



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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(January 29, 2024)

State Bank of India and Ors. Vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr.
Civil Appeal Nos 3736-3737 of 2023 With
Civil Appeal Nos 4131-4134 of 2023
Civil Appeal Nos 6427-6428 of 2023
Date of Supreme Court Judgement: January 18, 2024

Facts of the Case:-

This Batch of appeals arises from three orders of the NCLAT. A resolution plan was submitted by the consortium of Murari Lal Jalan and Florian Frisch in respect of the CD (Jet Airways Ltd.)

The Plan received the imprimatur of the AA. As per the Resolution plan, the Successful Resolution Applicant ('SRA') was obligated to recommence operations as an aviation company subject to the fulfillment of five precedent conditions. The date of completion of the Conditions precedent was defined as the 'Effective date'. The SRA was then required to infuse funds and fulfil specified payments to stakeholders, including disbursements to Employees, Workmen, and other Operational Creditors, within 180 days from the Effective date. Due to contrary belief between the SRA and the consortium of lenders (represented by the SBI) regarding the completion of the precedent conditions, an IA was filed before the AA. The AA held that SRA was compliant with the conditions precedent and permitted the SRA to take control and management of the CD. The period of six months for implementation would commence from 16 November 2022.

SBI challenged the appeal before the NCLAT and on 3 March 2023, the NCLAT declined to stay the AA's order, which has given rise to the first in the three sets of appeals being Civil Appeal Nos 3736-3737 of 2023. By a subsequent order dated 26 May 2023, the NCLAT allowed an extension commencing from 3 March 2023 until 31 August 2023. This order has given rise to the second in the batch of appeals being Civil appeal Nos 4131-4134 of 2023. In an effort to resolve the imbroglio, an affidavit was filled by SBI that if SRA satisfies particular criteria, including infusing ₹350 crores by 31 October 2023, adhering to the Resolution plan terms, and meeting employee payment obligation in accordance with the NCLAT order dated 21 October 2022, the lenders would abstain from challenging exclusion/extension of time issues.

Following the affidavit, which was filled by SBI, an application was moved by the SRA on 18 August 2023 seeking liberty to pay the amount of ₹350 crores as envisaged in the affidavit of SBI in the following manner (i) The first tranche of ₹100 crores by 31 August 2023, (ii) The second tranche of ₹100 crores by 30 September 2023 and (iii) The balance of ₹ 150 crores by the adjustment of the Performance Bank Guarantee issued by SRA in favour of the lenders. The same was permitted by NCLAT.

Clause 3.13.9 of the Resolution Plan specifies that the performance security shall not be set off against or used as part of the consideration which the SRA proposes to offer in relation to the company: The Resolution plan also specifically contemplates that the performance guarantee provided by the Resolution Applicant can be invoked in terms of RFRP. NCLAT has permitted the SRA to adjust the last tranche of ₹ 150 Crores by adjusting the PBG of ₹150 Crores. This forms the subject matter of the appeal before the Court.



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Supreme Court Observations: -

The Apex Court observed that the impugned order of the NCLAT allowed the plea of the SRA for adjustment and consequential release of the PBG at the interlocutory stage. This prima facie would not be in accordance with the tenor of the affidavit which was filed by SBI in which it stated that the lenders would not contest the issues in the pending appeal conditional on compliance with three conditions which were set out in the affidavit. Infusion of ₹350 crores, as envisaged in the affidavit, could not have been submitted with a direction for adjustment of the PBG, at that stage. Infusion meant that the third tranche has to be paid in the same manner. Adjustment of the PBG was not permissible.

The Apex Court held that NCLAT was not justified in holding, in its order dated 28 august 2023, that the last tranche of ₹ 150 Crores which was to be paid would be adjusted against the PBG. The SRA having deposited the first two tranches each of ₹ 100 crores must comply with the remaining obligation of depositing ₹150 crores to make a total payment of ₹350 cores.

The Apex Court directed the SRA to (i) The SRA shall peremptorily on or before 31 January 2024, deposit an amount of ₹150 crores into the designated account of SBI, failing which the consequences under the Resolution Plan shall follow: (ii) The PBG of ₹150 crores shall continue to remain in operation and effect, pending the final disposal of the appeal before NCLAT: and shall abide by the final outcome of the appeal and the directions that may be issued by the NCLAT and (iii) Whether or not the SRA has been compliant with all the conditions of the Resolution Plan as well as of the conditions set out in paragraph 8 of the affidavit dated 16 august 2023 shall be decided by the NCLAT in pending appeal.

Order/Judgement: The order dated 28 August 2023 of the NCLAT is modified in part in terms of the above directions and hence, the permission which was granted to the SRA to adjust the last tranche of ₹150 crores against the PBG shall stand substituted by the above directions. The NCLAT is requested to endeavor an expeditious disposal of the appeal by the end of March 2024.

Case Review: The appeals are accordingly disposed of and Pending applications, if any, stand disposed of.