



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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(September 25, 2023)

Deutsche Bank A.G Vs. Mr. Devendra Umrao.
IA. NO. 3846/ND/2023 & IA-1175/ND/2022
in C.P. (IB)-2240(ND)/2019
Date of NCLT Judgement: Sept. 18, 2023

Facts of the Case: -

The Present IA (NO. 3846/ND/2023) is filed by the Deutsche Bank A.G (hereinafter referred as 'Applicant') against the resolution plan submitted by the Resolution Professional (hereinafter referred as 'Respondent') through IA (No-1175/ND/2022).

The main CIRP petition was filled by M/s Hi-tech Resource Management Ltd. against, M/s Overnite Express Ltd ('CD') u/s 7 of IBC, 2016 and the same was admitted vide order dated 02.03.2020. The Applicant has raised concerns that secured creditors have been offered a meager amount of ₹3,24,62,545/- against total admitted claims of ₹10,82,08,485/-, which represents approximately 30% of the total admitted claims. Given the Applicant's claim of ₹6,00,26,716.30/-, they are set to receive only 30% of their admitted claim and this offer has been made without considering the security held by the Applicant, which is valued at more than ₹12 crores as of the current date. The Applicant further stated that they are entitled to equivalent the value of their security/Mortgage property, as held by the Hon'ble Apex Court in the cases of '*Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.*' and '*India Resurgence ARC Pvt. Ltd. v. Amit Metaliks Ltd.*', and also stated that, the Respondent has not included the Applicant's claims, even after admitting it before AA. The Applicant further contended that the suspended director of CD has submitted the resolution plan claiming that CD falls under the MSME category in terms of the Central Govt. notification and is fraudulently trying to take advantage available to MSME u/s 240A of the Code.

The Respondent submitted that he took legal opinion before obtaining MSME license for the CD and cited the judgement of the Appellate Tribunal in '*Govind Prasad Toddi v. Satyanarayana Gudetti and Ors.*' where promoters who obtained an MSME certificate after CIRP initiation submitted a resolution plan. The Respondent also stated that the dissenting Financial Creditors who did not support the Resolution Plan would be paid the liquidation value in accordance with the provisions under Section 30(2) read with Section 53 of the Code.

The main issue raised before the AA is: (i) Whether the MSME Certificate obtained after the commencement of CIRP is valid for making a Defaulter Promoter eligible to submit a Resolution Plan under Section 240A of IBC, 2016. or not?



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NCLT's Observations:-

The AA while placing its reliance on judgement pronounced by the Appellate Tribunal in ***Harkirat Singh Bedi vs. The Oriental Bank of Commerce & Anr.***, observed that an MSME Certificate obtained by Promoter(s)/Ex-Director(s) post-commencement of the CIRP is invalid and it will not make them eligible to submit an EOI or the Resolution Plan by taking benefit of Section 240A of IBC 2016.

The AA further stated that the RP/CoC members can obtain the MSME certificate after commencement of CIRP, either for the purpose of availing the business advantages available under the MSME Act, 2006 or for availing the preference in the marketing of its product which are in overall interest of maximizing the value of assets of the CD.

Further, the AA while placing its reliance on the judgment delivered by the Apex court in ***Arun Kumar jagatramka Vs. Jindal Steel and power Ltd. & Anr. 2019***, observed that Section 29A was incorporated to prevent unscrupulous persons from gaining control over the affairs of the company, including those who by their misconduct have contributed to the defaults of the company or are otherwise undesirable. Hence, neither Section 25 nor Section 28 of IBC empowers the Respondent or CoC to obtain an MSME Certificate to enable the back door entry of the defaulting Promoter/Suspended Management into the CD, who is otherwise barred under Section 29A of IBC to submit the EOI/Resolution Plan.

Order/Judgement: The AA rejected the resolution plan and allowed the IA. Furthermore, it stated that since a period far exceeding 330 days of the CIRP has already elapsed, the CD should be liquidated with immediate effect in terms of Section 34(4) of the IBC, and a Liquidator is appointed.

Case Review: The IA (NO. 3846/ND/2023) filed by the Deutsche Bank A.G is allowed and IA (No-1175/ND/2022) filed by the Respondent is rejected.