

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Sanjay Sarin Vs. The Authorised Officer, Canara Bank & Ors

Brief Facts

In the present case, the Petitioner, who stood as a guarantor to a loan facility, was aggrieved with the recovery action initiated by the bank, against the borrower and himself, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. According to the petitioner, once a resolution plan qua the borrower was approved u/s 31 of Insolvency and Bankruptcy Code, 2016, the banks claims stood addressed. Thus, it could not have sought recovery for amounts over and above the amount approved by the NCLT and sought a mandamus to that effect. Whether the petition was maintainable for the above reliefs, was the question before this court.

Briefly stated, Mr. Sanjay Sarin, stood as a guarantor to a loan advanced by Canara Bank to the borrower Alphabet Heights Pvt. Ltd. Subsequently, corporate insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016 were initiated. A resolution plan, accepted by the Committee of Creditors was approved by the NCLT. Under the approved resolution plan, the resolution applicant Apex Heights Pvt. Ltd was to make payment, but it defaulted.

Thereafter, proceedings were initiated under Section 13(4) of the Securitisation and Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002, and in furtherance thereto, proceedings were also instituted under Section 14 of the Act, for taking possession of the security offered by the Guarantor being the dwelling unit of the Petitioner as well as for appointment of a receiver.

Decision

The court held that discharge of the corporate debtor from a debt owed by it to its creditors, by way of an involuntary process such as insolvency proceedings, does not absolve the guarantor of its liability since it arises out of an independent contract. Thus, the passing of a resolution plan does not ipso facto discharge the personal guarantor. Thus, if the Petitioner is not absolved of his liability, the proceedings initiated by the bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 cannot be held to be unconstitutional or in derogation of the Approval Order of the NCLT.

The court further observed that Canara Bank certainly has the right to proceed against the collateral securities for recovery of its dues which are independent of the resolution plan approved by the NCLT. If the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected, may make an application to the Adjudicating Authority for an order for liquidation. Where a resolution applicant succeeds as a corporate debtor, but fails to comply with its assurance in terms of the resolution plan, then subsequent step to be taken has been specified in Section 33(3) of the IBC. This is the scheme under the IBC, and if the Parliament, in its wisdom, has only provided the remedy of a liquidation process under Section 33(3) of IBC as a consequence of non-implementation of the resolution plan by the concerned corporate debtor, this Court cannot create another remedy just because the afore-noted remedy is not sufficient or suitable for the Petitioner. Therefore, Petitioner's grievance regarding non-implementation of the resolution plan, too, cannot be a ground for this Court to entertain the instant petition.

Therefore, the bench did not find any merit in the petition and was dismissed accordingly.

Link of the Order

<https://ibbi.gov.in/uploads/order/f4a5f77dbc261a64bd853d05f8410365.pdf>

