiming a principal amount of INR 500 crores but the same was rejected by the RP which was not challenged by the Appellants. The RP received two resolution plans and the plan by M/s LHG was approved by the CoC. The Resolution plan was approved by the AA but as the LHG did not fulfil its commitment, the AA passed an order directing reconsideration of the CoC for consideration of DVI's plan. The Appellants filed application u/s 60(5) of IBC claiming the right on the basis of the pledged shares, the AA dismissed the application filed by the appellants. The Appellate Tribunal observed that the Appellants have not lend any money to the CD and the CD did not owe any financial debt to the appellants except the pledge of shares to be executed. Therefore, the Appellants would not be coming under the purview of financial creditor of the CD.

Supreme Court's Observations

The Apex court placing its reliance on Judgments in Anuj Jain Interim Resolution professional for Jaypee Infratech Ltd. vs. Axis bank Ltd. and Phoenix ARC Pvt. Ltd. vs. Ketulbhai Ramubhai Patel held that the CD is not liable to repay the loans advanced, in respect of which there were detailed, and separate agreements executed by the lenders with Brascos and WLD.

Further, the Apex Court held that the present plea of the Appellant to be treated as a financial creditor of the CD should be dismissed on the grounds of delay, laches and acquiescence. The Appellant had not objected to the resolution plan submitted by the erstwhile applicant – LHG and as a sequitur, its non-classification as a financial creditor in the CoC of the CD. The Apex court observed that the Appellant, a secured creditor is being denied the rights u/s 52, 53 of the code in respect of pledged shares. The Apex Court provided two options, first is to treat the secured creditor as a financial creditor of the CD to the extent of the estimated value of the pledged share on the date of commencement of CIRP or second is to treat the Appellant as a Secured Creditor in terms of Section 52 read with Section 53 of the Code.

Order: The order of the NCLAT affirming the view taken by NCLT is partly modified in terms of Apex Court's directions holding that the Appellant would be treated as a secured creditor, who would be entitled to all rights and obligations as applicable to a secured creditor in terms of Section 52 and 53 of the code and in accordance with the pledge agreement.

Case Review: *The Appeal disposed of.*

Abhishek Singh Vs. Huhtamaki PPL Ltd. & Anr. SLP (Civil) No.6452 of 2021. Date of Supreme Court Judgements: March 28, 2023.

Facts of the Case

This Appeal is filed by Mr. Abhishek Singh (hereinafter referred as 'Appellant'), a Suspended director of the Manpasand Beverages Ltd. (hereinafter referred as "CD") after being aggrieved by the AA's order dated 13.04.2021. The CD was in the business of manufacturing and distribution of fruit beverages. Huhtamaki PPL Ltd. (hereinafter referred as "Respondent"), used to supply packaging material to the CD. Later, The Respondent filed a petition under Section 9 of IBC, seeking initiation of CIRP of the CD, over a default of ₹1,31,00,825/-. The AA admitted the petition against the CD by order dated 01.03.2021. Two days after initiation of CIRP, the parties entered into settlement even before the CoC could be constituted. As per settlement terms, the CD paid ₹95.72 Lakhs to the respondent and the IRP filed an application before AA seeking withdrawal of CIRP against the CD.

Meanwhile an appeal was preferred before the Appellate

Tribunal against the admission order of AA dated 01.03.2021 on the ground that Section 9 of IBC was not maintainable as there was a pre-existing dispute. Later, the appeal was withdrawn with liberty to revive the appeal in case the settlement failed. The Appellate authority also granted stay on formation of CoC. The AA observed that (i) Appellant had violated the moratorium directions contained in admission order dated 01.03.2021, (ii) 35 creditors have filed their claims during the pendency of the CIRP application and withdrawal of the proceeding would adversely affect their rights, and (iii) Regulation 30A of IBBI Regulations was not binding upon it and such provision would not be of any help to the CD or Appellant. Therefore, the AA by its order dated 13.04.2021 rejected the settlement application and fixed the matter for disposal of the application under Regulation 30A after hearing all creditors.

Supreme Court's Observations

The Supreme Court referring to the judgements in *Swiss Ribbons Pvt. Ltd. & Anr. Vs UOI & Ors.* (2019) and *Kamal K. Singh v. Dinesh Gupta & Anr.* (2021) held that section 12A of IBC permits withdrawal of applications admitted under section 7, 9 or 10 of IBC and does not debar entertaining applications for withdrawal even before constitution of CoC. The substituted Regulation 30A (as it stands today after the judgement of Swiss Ribbon) clearly provides for withdrawal applications being entertained before constitution of CoC.

The Supreme Court further stated that the AA committed an error in holding that Regulation 30A would have no binding effect as this would amount to defeating the very purpose of substituting Regulation 30A in IBBI Regulations. The Apex Court further held that large number of creditors filed their claim due to the delay on the part of AA in disposing of applications under Section 12A of IBC and Regulation 30A of CIRP Regulations.

Order: The impugned order of the AA cannot be sustained. The application filed under Regulation 30A of IBBI Regulations deserves to be allowed and the impugned order of NCLT is set aside.

Case Review: *Appeal is allowed and pending applications, if any, are disposed of.*

High Court

The Principal Chief Conservator of Forest & Ors. Vs. M/s Wind World (India) Ltd. Writ Petition No.20083 OF 2022 (GM – RES). Date of High Court Judgements: April 13, 2023.

Facts of the Case

The present writ petition is filed by The Principal Chief Conservators of Forests & Ors. (Hereinafter, referred as 'Petitioners'), after being aggrieved by impugned order dated 06.07.2022 passed by AA. M/s Wind World (India) Ltd, (hereinafter referred as 'Respondent') was granted a lease by the Karnataka Renewable Energy Development Corporation Ltd. in respect of land measuring 221.80 hectares for period of 15 years under a lease deed dated 03.09.2003. On being due, the leased land was applied for renewal and was pending before the competent Authority.

Meanwhile the Respondent requested state's approval to start the windmill as the same would get damaged if not put into functioning. For safeguarding the interest of Respondent, state gave the permission but was subject to clearance of the forest department. The Respondent, on declaration of it being an insolvent before AA invoked the section 14 of IBC. The proceedings were pending before the AA from 2018 and all the above permissions were granted during the said pendency. State Government suspended operations of the Respondent in the year 2022 as the forest clearances were not placed before it. The Respondent did not challenge the suspension but approached the AA by filing application u/s 60(5) of the code for passing an interim order. The Tribunal directs the government to permit functioning of the windmill by holding that it was essential to resolve insolvency of the Respondent. Pursuant thereto, the petitioner has filed the current writ petition.

The issue raised before the High court through the writ petition is that whether the AA has exceeded its jurisdiction by passing the Impugned order?

High Court's Observations

The High Court, referring to the judgment of "Gujarat Urja Vikas Nigam Limited", held that the AA had no jurisdiction to direct functioning/ continuing of the windmill without the forest clearances, merely because the state had granted such permission earlier. The AA cannot

overstep its jurisdiction. The High Court held that the Respondent has been taking undue advantage of indulgence of the State and has not taken any steps to submit a complete forest clearance proposal for renewal of the lease and has been continuing with the operation on ad hoc basis. The Respondent could not have knocked at the doors of the AA as it completely falls beyond the purview of the code.

Order: Impugned order dated 06.07.2022 passed by the AA stands quashed.

Case Review: *Appeal allowed.*

National Company Law Appellate Tribunal (NCLAT)

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 form 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 was no resolution plan for consideration. Hence, this appeal is filed by the suspended director of the company in Appellate Tribunal.

NCLAT's 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 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: The Appeal stands disposed of. No costs. The connected pending 'Interlocutory Applications', if any, are closed.

Case Review: *Appeal Disposed of.*

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 was no resolution plan for consideration. Hence, this appeal is filed by the suspended director of the company in Appellate Tribunal.

NCLAT's 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 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: The Appeal stands disposed of. No costs. The

connected pending 'Interlocutory Applications', if any, are closed.

Case Review: *Appeal Disposed of.*

M/s Smartworks Coworking Spaces Private Ltd. Vs. M/s Turbot Hq India Private Ltd. Company Appeal (AT) (Insolvency) No. 772 of 2022. Date of NCLAT Judgement: May 23, 2023.

Facts of the Case

The Present Appeal is filed by M/S Smartworks Coworking Spaces Pvt Ltd. in the capacity of Operational Creditor (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 08.04.2022 passed by AA. The Appellant is engaged in the business of co-working and/or providing flexi office space. The Appellant entered into a Services Providers Agreement with M/s Turbot HQ India Pvt. Ltd. (hereinafter referred as 'Respondent') for the monthly rent of ₹ 3.52 lacs starting from 01.10.2018 to 30.09.2021. The Agreement had lock-in period of 36 months and did not create any right/title/interest in the property immovable or movable.

The Respondent via email dated 04.06.2019 informed the Appellant to end the contract by 01.09.2019 but the Appellant demanded the unpaid balance amount for the lock-in period. However, the Respondent stopped using the premises by 01.09.2019. The Appellant issued demand notice to the Respondent under section 8 of IBC, 2016 claiming the Operational debt of ₹ 1.29 Crore but the same was denied by the Respondent. Thereafter, the Appellant filed the application under section 9 of IBC, 2016. The AA held that the amount claimed by the Appellant for the lock-in period is not an operational debt and rejected the section 9 application by its order dated 08.04.2022. Therefore, the Appellant filed the appeal. The main issues arise before Appellate Tribunal is: (i) Whether the claimed amount considered as operational debt? (ii) Whether the agreement dated 17.08.2018 is compulsorily registerable instrument under the Registration Act 1908? (iii) Whether the agreement dated 17.08.2018 was originally engrossed on an unstamped paper?

NCLAT's Observations

The Appellate Tribunal placing its reliance on the judgment given in "*Jaipur trade Expocentre Pvt. Ltd. Vs. Metro Jet Airways training Pvt. Ltd.*" held that the debt

claimed by the Appellant is clearly a claim within the meaning of IBC and the debt become due because of the Respondent default and the Appellant is fully entitled to initiate CIRP u/s 9 of IBC.

While addressing second issue the Appellant Tribunal stated that the agreement does not purport or operate to create, declare, assign, limit or extinguish any right, title of interest in immovable or movable property, and therefore the agreement was clearly not required to be compulsorily registered under section 17(b) of Registration Act. The Appellate Tribunal further stated that when the Agreement was admittedly signed and executed between the parties and acted upon, mere fact that it not being engrossed on stamped papers shall have no consequence on the claim of the Appellant.

Order: The debt claimed by the Appellant in section 9 application is an Operational Debt and the Agreement dated 17.08.2018 was not compulsorily registrable and agreement having not been executed on stamp paper was inconsequential. AA to pass order of admission of Section 9 Application within a month. However, in the meantime the parties may enter into a settlement, if any.

Case Review: *Appeal is allowed.*

Westcoast Infra projects 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. 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 ₹373 Crores. The Appellant remitted an amount of ₹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.

NCLAT's 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: The AA did not commit any error in rejecting the IA and there is no merit in appeal.

Case Review: *Appeal dismissed.*

Mr. P. Eswaramoorthy Vs. The Deputy Commissioner of Income Tax (Benami Prohibition) Company Appeal (AT) (CH) (INS) No. 188 of 2022. Date of NCLAT Judgement: March 13, 2023.

Facts of the Case

The present appeal is filed by the liquidator (hereinafter referred as 'Appellant') of M/s Senthil papers and Boards Pvt. Ltd. ('CD') after being aggrieved by the AA order dated 29.03.2022. After the Resolution Plan was rejected by CoC, liquidation order was passed by the AA dated 14.02.2019 and a Liquidator was appointed.

The provisional attachments were made on 01.11.2019, meanwhile a show Cause notice was served by The Deputy Commissioner of Income Tax, Benami Prohibition (hereinafter referred as 'Respondent') dated 01.11.2019, to the CD, under the Prohibition of Benami Property Transactions Act, (PBPT), 1988. The Respondent alleged that the land on which the factory of CD is located is a Benami Property. During Demonetization, ₹400 Crores in 'Old High Denomination Notes' were given to Senthil Group for the purchase of a Paper Mill in Coimbatore District, belonging to Smt. Sasikala, through her Intermediaries, etc. The Income Tax Department also issued a Provisional Attachment Order dated 01.11.2019 under PBPT Act and attached the concerned asset of the CD during liquidation. The Appellant filed an application under Section 60(5) of IBC before the AA, seeking setting aside of the provisional attachment order and argued that IBC prevails over PBPT Act. The AA dismissed the application by order dated 29.03.2022 and observed that the remedy lies before an appropriate forum and not with the AA.

NCLAT's Observations

The Appellate Tribunal held that attachment made as per Section 24(3) of 'The Prohibition of Benami Property Act, 1988, cannot be a subject matter of proceedings under Section 60(5) of the IBC. A mere running of the eye of the ingredients of Section 60(5) of the Code, clearly indicates that it is not an all-pervasive Section, conferring 'Jurisdiction', to an 'AA', to determine any questions, relating to the 'CD'.

One cannot fall back upon Section 60(5) of the IBC, for seeking remedy, concerning the matter, relating to 'The

PBPT Act, 1988'. The AA is not a proper Fora to determine the controversies revolving around the Attachment of Property under the PBPT Act 1988. Thus, the application filed by the Liquidator seeking setting aside of Attachment Order per se are not maintainable in the eye of law. The Appellate Authority further observed a 'Moratorium' imposed under Section 14 of the IBC, 2016, does not affect the Provisional Attachment Order, passed under The PBPT Act, 1988.

Order: The view drawn by the AA in dismissing the applications including all IAs through its Impugned Order dated 29.03.2022 is free from 'Legal Infirmities'. Consequently, the 'Appeals' fail.

Case Review: *Appeal dismissed. All Connected pending Interlocutory Applications, if any, are closed.*

National Company Law Tribunal (NCLT)

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 from 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.

NCLT's 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: 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.*

DHL Supply Chain India Private Ltd. Vs. Eicher Motors Ltd. Company Petition No. (IB)-272(ND)2022. Date of NCLT Judgement: May 29, 2023.

Facts of the Case

The present petition was filed by the DHL Supply Chain India Pvt. Ltd. in the capacity of operational creditor (hereinafter referred as 'Petitioner') against Eicher Motors Ltd. (hereinafter referred as 'Respondent') for initiating CIRP u/s 9 of IBC over some unpaid dues.

The parties entered into 'Service Agreement for Warehouse', dated 29.08.2019 for taking the services of the Petitioner for logistics and warehousing. The term of the agreement was for three years effective from 01.10.2019 to 30.09.2022 and the entire term constituted a lock-in period for both the parties. In November 2020, the Respondent proposed to use the warehouse for storing Bikes and spare parts instead of storing genuine motorcycle accessories and apparel, but it didn't work out. The Respondent decided not to use the warehouse and sought to prematurely terminate the agreement. The Petitioner rejected the proposal for premature termination of the agreement vide its letter dated 21.04.2021 and as no response of said letter/notice was received, the Petitioner informed the Respondent to remove the assets lying in the warehouse. The Respondent via its reply dated 31.05.2021

stated that dismantling and shifting was to be done by the Petitioner. The Petitioner provided services to the Respondent and raised various invoices including interest charged on the overdue invoice amount and claimed operational debt of approx. ₹8.3 crore. The demand notice dated 07.12.2021 u/s 8 of IBC was sent by the Petitioner via e-mail but the same was denied by the Respondent on the ground that the demand notice was not served at the Respondent's registered office or to the Whole Time Director or Designated Partner or Key Managerial Personnel.

In the light of above dispute, the Petitioner filled the CIRP application before AA.

NCLT's Observations


The AA while placing its reliance on the judgment pronounced by Hon'ble Supreme Court in "*Kirshna Texport and Capital Markets Ltd. vs Ila A. Agarwal and Ors*". held that there was no illegality or deficiency in the service of demand notice, which was duly served through the E-mail address of the Respondent with attention to its MD who was a Key Managerial Personnel of the Respondent company as defined u/s 2(51) of Companies

Act 2013.

The AA, while examining the application on its merits and placing their reliance on the judgments given by the Hon'ble Supreme court in "*India vs Raman iron Foundry*" and "*Moblix Innovations Pvt. Ltd. vs Kirusa Software Pvt. Ltd.*" stated that there is sufficient material in the form of e-mail communications between the parties that there were pre-existing disputes before the issuance of demand notice. Further, on perusal of email dated 05.01.2021 it is clear that the Petitioner was well aware that the Respondent was vacating their warehouse as a part of their normal business transaction and therefore, the submission made by the Petitioner that it had no knowledge of the Respondent vacating the premises is misplaced.

Order: The correspondence on record prodigiously establishes severe disputes between the parties inter-se, with each party having claims/ counterclaims against the other. The Respondent too has raised plausible contentions, which require further investigation. There being pre-existing disputes between the parties, the Application is liable to be dismissed.


Case Review: *Application dismissed.*


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