



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 06 | Number 52

(December 25, 2023)

DR. ARUN MOHAN v CENTRAL BUREAU OF INVESTIGATION
W.P.(CRL) 544/2020 & CRL.M.A. 4088/2020
Date of High Court Judgement: December 18, 2023

Facts of the Case: -

The present petition is filed by Dr. Arun Mohan (hereinafter referred as 'Petitioner') under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking writ of Mandamus or any other appropriate writ, order or direction to quash FIR filed under Sections 7 and 7A of the Prevention of Corruption Act ('PC Act'), read with Section 120-B of Indian Penal Code, and pending before learned Special Judge, PC Act.

On being approached by a Financial Creditor, Mr. Karan Lalwani (hereinafter referred as 'Respondent-2'), the Petitioner consented to act as IRP of FR Tech Innovations Private Limited ('CD'). The AA vide its order appointed the Petitioner as the IRP. The Petitioner verified the claims received from various creditors, including the claim of the Respondent-2's wife who allegedly submitted the forged documents in support of her claim. The Petitioner sought additional details from the Respondent-2's wife in support of her claims. The petitioner informed the Respondent-2 that the CoC had decided to recover Rs.15.20 Lacs from his wife along with interest as she had received the said amount based on forged documents. Accordingly, the Petitioner issued the Demand notices. The Respondent instead of replying to Demand notice, filed a fabricated complaint under the PC Act against the Petitioner with CBI (hereinafter referred as 'Respondent-1').

The Petitioner contended that IP/IRP are not "public servants" for the purposes of PC Act and therefore FIR is *void ab initio*. Relying upon *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.* and *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Petitioner submits that IRP/RP does not render any adjudication over any point and only act as a Facilitator to sub-serve the interests of the CoC.

The Respondent(s) relied upon the judgement of *Sanjay Kumar Aggarwal v. Central Bureau of Investigation* that the RP are "Public Servant" falling under the definition of the Section 2(c) of the PC Act.

The main issue faced by the High court is that whether the petitioner who is a 'Resolution Professional' is a public servant or not and thus, would be liable for the offence punishable under Prevention of Corruption Act?



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



High Court Observations: -

The High Court referring to *Central Bureau of Investigation, Bank Securities and Fraud Cell vs. Ramesh Gelli and Ors* held that it is trite that every duty, even if has a color of “public duty”, may necessarily not be of a character which is “public” in nature. There could be many instances where a role or a responsibility of an individual in a particular statute would assume the nature of “public duty” but sans the “Public Character”.

The High Court respectfully differs with the judgement rendered by the learned Single Judge of the High Court of Jharkhand at Ranchi, in *Sanjay Kumar Aggarwal’s case (supra)*.

Further, the High Court held that the omission to include IP in section 232 IBC (related to Members, officers, and employees of the Board to be public servants) is not inadvertent but a thoughtful, willful and deliberate one by the Legislature, and the Courts of law being empowered to interpret the same, ought not to legislate or supply casus omissus, which in any case is prohibited.

Order/Judgement: The High Court held that IP does not fall within the meaning of “public servant” as ascribed in any of the clauses of sub-section (c) of section 2 of the Prevention of Corruption Act, 1988. Resultantly, the FIR registered by the Respondent No.1 is quashed and set aside.

Case Review: Petition along with pending application stands disposed of.