

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Vineet Saraf Vs. Rural Electrification Corporation Limited

Brief Facts

In the present case, to have the impugned demand notice issued by the respondent, Rural Electrification Corporation Limited under Rule 7(1) of the Insolvency and Bankruptcy Application to deciding authority for Insolvency Resolution Procedure for Personal Guarantors to Corporate Debtors Rules, 2019, invalidated by the petitioner's guarantees for the full amount of the outstanding debt, the petitioner filed a writ petition. The petitioner, a personal surety for a debt covered by a corporate guarantee, filed for insolvency against FACOR Power Ltd. due to default.

The respondent initiated the process, which led to the creation of a Resolution Plan that was approved by Hon'ble NCLT, Cuttack. The Hon'ble NCLAT declined to hear the FPL promoters' appeal. An appeal from a civil case was denied by the Supreme Court. According to the petitioner, the respondent agreed to give FPL all rights, titles, and interests in the debt as its whole. The respondent disagreed, arguing that because of ongoing personal guarantees and collateral offered by third parties as security for the debt, financial creditors continued to have full rights to seek the securities even after the plan's Effective Date. The respondent sent a demand notice in accordance with the 2019 Rules, citing the

petitioner's personal guarantee. The demand notice was disputed by the petitioner.

Decision

The court viewed that the petitioner's claim that the guarantor had a legal right to be heard at a later stage was insufficient, in accordance with Justice Purushaindra Kumar Yadav of the Delhi High Court's Single Judge Bench, to permit the current case to move on. The petition, in this case, would ultimately go against the Insolvency and Bankruptcy Code's 2016 processes, the Court claims, and deprive the respondent the opportunity to present their case before the relevant NCLT. As a result, the Court dismissed the writ petition and delegated responsibility for determining the case's merits to the NCLT.

The petitioner claimed that the respondent's transfer of all liabilities to Ferro Alloys Corpn. Ltd. without excluding personal guarantees was the reason why the petitioner's guarantee could not be invoked. However, the Court dismissed this claim. The Court provided important thinking points, but NCLT was given the authority to decide the issue on its merits. The Court argued that a reserve of rights clause was included in a deed to release or discharge the primary borrower in order to safeguard the creditor's right to sue the guarantor. The principal borrower, however, did not sign either the Assignment Agreement or the Resolution Plan.

Even where rights are expressly reserved, the court ruled that it is nevertheless important to distinguish between an unconditional release and a promise not to sue. In the first scenario, a reserve clause is appropriate, but not in the second because the primary borrower's release exceeds it.

A motion for a writ of prohibition was denied by the Delhi High Court because it was improper to establish a body of private business law to show that the respondent lacked jurisdiction. The court determined that the petitioner's claim that the guarantor had a right to be heard at a later stage was insufficient to permit the petition to move forward. The court argued that granting the petition would go against IBC protocol and deny the respondent the opportunity to present their argument to the NCLT. The matter was left up to the merit-based judgment of NCLT.

Link of the Order

<https://ibbi.gov.in/uploads/order/e7233486d06451bb8795b8c4d8519068.pdf>



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