IBC Case Laws

Supreme Court of India

Bharti Airtel ltd. and Anr. Vs Vijaykumar V. Iyer and Ors. Civil Appeal No. 3088-3089 of 2020, Date of Supreme Court Judgement: January 03, 2024.

Facts of the Case

The present appeal is filed by the M/s Bharti Airtel Ltd. and others (Appellants) after being aggrieved by the Appellate Tribunal's order on May 17, 2019.

In 2016, the Appellant entered into eight spectrum trading agreements with Aircel Limited and Dishnet Wireless Limited (collectively called as CDs), for purchase of the right to use the spectrum allocated to the latter in the 2300 MHz band. The Appellants were to pay ₹4,022.75 crores to the CDs. The agreement was contingent on approval of the Department of Telecommunications (DoT) who demanded bank guarantees from the CDs. Upon request, the Appellants furnished bank guarantees to DoT on behalf of CDs.

Later the bank guarantees were cancelled and thereupon the Appellant made a payment of ₹341.80 Crs due to the CD and the balance amount of ₹145.20 Crs was set off by the CD on the ground that the amount was owed by CD to the Appellants. In the meantime, the CIRP application was admitted against the CDs in 2018 by the AA. According to the Appellant ₹145.20 crores was the net amount payable by the CDs towards operational charges, SMS charges and interconnect usage charges to the Appellant.

The Appellant submitted a claim of ₹203.46 crores in the CIRP of CD's which was admitted by RP (hereinafter referred as 'Respondent') to the extent of ₹ 112 Crores. However, the Appellant also owed ₹64.11 Crs towards interconnects charges to the CDs. The RP informed the Appellant that they have *suo moto* adjusted ₹112.87 crores from the amount of ₹453.73 consequent to the discharge and cancellation of bank guarantee. The Appellant claimed set-off of the amount due to them by CDs. The RP rejected the reply and claim of the Appellants. Upon appeal, the Appellate Authority vide its order on May 17, 2019, held that the set-off is violative of the basic principles and protection under IBC.

Supreme Court Observations

The Apex court scrutinized various types of setoffs. In its analysis of statutory set-off, the Apex Court highlighted that as per Code of Civil Procedure, a defendant can claim set-off against the plaintiff demand for any ascertained sum of money. Mutual cross-obligations, indicating crossclaims between the parties in the same right, are essential for a set-off in law. The Apex Court noted that under United Kingdom law, insolvency set-off is permissible when there are mutual debts, mutual credits, and other mutual dealings between parties at the relevant cut-off time, typically at the commencement of the liquidation process.

It was further emphasized that unlike the Companies Act, the IBC doesn't grant indebted creditors the right to set off against the CD in the case of CIRP. The insolvency set-off under the IBC is neither automatic nor self-executing. While Section 173 of the IBC allows set-off in partnerships and individual bankruptcies, Regulation 29 of the Liquidation Regulations, dealing with mutual credits and setoff, doesn't apply to Chapter II Part II of the IBC, which pertains to CIRP.

The Court outlined two exceptions to the applicability of statutory or insolvency set-off to CIRP:

1. Statutory set-off or insolvency set-off cannot be applied to CIRP, except in cases where a party is entitled to contractual set-off effective before or on the date the CIRP commencement. The moratorium during CIRP does not preclude the application of contractual set-off, as the terms of the contract remain binding.

2. The second exception is for 'equitable set-off,' applicable when the claim and counterclaim are linked

due to one or more transactions. For this set-off to be valid, it must be genuine, clearly established on facts and in law, and involve a quantifiable and unquestionable monetary claim.

Order: The Apex Court rejected the Appellant's plea for set off since 'Amounts' to be set- off is not the part of the CDs assets in the present fact and upheld the order dated 17.05.2019 passed by the Appellate tribunal.

Case Review: *Appeal dismissed.*

In the matter of Hari Babu Thotha, Civil Appeal No. 4422/2023, Date of Supreme Court Judgement: November 29, 2023

Fact of the Case:

The Present appeal is filled by the RP of the Shree Aashraya Infra-Con Limited / CD, (Appellant), after being aggrieved by the order on June 02, 2023, passed by the Appellate Tribunal.

The CD was admitted into CIRP by the AA's order dated April 06, 2021. Subsequently, the CD was registered as Micro, Small and Medium Enterprise (MSME) on July 15, 2021. Later, the promoters of the CD submitted a Resolution Plan which was approved by the CoC, by availing benefits 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 February 28, 2023, stating that the MSME certificate was obtained post commencement of CIRP. An appeal was filed against the said order of AA and the Appellate Tribunal citing ***Digamber Anand Rao Pingle Vs. 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's 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.

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 wilful 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

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 Allowed.*

Ramkrishna Forgings Ltd. Vs. Ravindra Loonkar, RP of ACIL Ltd. & Anr. Civil Appeal No.1527 of 2022, Date of Supreme Court's Judgement: November 21, 2023 **at**

Fact of the Case

The Present Appeal is filled by M/s Ramkrishna Forgings Ltd. (Appellant) after being aggrieved by the order dated February 19, 2022, passed by the Appellate Tribunal.

The CIRP application was filed by IDBI bank Ltd. against ACIL/CD which was admitted by the AA and the IRP was appointed (Respondent) by an order dated October 16, 2018. The Appellant submitted a Resolution Plan which was negotiated and revised several times. Thus, the final Resolution Plan was submitted on August 05, 2019, and approved by the CoC on August 14, 2019, with majority of 88.56% votes. Accordingly, the Respondent filed an application under Section 30(6) of IBC before the AA, seeking approval of the Resolution Plan.

Later, the AA kept the approval of the Appellant's (Successful Resolution Applicant or SRA) Resolution Plan in abeyance and directed the Official Liquidator (OL)

to provide exact figures/value of assets by an order dated September 01, 2021. The Appellant filed an appeal before the Appellate Tribunal against the order dated September 01, 2021. The Appellate Tribunal dismissed the appeal vide an order dated January 19, 2022, while observing that an avoidance transaction of approximately ₹1000 Crores had come to light and the case justifies interference since figures of crores are involved. The Appellant filed an appeal before the Supreme Court against the order dated January 19, 2022, passed by the Appellate Tribunal.

The Appellant submitted that the IBC has an inbuilt mechanism for valuation of assets of the CD which is provided under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Therefore, appointment of an Official Liquidator for valuation, which is otherwise a creation of the Companies Act, 2013 is unwarranted. Further, AA cannot sit in appeal over commercial decision of the CoC. The AA can exercise its discretion in rare cases and order for re-valuation, but the same can't be justified in present matter as absolutely no reason has been given by the AA or the Appellate Tribunal for undertaking such exercise in respect of the assets of the CD, which is arbitrary and unjustified.

Supreme Court Observations

The Apex court observed while placing its reliance on judgment pronounced in ***Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh (2020) and K Sashidhar Vs. Indian Overseas Bank (2019)*** and said that the AA did not have sufficient grounds to solely rely on the argument that the proposed haircut in the debt was around 94.25%. Furthermore, the court was not convinced that the fair value of the assets has been projected in proper manner as the bid of the Appellant was very close to the fair value of the assets of ACIL. The Supreme Court also observed that the order of AA for revaluation of assets by the OL i.e., Ministry of Corporate Affairs, was unjustified.

Stricto sensu, it is now well-settled that the CoC holds the authority to decide how to handle the entire debt of the CD. The Resolution Plan submitted by the Appellant, including the financial aspects and upfront payments, had undergone repeated negotiations and gained approval from the CoC with a substantial majority vote of 88.56%. The court asserted that such commercial wisdom, backed by the CoC's approval, should not be casually questioned or interfered with.

The Supreme Court found a lack of detailed discussion in the orders, of AA and the Appellate Tribunal except for discrepancies in outstanding dues and the initial amount the Appellant was to contribute. The AA's decision to order revaluation by the OL was deemed 'novel path' and was not adequately justified. Notably, no objections had been raised or challenges made to the Resolution Plan during the approval process. The Appellate Tribunal had only suggested considering expert opinions when dealing with large financial figures.

Order: The Supreme Court set aside both the order dated September 01, 2021, passed by AA and impugned order dated January 19, 2022, passed by the Appellate Tribunal and further directed the AA to pass appropriate orders in terms of this judgment.

Case Review: *Appeal allowed.*

Vishal Chelani & Ors. Vs. Debashis Nanda, Civil Appeal No. 3806 of 2023, Date of Supreme Court Judgement: October 06, 2023.

Facts of the Case

The present appeal is filled by Mr. Vishal Chelani & Ors. (Appellants) after being aggrieved by the decision of the Appellate Tribunal.

The Appellants, in the capacity of homebuyers, invested in a real estate project of Bulland Buildtech Pvt. Ltd. (CD). The Appellants were dissatisfied with the project's delays and sought relief through the Uttar Pradesh Real Estate Regulatory Authority (UPRERA). The UPRERA ruled in the appellants favor by upholding their right to refund along with interest. Meanwhile, the CIRP proceedings were initiated against the CD and the RP was appointed (Respondent).

After due consultations form CoC, a Resolution Plan was submitted before AA, which differentiated between home buyers who had sought remedies under the RERA and those who had not. Those who hadn't approached RERA were offered more favorable terms, with a 50% advantage over those who had obtained RERA orders or were decree holders. The Appellants being unhappy with the arrangement, filed an application with AA but their claims were denied by the AA. The Appellate Tribunal further turned down their appeal which led them to approach the Supreme Court.

The Appellants submitted that a distinction cannot be made between two set of home buyer allottees as the definition of financial debt u/s 5(8)(f), after the amendment in 2018, include home buyer allottees in real estate projects under the broad description of financial creditors.

The Respondent submitted that the appellants cannot be permitted to secure two benefits. Having approached the UPRERA, they fell into a different sub-class of home buyers, who were entitled to specified amounts and, therefore, were unsecured creditors, as compared with allottees who had not invoked RERA remedies.

Supreme Court's Observations

The Apex Court, citing the judgement in the case of *Mr. Natwar Agarwal (HUF) Vs. Ms. Ssakash Developers & Builders Pvt. Ltd*., emphasized that the 2018 amendment with the added explanation to section 5(8)(f), categorizes homebuyers and allottees of real estate projects as 'financial creditors. The Apex Court stated that there's no inherent distinction among different classes of financial creditors when it comes to creating a resolution plan.

The Apex Court further stated that only homebuyers have the standing to seek remedies under RERA. Therefore, it would be highly inequitable to treat a specific segment of this class differently under another law solely because they opted to receive their deposits along with the interest. The fundamental claim of an aggrieved party remains unaltered by a court order or decree, and allottees retain their status as financial creditors.

Furthermore, Section 238 of the IBC includes a non-obstante clause, giving priority to its provisions over those of the RERA Act. The artificial distinction made by the Respondent constitutes 'hyper classification' and contravenes Article 14.

Order: The Apex Court set aside the impugned order of the Appellate Tribunal and declared the Appellants as financial creditors within the meaning of section 5(8)(f) explanation. Further the Court directed to treat the Appellant at par with the other home buyers/financial creditors, for the purposes of a resolution plan.

Case Review: *Appeal Allowed.*

Tottempudi Salalith. Vs. State Bank of India & Ors. Civil Appeal No. 2348 Of 2021 Date of Supreme Court Judgement: October 18, 2023.

Facts of the Case

The present appeal is filed by Mr. Tottempudi Salalith (Appellant), in the capacity of MD of Totem Infrastructures Ltd. (CD), after being aggrieved by the order of Appellate Tribunal. The CD was facing insolvency proceedings due to default on financial obligations to multiple banks. The total claim against the CD was approximately ₹613 crore. The State Bank of India (Respondent), representing several other banks, initiated the insolvency proceedings U/s 7 of the IBC.

Earlier, the Respondent also pursued recovery proceedings under the SARFAESI Act, 2002 and obtained recovery certificates from the Debt Recovery Tribunals. The Respondent's application under the IBC was based on these recovery certificates. The Adjudicating Authority admitted the application and appointed an IRP. The Appellant appealed against the decision, primarily arguing that the petition u/s 7 of IBC was barred by limitation since one of the Recovery Certificates dated back to 2015 and the Section 7 petition was filed in 2019. Moreover, the Appellant asserted that the date of default should be the date when the CD's account was declared NPA and not from the date of Recovery Certificate.

Furthermore, the Appellant stated that the Respondents, having chosen the SARFAESI mechanism first and having approached the DRT, were barred, under the doctrine of election, from approaching the AA for the recovery of the same set of debts.

The Appellate Tribunal dismissed the appeal. Consequently, the Appellant filed an appeal before the Supreme Court.

Supreme Court's Observations

The Apex court while citing the judgement delivered in *Kotak Mahindra Bank LTD. Vs A Balakrishnan*, held that liability in respect of a claim arising out of recovery certificate would be a financial debt with-in the meaning of section 5(8) of IBC. This makes the holder of a recovery certificate a financial creditor entitled to initiate CIRP.

On the issue of applicability of Doctrine of Election, the Apex Court stated that recovery proceedings began before the DRT in 2014 i.e., prior to the IBC's implementation.

The Kotak Mahindra (Supra) established that the issuance of a recovery certificate creates a new cause of action, allowing financial creditors to initiate CIRP. The Doctrine of Election doesn't prevent financial creditors from approaching the AA for CIRP after obtaining a recovery certificate. Further, the court held that a recovery certificate is also clothed with the character of a deemed decree and life of a decree is twelve years for enforcement as per Article 136 of the schedule of Limitation Act.

Further, the Apex Court held that the IBC primarily focuses on company revival but also aids debt recovery. Once CIRP results in a moratorium declaration, the enforcement mechanisms under the 1993 Act or the SARFAESI Act are suspended. The financial creditor, after receiving a recovery certificate, has the option to pursue debt recovery through a different forum, rather than sticking to the one through which the certificate was issued. This aligns with the decision in the *Transcore Vs. UOI*, where SARFAESI mechanisms were considered permissible even if the initial proceedings were instituted under the 1993 Act.

Order: The Appeal is dismissed. Interim order, if any, stands dissolved.

Case Review: *Application Disposed of.*

Vishal chelani & ors. Vs Debashis Nanda, Civil Appeal No. 3806 of 2023, Date of Supreme Court Judgement: October 06, 2023.

Fact of the Case

The present appeal is filled by Mr. Vishal Chelani & Ors. (Appellants) after being aggrieved by the decision of the Appellate Tribunal.

The Appellants, in the capacity of homebuyers, invested in a real estate project of Bulland Buildtech Pvt. Ltd. (CD). The Appellants were dissatisfied with the project's delays and sought relief through the Uttar Pradesh Real Estate Regulatory Authority (UPRERA). The UPRERA ruled in the appellants favor by upholding their right to refund along with interest. Meanwhile, the CIRP proceedings were initiated against the CD and the RP was appointed (Respondent).

After due consultations form CoC, a resolution plan was submitted before AA, which differentiated between home buyers who had sought remedies under the RERA and those who had not. Those who hadn't approached RERA were offered more favorable terms, with a 50% advantage over those who had obtained RERA orders or were decree holders. The Appellants being unhappy with the arrangement filed an application with the AA, but their claims were denied by the AA. The Appellate Tribunal further turned down their appeal which led them to approach the Supreme Court.

The Appellants submitted that a distinction cannot be made between two set of home buyer allottees as the definition of financial debt u/s 5(8)(f), after the amendment in 2018, include home buyer allottees in real estate projects under the broad description of financial creditors.

The Respondent submitted that the appellants cannot be permitted to secure two benefits. Having approached the UPRERA, they fell into a different sub-class of home buyers, who were entitled to specified amounts and, therefore, were unsecured creditors, as compared with allottees who had not invoked RERA remedies.

Supreme Court's Observations

The Apex Court, citing the judgement in the case of ***Mr. Natwar Agarwal (HUF) Vs. Ms. Ssakash Developers & Builders Pvt. Ltd.,*** emphasized that the 2018 amendment with the added explanation to section 5(8)(f), categorizes homebuyers and allottees of real estate projects as 'financial creditors.' The Apex Court stated that there's no inherent distinction among different classes of financial creditors when it comes to creating a resolution plan.

The Apex Court further stated that only homebuyers have the standing to seek remedies under RERA. Therefore, it would be highly inequitable to treat a specific segment of this class differently under another law solely because they opted to receive their deposits along with the interest. The fundamental claim of an aggrieved party remains unaltered by a court order or decree, and allottees retain their status as financial creditors.

Furthermore, Section 238 of the IBC includes a non-obstante clause, giving priority to its provisions over those of the RERA Act. The artificial distinction made by the Respondent constitutes 'hyper classification' and contravenes Article 14.

Order: The Apex Court set aside the impugned order of the Appellate Tribunal and declared the Appellants as

financial creditors within the meaning of section 5(8)(f) explanation. Further the Court directed to treat the Appellant at par with the other home buyers/financial creditors, for the purposes of a resolution plan.

Case Review: *Appeal Allowed.*

High Court

Dr. Arun Mohan Vs. Central Bureau of Investigation, W.P.(CRL) 544/2020 & CRL.M.A. 4088/2020, Date of High Court Judgement: December 18, 2023.

Fact of the Case

The present petition is filed by Dr. Arun Mohan (Petitioner) under Article 226 of the Constitution of India read with Section 482 of the IBC 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 (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 ₹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 (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. Vs. Satish Kumar Gupta and Ors***. and ***Swiss Ribbons Pvt. Ltd. Vs. 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 Vs. 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?

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 colour 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, wilful 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: 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.

National Company Law Appellate Tribunal (NCLAT)

Jaipur Trade Expocentre Pvt. Ltd. Vs. Metro Jet Airways Training Pvt. Ltd. & Ors. Company Appeal (AT) (Ins.) No. 1224 of 2023, Date of NCLAT Judgement: December 21, 2023.

Facts of the Case

The Present Appeal is filled by M/s Jaipur Trade Expo Centre Pvt. Ltd. in the capacity of operational creditor (Appellant) after being aggrieved by order dated August 31, 2023, passed by the Adjudicating Authority.

A CIRP application under section 9 of IBC was admitted against Metro Jet Airways Training Pvt. Ltd. & Ors., (Respondent) by an order dated August 10, 2023, passed by the AA, The Interim Resolution Professional (IRP) made the publication wherein only one claim was received that too of the Appellant who initiated the CIRP. A CoC was constituted and since no other claim was received, in the third Meeting of the CoC a resolution was passed for liquidation of the Respondent. Accordingly, the RP filed the application for liquidation before the AA. The AA disposed of the application and directed the CoC to take steps in successfully resolving the Respondent, including publication of Form-G and appointment of valuers. After being aggrieved by the order passed by the AA, the Appellant filed this appeal in the Appellate Tribunal.

The Applicant submitted that the scheme of IBC does not contemplate that without issuance of Form-G, decision can't be taken by the CoC to liquidate the Respondent and further submitted that the RP, after passing of the interim order passed by the AA, had published From-G but no EOI was received.

NCLAT's Observations

The Appellate Tribunal, upon reviewing the arguments presented by both parties, noted that the CoC provided justifications for its decision, highlighting the absence of employees, business activities, a registered office, and the filing of annual accounts with the Ministry of Corporate Affairs since March 31, 2011. Furthermore, it was observed that no returns had been filed, and no transactions had taken place since 2017.

The Appellate Tribunal emphasized that Section 33(2) of the IBC grants authority to the CoC to opt for liquidation after its constitution. The Tribunal clarified that such decisions must be accompanied by reasons and cannot be made arbitrarily. Upon examining the CoC's resolution, the Tribunal affirmed that there was a deliberate and objective consideration by the CoC in choosing to proceed with the liquidation process.

Order: The Appellate Tribunal allowed the appeal and set aside the order passed by the AA and directed the Liquidation of the Respondent. It also ordered the AA to pass an order for the appointment of a liquidator to proceed with the liquidation proceeding.

Case Review: *Appeal Allowed.*

Fervent Synergies Ltd. Vs. Manish Jaju & Ors., Company Appeal (AT) (Insolvency) No.1338 of 2023, Date of NCLAT Judgement: November 02, 2023.

Facts of the Case

The present appeal is filled by M/s Fervent Synergies Ltd. (Appellant) after being aggrieved by the order dated July 19, 2023, passed by the Adjudicating Authority.

Sivana Reality Pvt. Ltd./CD launched the 'Samriddhi Garden' project, funded by a ₹130 crore term loan from LIC Housing Finance Ltd. (LICHFL), with the project mortgaged to LICHFL. The mortgage stipulated that any sale or third-party right required prior written consent or NOC from LICHFL.

On August 09, 2018, the Appellant and CD entered 10 separate agreements for the sale of flats in the project. The CD faced insolvency proceedings, and the Appellant filed a claim for 10 flats, initially being informed of its admission as a Financial Creditor (FC) by the Respondent. However, the Respondent later demanded to produce the required NOC for the 10 flats, which the appellant failed to submit. This led to the Appellant's rejection of claims on June 17, 2021. Subsequently, on June 30, 2021, the Respondent reinstated the Appellant's status as a FC belonging to a class of creditors.

The Resolution Plan divided Financial Creditors Class into two categories – 'Affected Homebuyers' and 'Unaffected Homebuyers' based on whether they had obtained or not obtained the NOC from LICHFL. Those without NOC were treated differently in the Plan. The

Appellant objected to the Plan before the AA which rejected the application emphasizing that individual objections from homebuyers were impermissible since the Plan had been collectively approved by the Class.

The Appellant submitted that the Plan discriminates between homebuyers, who belong to one class of creditors and such classification between Affected and Unaffected homebuyers is erroneous and illegal. Furthermore, the Appellant argued, given their admitted claim and reliance on representations made by the Respondent is bound by the principle of promissory estoppel and cannot deny the claim.

The main issues raised before the Appellate Tribunal are: (i) Whether the categorization of the homebuyers in class as 'Affected' and 'Unaffected' homebuyers is violative of Section 30(2)(e) and the Resolution plan deserve to be set aside on this ground alone? (ii) The doctrine of promissory estoppel can be pressed in respect of a Resolution Plan approved by the CoC and submitted to the AA or not?

NCLAT's Observations

The Appellate Tribunal clearly justified the Respondent's decision regarding the classification of the homebuyers into two groups and held that the Resolution Plan did not violate any provision of the IBC. The Appellate Tribunal placed its reliance on its previous judgment in the case of *Sabari Reality Pvt. Ltd. Vs. Sivana Realty Pvt. Ltd. & Ors.* (2023).

The Appellate Tribunal further stated that acceptance or admission of the claim of a Financial Creditor including homebuyers is one aspect of the scheme under the IBC. Subsequent steps in the IBC including the preparation of Resolution Plan are based on the list of creditors, admitted claims of the creditors etc. as per the scheme of the IBC, but the principle of promissory estoppel cannot be pressed against the Resolution Applicant, who submits Resolution Plan on the basis of relying on the Information Memorandum, the list of creditors and other aspect of the matter.

The Respondent has not extended any promise to the Appellant/FC's of the CD that the claim submitted by the FC, or any other creditor shall be accepted in toto. The mandatory contents of the Resolution Plan are laid down in the CIRP Regulations, 2016. If a Resolution Plan is compliant with the provision of Section 30, sub-section (2) of the IBC and the provisions of the Regulations, 2016, the Plan cannot be faulted on the ground of the promissory estoppel, which the Appellant is pressing against the Respondent, who has admitted the claim.

Order: The Appellate Tribunal upheld the decision of AA and held that the doctrine of promissory estoppel can't be pressed in reference to the Resolution Plan which have been approved by the CoC in its commercial wisdom and submitted to the AA.

Case Review: *Appeal Dismissed.*

DB Power Ltd. Vs. Kreate Energy (I) Pvt. Ltd. Company petition No. (IB)-521/ND/2022, Date of NCLAT Judgement: October 31, 2023.

Facts of the Case

The Present CIRP application filed by M/s. DB Power Ltd (Applicant) in the capacity of an Operational Creditor against the Corporate Debtor, M/s Kreate Energy (I) Pvt. Ltd (Respondent) for defaulting the payment of ₹9.62 Crore.

The Applicant is operating a 1200 (2x600) MW coal-based thermal power plant in District Janjgir Champa, Chhattisgarh. The Respondent offered to purchase 105 MW of RTC power for the period September 01, 2020, to September 30, 2020 @ ₹2.75/KWh at Regional Periphery and the same offer was accepted by the Applicant.

The Applicant supplied 105 MW of RTC powers for which invoice of ₹20.87 Crores was raised and the same became due on December 01, 2020. The Respondent defaulted in payment and therefore the Applicant served a Demand notice on October 21, 2021, u/s 8 of IBC for payment of the operational debt.

The Applicant submitted that the Respondent via various emails acknowledged its liability to pay the operational debt and through its mail dated March 09, 2021, the Respondent agreed to pay the debt during the period March 25, 2021, to March 31, 2021, i.e., after the expiry of the period mentioned under Section 10A. Therefore, giving a fresh cause of action which is beyond the Section 10A of IBC. The Applicant further stated that the Respondent issued a cheque for ₹10.87 Crores on July 09, 2021. However, the cheque was dishonored and returned on October 05, 2021, giving rise to a fresh cause of action again.

The Respondent submitted that that the date of default mentioned in the filed application is December 01, 2020, which is covered under the Section 10A of IBC. Section 10A restricts the filing of any application under Sections 7, 9, and 10 of IBC if the default occurred on or after March 25, 2020, for duration of six months. Later this period was extended till March 24, 2021.

NCLAT's Observations

The AA while placing its reliance on the judgement pronounced in *Ramesh Kymal Vs. Siemens Gamesa Renewable power Pvt. Ltd.* (2021) observed that the legislative intent behind section 10A was not to extinguish the right of the creditor but to safeguard the CD from the rigorous of corporate Insolvency.

The AA further observed that as per Section 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the periods from March 25, 2020 till March 24, 2021 and therefore the application could not be allowed.

The AA also noted that the criteria for deciding the limitation period for a debt and the criteria for determining the date of default for that debt are two distinct questions of law and fact and cannot be evaluated on the same scale. The submission of the Applicant in reference to the fresh cause of action can only be sustained for the purposes of Limitation Act.

Order: The AA dismissed the application of CIRP filled u/s 9 by Applicant as the fact of the present case clearly attracts the provisions of section 10A of IBC

Case Review: *CIRP Application Dismissed.*

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. (Appellants) in the capacity of suspended director of Gupta Marriage Halls Pvt. Ltd. (CD) after being aggrieved by the impugned order dated March 02, 2022, 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 September 03, 2019, and the IRP was appointed (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 March 02, 2022, 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's 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 IBC, the complaint has to be filed by the IBBI or Central Government or any person authorized by the Central Government 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 IBC is a separate and independent proceedings, and is no manner fetter power upon tribunal to invoke Section 70 of the IBC. 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: The Appellate Tribunal set aside the order dated March 02, 2022, passed by the AA, and held that AA passed the impugned order only by overlooking the law of the land through the IBC 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: *Appeal Allowed.*

National Company Law Tribunal (NCLT)

Vinsari Fruitech Ltd. Vs. Effort BPO Private Limited, CP (IB) No. 330/MB/2023, Date of NCLT Judgement: December 05, 2023.

Facts of the Case

The Present CIRP application is filled before the AA u/s 7 of the IBC by M/s Vinsari Fruitech Ltd. in the capacity of financial creditor (Applicant) against M/s Effort BPO Pvt. Ltd. (Respondent). M/s One Modesto Logistics & Cargo Pvt. Ltd. (Modesto) availed a loan for an amount of ₹1,10,00,000/- from the Applicant. Modesto being unable to repay the said loan amount approached the Respondent to take over the said loan. As per Deed of Assignment dated April 01, 2021, Modesto assigned all its right, title and interest in the financial facility to the Respondent.

The assigned outstanding debt of ₹ 1,10,00,000/- was repayable by the Respondent to the Applicant within a period of 6 months from date execution of the deed (i.e. 1 October 2021). In turn the Respondent would recover the said amount of ₹1,10,00,000/- along with interest at the 24% within a period of 12 months from Modesto. However, the Respondent failed to repay the outstanding dues on given date. The Applicant issued the demand notice and the Respondent even after admitting its liability vide letter dated October 06, 2021, again failed to repay the loan amount. The Respondent submitted that the assignment deed dated April 01, 2021, is insufficiently stamped and unless the deed is impounded, CIRP can't be initiated.

NCLT's Observations

The AA while placing its reliance in the judgment pronounced by the apex court in *N.N. Global Mercantile Pvt. Ltd. Vs. Indo Unique Flame Ltd. and Ors.*, observed that an instrument which is not stamped or insufficiently stamped in accordance with the Stamps Act, is not an enforceable instrument. Hence it is a void contract in terms of Contract Act and cannot be taken as evidence by the Court.

The AA further held that the liability of the Respondent accrues from the insufficiently stamped Assignment Deed as the assignment which are legally carried out are only included in the definition of financial creditor under the IBC.

Order: The AA asked the affected party to approach the Collector of Stamps to adjudicate the quantum of stamp duty payable on the document and thereafter upon payment of such duty, the party shall be at the liberty to file the appropriate application in terms of legally enforceable assignment deed.

Case Review: *Petition Dismissed.*