



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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Rakesh Gupta & Nidhi Gupta Vs. Mahesh Bansal
COMPANY APPEAL (AT) (Insolvency) NO. 401 OF 2022
Date of NCLAT Judgement: October 19, 2023

Facts of the Case: -

The present appeal is filed by M/s Rakesh Gupta and Ors. (hereinafter referred as 'Appellants') in the capacity of suspended director of Gupta Marriage halls Pvt. Ltd. ('CD') after being aggrieved by the impugned order dated 02.03.22 passed by the AA.

The CD being engaged in the business of hiring and running the business of Hotels, Restaurants, and Marriage Halls availed credit facilities from Punjab National Bank. The CIRP petition u/s 7 of IBC was filed by the PNB on 03.09.2019, and the IRP was appointed (hereinafter referred as 'Respondent').

The Respondent during the pendency of CIRP filed application u/s 19(2) of IBC alleging non-cooperation from the Appellants. Later, liquidation of the CD was initiated and the appointed liquidator filed a fresh application u/s 34(3) of IBC on the same ground of non-cooperation by the Appellants. The AA by the order dated 02.03.22 held that the act of Appellants constituted misconduct during CIRP and was punishable u/s 70 of IBC. The Appellants were accordingly fined ₹5 lakhs.

The Appellant asserted that any fine or penalty for offences is dealt under Chapter VII of IBC and trial of offences under Sections 70 and 236 can only be done by a Special Court established under Chapter XXVIII of the Companies Act, 2013. Additionally, the Appellants disputed the Respondent's claim that the AA imposed "cost" under Rule 149 of the Companies Rules, asserting that the term 'cost' is not mentioned in the entire AA's order.

NCLAT Observations:-

The Appellate Tribunal while placing its reliance on its judgement pronounced in **Lagadapati Ramesh Vs Mrs. Ramanathan Bhuvaneshwari** held that in order to initiate prosecution u/s 70 of the Code, the complaint has to be filed by the IBBI or Central Government or any person authorized by the Central Government.



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The Appellate Tribunal further relying on the judgment pronounced in ***Vikram Puri vs. Universal Buidwell Pvt. Ltd.*** held that the prosecution u/s 70 of the code is a separate and independent proceedings, and is no manner fetter power upon tribunal to invoke section 70 of the code. The Appellate Tribunal further held that the term “fine” is covered in penalty, which is required to be dealt under sections 70 and 236, and is outside the jurisdiction of AA. Further, the Appellate Tribunal distinguished between 'Fine' and 'Cost' and explicitly stated that both terms are not synonyms to each other.

Order/Judgement: The Appellate Tribunal set aside the order dated 02.03.22 passed by the AA, and held that AA passed the impugned order only by overlooking the law of the land through the code not by the precedent cases settled by the Appellate Tribunal. The order is remanded back to AA to have a fresh look in accordance with the law.

Case Review: The Appeal is allowed. No Costs.