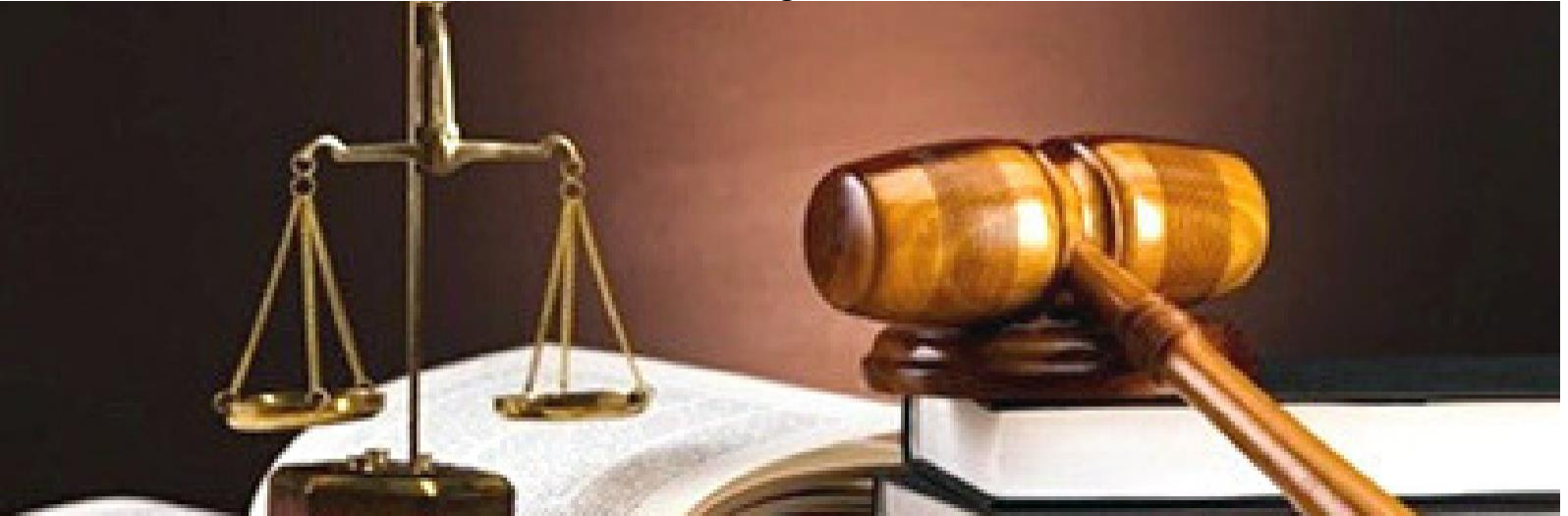


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Venus Recruiters Private Limited v. Union of India

Brief Facts

The dispute in *Venus Recruiters* arose with the allegation of a preferential transaction in an agreement between Venus Recruiters Private Limited (petitioner) and the erstwhile corporate debtor, Bhushan Steel Limited (respondent). The allegation, regarding the objectionable payment of 10% service charge paid to the petitioner under the agreement, was pointed out by way of a Forensic Audit Report which was submitted to the RP on April 3, 2018. However, the CIRP against the corporate debtor commenced in July 2017 before the NCLT (Principal Bench, New Delhi) and the successful resolution plan was filed for approval before the NCLT on March 28, 2018.

An application for, *inter alia*, reversal of the aforesaid transaction (avoidance application) was filed by the RP under Section 43 read with Section 25(2)(j) [duty of RP to file application for avoidance of transactions] of the Code, on April 9, 2018. The judgment on the approval of the resolution plan was reserved by the NCLT on April 11, 2018, and pronounced on May 18, 2018.

Pertinently, the avoidance application was heard for the first time only in July 2018, i.e. after the resolution plan was duly approved, and subsequently, a fresh memo of parties was filed by the counsel of the 'Former RP', whereafter the petitioner was impleaded. The said order of impleading the petitioner was challenged by way of a writ petition before the Court on the ground that the proceedings by the NCLT in the avoidance application are without jurisdiction.

Decision

The judgment comes as relief for various third parties to questionable transactions who were being dragged into protracted litigation, even after conclusion of the CIRP. On the flip side, though the judgment seeks to reiterate the importance of timelines under the Code, it may have the effect of putting a question mark on the efficacy of the avoidance process itself, as it will be extremely difficult to achieve a final decision on the avoidance of transactions within the timeframe for conclusion of CIRP.

Considering its far-reaching consequences, as the judgment will also be applicable to all types of questionable transactions other than preferential transactions, this matter is likely to be carried to the Supreme Court. It remains to be seen how the Apex Court deals with the issue and settles the position. For now, parties to such questionable transactions will have some respite.

Link of the Order

<https://ibbi.gov.in/uploads/order/2020-11-26-150009-rjb40-a1a2ac9ba6caea53c8c7a2081921ec52.pdf>



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