



# 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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(February 19, 2024)

**Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr**  
**CIVIL APPEAL NOS.7590-7591 OF 2023**  
**Date of Supreme Court Judgement: February 12, 2024**

### Facts of the Case:-

The appeals under Section 62 are filed by the Greater Noida Industrial Development Authority (hereinafter referred as 'Appellant') against the order of the NCLAT whereby its appeal, against the order of the AA, has been dismissed.

The Appellant being a statutory authority acquired land for setting up an urban and industrial township and one of the plots was allotted to M/s. JNC Construction Pvt Ltd ('CD') for a residential project, by charging premium, payable in instalments. The CD committed default in payment of instalments and was served with demand cum pre-cancellation notice. Later, CIRP against the CD was admitted and claims were admitted. The Appellant in the capacity of Financial Creditor, submitted a claim of Rs. 43,40,31,951/- being unpaid instalments payable towards premium. However, the RP requested the appellant to submit its claim as an operational creditor.

The appellant did not submit its claim afresh and the AA vide its order dated 04.08.2020 approved the Resolution Plan. Subsequently, the Appellant filed I.A. No.344 of 2021 questioning, inter alia, the resolution plan, the decision of the RP to treat the appellant as an operational creditor. Another I.A. No.1380/2021 was filed on 15.03.2021 seeking, inter alia, to recall of the AA' order dated 04.08.2020.

The Respondent relying on *New Okhla Development Authority vs. Anand Sonbhadra* submitted that the dues payable to an Industrial Area Development Authority, like the appellant, would not be a financial debt.

The main issue before the Apex Court are: (i) Whether in exercise of powers under sub-section (5) of Section 60, the AA can recall an order of approval passed under sub-section (1) of Section 31 of the IBC?. (ii) Whether the application for recall of the order was barred by time? (iii) Whether the resolution plan put forth by the resolution applicant did not meet the requirements of sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016? (iv) As to what relief, if any, the appellant is entitled to?



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### Supreme Court Observations: -

Citing the judgements of the Hon'ble Supreme Court/other Courts/Tribunal in various cases, the Supreme Court held that a Court or a Tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the Court. Further the Supreme Court held that Section 60(5)(c) of the IBC, which opens with a non-obstante clause, empowers the AA to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution of the corporate debtor or corporate person under the IBC. Further the Supreme Court observed that the Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal and therefore, in the absence of any specific provision, the Tribunal has power to recall its order.

The Supreme Court held that the grounds taken by the Appellant qualify as valid grounds and therefore the recall application is maintainable, notwithstanding that an appeal lay before the NCLAT against the order dated 04.08.2020. Further, it was held that both the appeals were not barred by time.

The Supreme Court allowed both the appeals of the Appellant and held that neither AA nor NCLAT took note of the fact that,- (a) the appellant had not been served notice of the meeting of the COC; (b) the entire proceedings up to the stage of approval of the resolution plan were ex parte to the appellant; (c) the appellant had submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected the appellant as one who did not submit its claim; and (d) the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016.

**Order/Judgement:** The order dated 04.08.2020 passed by the AA, approving the resolution plan, was set aside. The resolution plan has been sent back to the COC for re-submission after satisfying the parameters set out by the Code.

**Case Review:** Appeals are allowed. No Costs.