



# 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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**Mr. Devarajan Raman (Liquidator of M/s Kotak Urja Pvt. Ltd.) Vs. Principal Commissioner Income Tax, & Ors., Company Appeal (AT) (Insolvency) No. 977 of 2023  
NCLAT Judgement dated May 24, 2024**

### Facts of the Case: -

The Present appeal is filed u/s 61 of IBC by the Liquidator of M/s Kotak Urja Pvt. Ltd. (hereinafter referred as 'Appellant') against The Principal Commissioner Income Tax & Ors. (hereinafter referred as 'Respondent') after being aggrieved by the order dated 16.06.23 passed by the AA, which dismissed the Appellant application for a refund of ₹90,42,174. This amount had been adjusted by the Respondent against the outstanding tax liabilities of M/s Kotak Urja Pvt. Ltd. during the period when a moratorium u/s 14 of the IBC was imposed.

M/s Kotak Urja Pvt. Ltd. was initially admitted into the CIRP on 18.11.19, The Appellant was appointed as the Resolution Professional (RP). Subsequently, the company transitioned into liquidation following a resolution by the CoC on 04.01.21. Despite the ongoing moratorium, the Respondent adjusted a tax refund received by the company against its outstanding tax demands during 10.02.21. This adjustment was challenged by the RP and later by the Liquidator on the grounds that it contravened the moratorium provisions designed to protect the assets of the CD from any creditor action that might undermine the collective process of resolution or liquidation.

The Main Issues Raised before the Appellate Tribunal are:

1. Whether the set-off exercised by the Respondent for adjustment of tax refunds against the outstanding tax liabilities during the moratorium period contravened the moratorium provisions under the IBC?
2. Whether the Respondent is liable to refund the amount which has been set off against income tax due?

### NCLT Observations:-

The Appellate Tribunal closely examined the sequence of events and the legal arguments presented and it noted that the moratorium provision under the IBC is designed to prevent any diminution of the CD's assets, the CD was admitted into CIRP on 18.11.2019, and a moratorium was declared. The Respondent, aware of the moratorium, filed a claim of ₹11.59 crore on 20.01.2020.



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The moratorium does not cease automatically upon the expiry of the CIRP period; it continues until a resolution plan is approved or a liquidation order is passed, as per legislative intent to protect the CD's assets.

The Appellate Tribunal while placing its reliance on the judgment delivered by The Hon'ble Apex Court in ***Bharti Airtel Ltd vs Vijaykumar V. Iyer, 2020*** held that set-off against a company under CIRP violates IBC principles. The Respondent, claiming secured creditor status, cannot exercise security interest realization before the commencement of liquidation proceedings on 03.10.2022. The set-off exercise undertaken by the Respondent was impermissible.

The Appellate tribunal held that the Regulation 29 of the Liquidation Regulations applies only after the liquidation order. The AA erred in allowing the Respondent's set-off during the vacuum period. The Respondent's set-off of ₹90 lakhs in tax refunds reduced funds available to other creditors, violating the moratorium. This action was unwarranted, and the Respondent was liable to return or pay the adjusted amount to the CD.

**Order/Judgement:** The Appellate Tribunal set aside the impugned order dated 16.06.23 passed by the AA and directed Respondent to refund the amount of ₹90,42,174 to the Appellant (Liquidator of M/s Kotak Urja Pvt. Ltd.) within two weeks from the date of the order. The Tribunal also clarified that the Respondent retains the right to submit a claim for their dues under the appropriate provisions of the IBBI (Liquidation Process) Regulations, 2016.

**Case Review:** The *Appeal* is allowed.