



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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In The Matter of Hari Babu Thotha
CIVIL APPEAL NO.4422/2023

Date of Supreme Court Judgement: November 29, 2023

Facts of the Case: -

The Present appeal is filled by the RP of the Shree Aashraya Infra-Con Limited / CD, (hereinafter referred as 'Appellant'), after being aggrieved by the order dated 02.06.23 passed by the Appellate Tribunal.

The CD was admitted into CIRP by the AA's order dated 06.04.21. Subsequently, the CD was registered as Micro, Small and Medium Enterprise ("MSME") on 15.07.2021. Later, the Promoters of the CD submitted a resolution plan which was approved by the CoC, by availing benefit provided u/s 240A of IBC.

Section 240A provides that the bar u/s 29A of IBC, to submit a plan would not apply in the CIRP of a MSME CD. However, the submitted Resolution Plan was declined by the AA through its order dated 28.02.23 stating that the MSME certificate was obtained post commencement of CIRP. An appeal was filled against the said order of AA and the Appellate Tribunal citing *Digamber Anand Rao Pingle v Shrikant Madanlal Zawar & Ors* upheld the order of AA.

The Appellant thereafter filed an appeal against the order of Appellate Tribunal before the Supreme Court.

The main Issue faced by the Apex court is that whether the CD not having an MSME status at the time of commencement of CIRP, would disqualify the Resolution applicant under Section 29A of IBC as benefit of Section 240A would not be available?

Supreme Court Observations: -

The Supreme Court emphasized the purpose of Section 29A of the IBC, which aims to address issues caused by individuals responsible for a company's financial distress attempting to submit plans to take over the company. Sub-sections (c), (g), and (h) of Section 29A focus on the ineligibility of CD's promoters.



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The Supreme Court observed that the CD's promoter was not disqualified under Section 29A because there were no outstanding bank dues or NPA's. The Apex Court observed that only one preferential transaction was identified, with no AA order issued, and therefore section 29A did not apply here. The Supreme Court held that the exemption of Micro, Small, and Medium Enterprises (MSMEs) from Section 29A allows MSME promoters, not willful defaulters, to bid for the MSME in insolvency to prevent liquidation and protect employee livelihoods.

The Supreme Court rejected the Appellate Tribunal order and held that even if MSME registration was obtained post-CIRP commencement; the CD's promoter remains eligible to submit a resolution plan under Section 240-A of IBC

Order/Judgement: The Supreme Court set aside the AA and the Appellate Tribunal orders, affirming the eligibility of the MSME promoter to propose a resolution plan.

Case Review: Appeal is allowed. No costs.