



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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(July 31, 2023)

Monica Jajoo Vs PHL Fininvest Pvt. Ltd. & Mr. Jayant Prakash
Company Appeal No. 1344 & 1345 of 2022
Date of NCLAT Judgement: July 21, 2023

Facts of the Case: -

The present appeal was filed under section 61 of the IBC by Monica Jajoo (hereinafter referred as “Appellant”) against two orders, dated 29.08.2022 and 16.9.2022, passed by the AA (‘NCLT, New Delhi, Court -IV’).

A Facility Agreement for a loan was entered into by M/s Piramal Finance Limited with M/s Hema Engineering Industries Ltd (hereinafter referred as ‘CD’). By virtue of an Assignment Agreement the above loan was assigned in favour of PHL Fininvest Private Limited (hereinafter referred as “Respondent”).

The Respondent issued a demand notice in under Rule 7(1) of the IBC seeking repayment of alleged outstanding of Rs. 443,36,21,727 and subsequently filed an application under section 95(1) of the IBC seeking initiation of personal insolvency against the Appellant who is the personal guarantor of the loan. The personal insolvency against the Appellant was initiated vide AA’s order dated 29.8.2022 and an RP was appointed.

The Respondent further filed an application under section 98(1) for the replacement of the RP which was decided by the AA vide order dated 16.9.2022.

The Appellant stated that procedure followed by the AA, in adjudicating the section 95 application vide Impugned Order dated 29.08.2022 and for replacement of the Resolution Professional vide Impugned Order dated 16.9.2022, was against the procedure prescribed under the IBC.

The Appellant contended that the appointment/replacement of the Resolution Professional was done without following the due procedure provided under section 98 of IBC. Further, the Appellant claimed that Bench-IV of NCLT, New Delhi had no jurisdiction to pass both the Impugned Orders, since liquidation proceedings of the CD was pending before the Bench-III of NCLT, New Delhi.



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NCLAT's Observations: -

NCLAT referring to the *State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia* held that the sub sections (1) and (2) of section 60 lay down a requirement of law, which stipulates and mandates that an application relating to insolvency resolution or liquidation of corporate guarantor of a CD shall be filed before such NCLT, where a CIRP or liquidation proceedings of the same CD is pending.

The Appellate Tribunal held that even though transfer application was filed before the AA, it did not take the transfer application into consideration before passing both the Impugned Orders. The Bench-IV of NCLT, New Delhi could not have heard and adjudicated upon the applications under section 95 and 98, and should have transferred these applications to Bench-III which was already considering the liquidation proceedings of the CD under the IBC.

Order/Judgement: The Appellate Tribunal held that requirement of law has not been kept in mind while considering the applications under section 95 and 98, and accordingly it directed to set aside both the Impugned Orders. Further, the Appellate Tribunal directed that the application filed by the Respondent against the Appellant be heard afresh and decided by the same bench of NCLT, New Delhi, which considered the insolvency and liquidation application against the CD.

Case Review: The appeal was allowed, with no order as to cost.