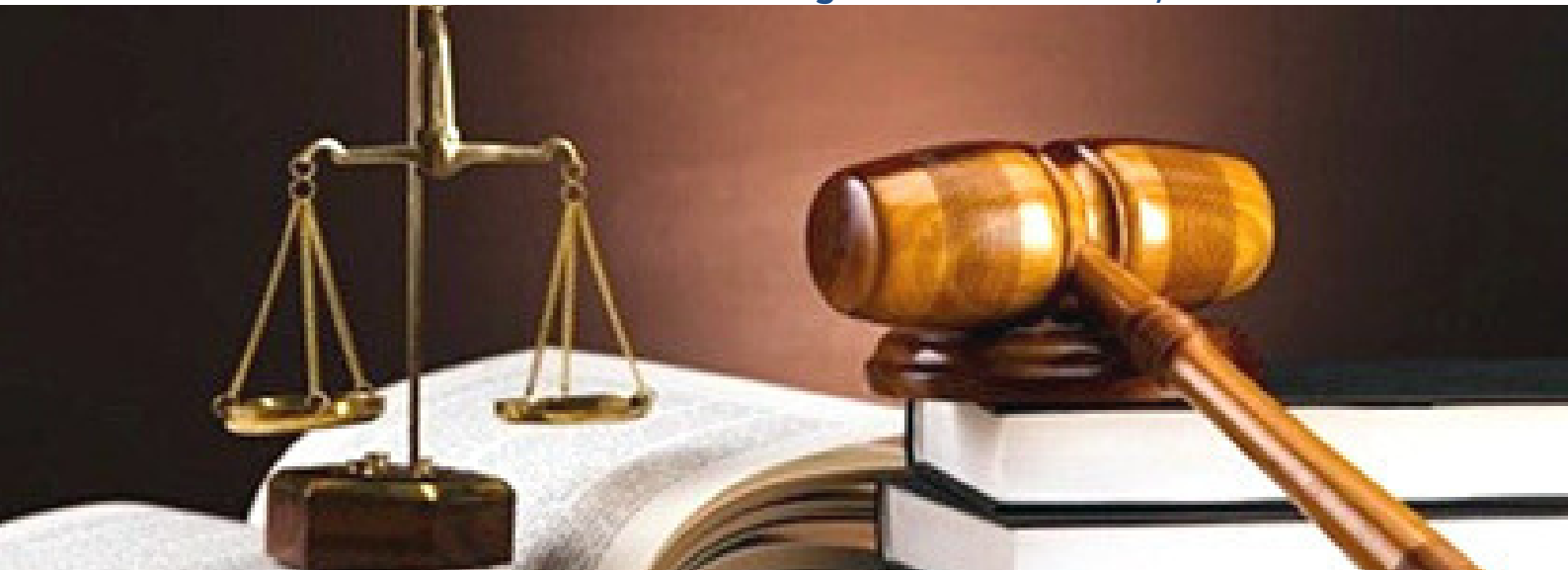


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MR. SAVAN GODIAWALA V/S. MR. G VENKATESH BABU COMPANY APPEAL (AT) (INS) NO. 715 OF 2019

Brief Facts

The corporate insolvency resolution process of Lanco Infratech Limited (“Lanco”) commenced in August 2017 u/s 7 of IBC,2016 wherein Mr. Savan Godiawala was appointed as IRP and subsequently confirmed as Resolution Professional and Liquidator.

On 31st March 2016, Income Tax Office, Shri Mandip ACIT, Income Tax Department filed a complaint before Additional Chief Metropolitan Magistrate Tis Hazari Court New Delhi bearing Criminal Case No. 530366/2016 under Section 276-B read with Section 278-B of the Income Tax Act against Mr. G Venkatesh Babu, then MD of Lanco and Lanco on the grounds that the TDS amounting to Rs. 37.90 Crores for the FY 2012-13 has not deposited to the Government account within the specified time period i.e. on or before 7 days from the end of the month in which the deduction is made as per the provisions of Income Tax Act read with Rule 30 of the Income Tax Rules.

Accordingly as per the Income Tax officials Mr. G Venkatesh Babu and Lanco have committed an offence punishable under Section 276-B read with Section 278-B of the Income Tax Act for the offence the punishment is prescribed a minimum imprisonment of 3 months which can be extended up to an imprisonment of 7 years.

In the present case, Mr. Babu has filed the Application before the compounding authority. Pursuant to Section 35(1)(k) of the IBC,2016, it is duty of the liquidator to institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name of on behalf of the corporate debtor and therefore Mr. Savan Godiawala has to defend Mr. Babu.



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Decision

Hon'ble NCLAT held that the actual prosecution by the Tax Authorities have been initiated against Mr. Babu, then MD of Lanco and Lanco in their personal capacity. Therefore, even after the liquidation proceedings have been started Mr. Babu has to face the trial in his personal capacity and ultimately if the offence is proved he will be punished. NCLAT also held that the Adjudicating Authority has misconstrued the provisions of Section 35(1)(k) of IBC,2016 and directed the liquidator to reimburse the compounding fees to Mr. Babu. Thus the impugned order is not sustainable in law and facts, hence it is set aside.

Link to the Order

<https://ibbi.gov.in/uploads/order/5150885293ac99dafcddec2b2dbb07d9.pdf>

