



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

No.212

(February 24, 2025)

State Bank Of India Assistant Manager Vs. India Power Corporation Limited
Civil Appeal No(s). 8178 of 2023
Date of Supreme Court's Judgement: February 14, 2025

Facts of the Case

The present appeal has been filed u/s 62 of the IBC 2016 by the State Bank of India (hereinafter referred as 'Appellant') against India Power Corporation Ltd. (hereinafter referred as 'Respondent' challenging the order dated 04.10.23, passed by the Appellate Tribunal. The Appellate Tribunal had dismissed the Appellant's appeal and upheld the earlier order passed by the Adjudicating Authority/AA.

The dispute originates from an application filed by the Appellant u/s 7 of the IBC before AA in February 2020, seeking initiation of insolvency proceedings against the Respondents. In November 2021, the Respondent filed its counter affidavit before AA. The Appellant filed its rejoinder affidavit on 13.06.22, but with a delay, which was attributed to a separate money suit filed by the Respondent. Consequently, the Appellant filed an IA requesting the tribunal to condone the delay in filing the rejoinder affidavit.

The AA in its order dated 30.01.23, condoned the delay but ruled that the factual assertions made in the rejoinder affidavit shall not be taken into consideration while deciding the Section 7 application. Dissatisfied with this decision, the Appellant approached the Appellate Tribunal, which dismissed Appellant's appeal on 04.10.23, effectively upholding the AA's order.

Following this, the AA rejected the Appellant's Section 7 application on 30.11.23, stating that only the facts mentioned in the respondent's reply affidavit could be considered. Aggrieved by this the Appellant approached the Supreme Court to challenge the Appellate tribunal's order.

Supreme Court's observations:

The Supreme Court observed that both the AA and Appellate Tribunal committed an egregious error by adopting a highly technical and pedantic approach. Having condoned the delay and permitted the Appellant to file its rejoinder, the AA erred in directing that the assertions in the rejoinder affidavit shall not be considered.



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The Apex Court emphasized that it was expected of the Appellate Tribunal to correct this error, but it too fell into the same mistake.

The learned Solicitor General of India referred to *Dena Bank vs. C. Shivakumar Reddy 2021*, where it was held that in the absence of any express provision prohibiting or setting a time limit for filing additional documents, there is no bar to submitting them beyond those initially filed with a Section 7 petition. The Apex Court clarified that a financial creditor filing a Section 7 application in Form 1 does not require elaborate pleadings, and such an application cannot be judged by the same standards as a plaint in a suit. It reiterated that there is no legal restriction on amending pleadings or filing additional documents. However, if there is an inordinate delay, the AA may at its discretion decline such requests and proceed with a final order.

In the present case, the Supreme Court found that both the AA and the Appellate Tribunal failed to apply this principle. Having permitted the Appellant to file its rejoinder affidavit after condoning the delay, the AA was incorrect in prohibiting the Appellant from relying on it, and the Appellate Tribunal erred in upholding this decision. The Apex Court also noted that the Appellant had already filed an appeal before the Appellate tribunal against the final rejection of its Section 7 application by the AA. In light of this, the Supreme Court ruled that the appeal must be allowed, and the matter remanded for reconsideration.

Order/Judgement: The Supreme Court allowed Appellant's appeal and set aside the Appellate Tribunal's order dated 04.10.23. The Apex Court clarified that it had not expressed any opinion on the merits of the case, leaving the final decision to the appropriate forums.

Case Review: The appeal is allowed.