



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

No. 210

(February 10, 2025)



Amrit Rajani Vs. Pegasus Assets Reconstruction Pvt. Ltd. & Shri Balaji Entertainment Pvt. Ltd.
Comp. App. (AT) (Ins) No. 375 of 2023 & I.A. No. 1261, 1262 of 2023
Date of NCLAT Judgement: January 23, 2025

Facts of the Case

The present appeal was filed u/s 61(1) of the IBC 2016 by Amrit Rajani erstwhile Director of CD (hereinafter referred as 'Appellant') against M/s Pegasus Assets Reconstruction Pvt. Ltd. & Shri Balaji Entertainment Pvt. Ltd./CD (hereinafter referred as Respondent no. 1 and 2) respectively, challenging the impugned order dated 03.02.23 passed by the Adjudicating Authority (AA).

The case originated when Respondent No. 1 initiated insolvency proceedings against Respondent No. 2 u/s 7 of the IBC, alleging a default of ₹35,90,56,629. The financial creditor claimed that the CD's account was classified as a Non-Performing Asset (NPA) on 02.12.2019, with default occurring on 01.06.19. The CD was both a co-borrower and corporate guarantor for a loan taken by M/s Universal Textile Waterproof Company (India) (UTWC), originally sanctioned by SVC Co-operative Bank Ltd., which was later assigned to Respondent No. 1. The AA admitted the Section 7 application, imposed a moratorium, and ordered commencement of the CIRP on 20.04.22.

A Committee of Creditors (CoC) was constituted, with Respondent No.1 holding 79% voting rights and NKGSB Co-operative Bank Ltd. holding 21% voting rights. Despite publishing Form-G for Expression of Interest (EoI) on 22.06.22, no resolution applicant submitted bid before the deadline of 07.07.22. After four CoC meetings, the CoC unanimously voted for liquidation with a 100% voting share. The RP filed an application under Section 33(1) (a), 33 (2) and 34 (1) of IBC, which was allowed by the AA, leading to the CD's liquidation.

The Appellant challenged the liquidation order, arguing that the CoC did not take meaningful steps to revive the CD, which contradicts the spirit of the IBC. It was further alleged that the RP accepted financial creditors' claims without proper verification, amounting to negligence and misconduct. The Appellant also contended that the introduction of the SVC Bank ledger account harmed the CD and violated natural justice principles.



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NCLAT observations:

The Appellate Tribunal observed that the definition of financial debt u/s 5(8) of the IBC 2016 requires disbursal against the consideration for time value of money. In the present case, the financial agreements and ledger accounts from SVC Bank provided evidence of the CD's obligations as a co-borrower and corporate guarantor for the loan availed by M/s Universal Textile Waterproof Company (India) (UTWC). The Appellate Tribunal further observed that the CoC exercised due diligence by following the prescribed procedure under the IBC. Form-G (Expression of Interest) was issued on 22.06.22 to invite potential resolution applicants, but no EoI was received by the deadline of 07.07.22, despite sufficient time being provided. The CoC also noted concerns over the non-availability of corporate assets, discrepancies in financial records, and the absence of a viable resolution plan. Based on these factors, the CoC resolved that liquidation was the only practical and legally sound recourse.

The Appellate Tribunal also examined the applicability of Section 33(2) of the IBC, which mandates that if the CoC, with at least 66% voting rights; resolves to liquidate the CD, the AA must pass a liquidation order. Since the CoC's decision to liquidate was unanimous with 100% approval, the Tribunal held that the statutory framework leaves no room for deviation once the required threshold is met.

Further, the Appellate Tribunal considered the Appellant's claims of forged documents and negligence in the verification of financial claims but found no substantive evidence to support these allegations. It reiterated that mere allegations, without material proof, cannot override statutory procedures. It was also noted that the CoC had exhausted all avenues for resolution, providing adequate time for potential applicants to submit plans, but none emerged, making liquidation a rational and compliant decision under the IBC. Finally, the Tribunal reinforced that while the IBC prioritizes resolution over liquidation, in cases where a CD has no assets or viable business prospects, liquidation remains the only feasible course. Forcing a resolution process in the absence of a prospective applicant would only delay the inevitable and impose unnecessary financial burdens on creditors.

Order/Judgement: The Appellate Tribunal upheld the AA's order, affirming that the CoC's decision to liquidate the CD was valid and in compliance with the IBC. It ruled that the Appellant's claims were unsubstantiated and lacked merit.

Case Review: Appeal Dismissed. No Costs.