IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016

Paschimanchal Vidyut Vitran Nigam Limited
Vs.
Raman Ispat Private Limited & Ors.

Brief Facts

In the present case, Hon'ble National Company Law Appellate Tribunal ordered the District Collector and Tehsildar to release the Corporate Debtor's assets that had been attached during recovery proceedings under electricity laws. The Appellant, a statutory company that distributes electricity, challenged this order before the Supreme Court. The application of a provision in an electrical supply agreement between the Appellant and the Corporate Debtor from 2010 resulted in the charge being placed against the Corporate Debtor's assets. The provision allowed the appellant to "charge on the assets of the Company" any unpaid debts. When the Corporate Debtor failed to pay its electricity bills, the Tehsildar furthered enforcement by securing the Corporate Debtor's assets. The liquidator thereafter asked the Hon'ble National Company Law Tribunal in Allahabad to order the Tehsildar to release the attached properties in the liquidation proceedings in the liquidator's favor. In 2018, NCLT instructed the Tehsildar to grant the Liquidator access to the linked properties. Following the dismissal of the Appellant's appeal of the NCLT's order in 2019, the Supreme Court heard a second appeal. The issue at hand was whether the Appellant can enforce its security interest over the

Corporate Debtor's assets through the procedure prescribed under electricity laws, as opposed to opting for the stand-out procedure prescribed under Section 52 of the Code.

Decision

The Court confirmed the legitimacy of the security interest established in the Appellant's favor and made it clear that, depending on the specifics of the agreement made with the Corporate Debtor, payments made to statutory corporations like the Appellant (and not to the Central Government or State Government) should be classified as financial debt or operational debt. However, according to Section 53 (1) (e)(i) of the Code, these debts are not included in those owed to the federal or state governments.

The corporate debtor in Rainbow Papers was different from the corporate debtor in the current case since the latter is going through liquidation, whilst the former was going through insolvency resolution proceedings. The Court further noted that Rainbow Papers treated the state government as a "secured creditor" by failing to take into account the waterfall mechanism under Section 53 of the Code. The Court noted the presence of "government dues" in the Code's Section 53's design, demonstrating the Parliament's aim to regard government debt differently from debt payable to a secured creditor.

The Court further pointed out that Section 52 of the Code offers secured creditors the option to opt out of the liquidation proceedings if they decide not to give up their security in favor of the liquidation estate. The Code and related rules provide a process and a deadline for a secured creditor to use this option, and they mandate that this type of secured creditor pay for insolvency and liquidation costs out of the proceeds obtained through enforcement.

Hence, the specific question of whether the Appellant could make use of a security interest established over the property of the Corporate Debtor outside of the liquidation proceedings under the Insolvency and Bankruptcy Code, 2016 was decided negatively. More significantly, the Hon'ble Supreme Court restricted the application of State Tax Officer v. Rainbow Papers Ltd., 2022 SCC OnLine SC 1162 (Rainbow Papers) to its unique factual circumstances, effectively excluding Rainbow Papers from the legal analysis of how government dues should be treated under the Code and related regulations.

Link of the Order

https://ibbi.gov.in//uploads/order/1183e861e1fc3ee7efa4882637e9a7ce.pdf