



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

No. 209

(February 05, 2025)

Anil Kumar (RP) Vs. Mukund Choudhary (Personal Guarantor)
Company Appeal (AT) (Insolvency) No. 38 of 2025
Date of NCLAT Judgement: January 22, 2025

Facts of the Case

The present appeal has been filed by the Resolution Professional/RP (hereinafter referred as 'Appellant') in the Personal Insolvency Resolution Process (PIRP) of the Personal Guarantor Mukund Choudhary (hereinafter referred as 'Respondent'), challenging the order dated 04.12.2024, passed by the Adjudicating Authority/AA in I.A. No. 5719/2024.

The appeal arises from an application filed under Section 94(1) of the IBC 2016 by the Respondent on 08.04.2021 through which the AA declared an Interim Moratorium u/s 96 of the IBC and appointed the Appellant as the RP. The RP filed a report under Section 99, which was considered and by order dated 30.04.2024, the Section 94 application was admitted, initiating the PIRP against the Personal Guarantor and a moratorium was imposed under Section 101 for 180 days.

Following this, the Appellant made a public announcement on 03.05.2024 and the Personal Guarantor submitted a draft repayment plan. A meeting of creditors was convened under Section 106(2)(c) which was rescheduled to 23.10.2024, where creditors discussed the repayment plan and sought modifications. On 28.10.2024, the Appellant was authorized to seek an extension of the PIRP by 90 days beyond 180 days, leading to the filing of I.A. 5719/2024. The AA granted a 90-day extension for the PIRP but did not extend the moratorium.

Aggrieved by this, the Appellant filed the present appeal, arguing that a PIRP without a moratorium would be ineffective, allowing creditors to initiate recovery actions and enforce security interests. The Appellant contended that the AA had jurisdiction to extend the moratorium beyond 180 days, relying on *Vikas Gautamchand Jain, (2024)* and *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd. (2021)*. The Respondent supported the appeal, submitting that the 180-day limit under Section 101 was directory not mandatory, and the AA had the power to extend it and also said that without extension of moratorium proceeding under personal Guarantor shall not yield any favorable results. The main issue raised before the Appellate Tribunal was: (i) Whether the moratorium under Section 101 of the IBC could be extended beyond 180 days?



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NCLAT observations:

The Appellate Tribunal examined Section 101(1) of the IBC, which states that a moratorium shall commence upon admission of the application under Section 100 and shall cease to have effect at the end of 180 days or on the date the AA passes an order on the repayment plan u/s 114, whichever is earlier. The provision clearly defines both the commencement and cessation of the moratorium, leaving no discretion for its extension. The Appellant contended that the 180-day period under Section 101(1) is directory and can be extended by the AA to ensure an effective resolution process, but the Tribunal rejected this argument, emphasizing that a statutory timeframe with a specified consequence must be interpreted as mandatory.

The Appellate Tribunal distinguished this case from *Vikas Gautamchand Jain (2024)*, where Section 54D concerning Pre-Packaged Insolvency Resolution Process (PIRP) was considered, noting that Section 101(1) mandates an automatic cessation of the moratorium after 180 days unlike Section 54D, which does not specify automatic termination. Similarly, reliance on *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd. (2021)* was misplaced, as that case dealt with the moratorium under Section 14 in relation to proceedings under the Negotiable Instruments Act and did not address the issue of extending the moratorium under Section 101.

The Appellate Tribunal held that when statutory language is clear, courts must adhere to its plain meaning without interpretative extensions by placing its reliance on *Dilip B. Jiwrajka vs. UOI (2021)*. Since Section 101(1) explicitly limits the moratorium period and does not permit any extension, the AA was correct in not extending it beyond 180 days. Consequently, no further extension could be granted, and the appeal was unsustainable in law.

Order/Judgement: The Appellate Tribunal affirmed that the moratorium u/s 101 automatically ceases after 180 days and cannot be extended. The extension granted for the PIRP does not imply an automatic extension of the moratorium, and creditors can proceed with legal actions beyond the 180-day period.

Case Review: *Appeal Dismissed.*