CORPORATE LAWS
Case Law Update

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Companies Act – Case 1

ROC Adjudication Order dated 22nd September 2023 passed by ROC NCT OF DELHI & HARYANA in the matter of SOLARGRIDX VENTURES PRIVATE LIMITED

Facts of the case

1. The SOLARGRIDX VENTURES PRIVATE LIMITED [hereinafter called as "the Company"], is incorporated under Companies Act 2013 ["the Act"] and has its registered office at Gurugram, Haryana.

2. As per the report of the statutory auditor for the financial year 2021-22 it was observed that the statutory auditor of the Company had raised the following emphasis of matter that, the Company has adopted and approved the Community Stock Option Plan (CSOP Plan) for granting to eligible community members identified and approved by the Board of Directors, the right to receive Payouts pursuant to the Plan. Each person who has subscribed to CSOP Plan is called an evangelist of the Company's product and service and accordingly the Company has agreed to reward CSOP Holders through Payouts.

3. The Company issued 6,186 Community Stock Options as per the Company Stock Option Plan to 565 subscribers. The Company issued the CSOP per unit for subscription fee of ₹ 1,000/- inclusive of applicable taxes and GST.

4. The Company had raised an amount of ₹ 52,75,407/- from a total of 565 subscribers and the average amount raised from per subscriber was ₹ 10,949/-

5. Amount received from such subscriptions had been recognized as Other Income by the Company.

6. The Company had agreed to reward the holders based on future valuation of the Company and the reward might increase/decrease over a period. Thus, the Company had created a provision for `CSOP Liability' and expense has been recognized as `CSOP Expenditure'.

7. The ROC noticed that the said issue of CSOP was done by the Company through the online platform called Tyke [Technology based community platform, which facilitates in organizing online pitching sessions].

8. The Tyke Platform consists of individuals from the business industry, corporate executives and professionals who are part of the Startup ecosystem.

Such platforms allow a company registered on the Tyke platform to display pitching information on the Tyke's Website and organizes Ask me anything sessions to showcase the company's business.

9. These sessions and information are accessible to approximately 1.5 lakh community members of the Tyke.

10. It was also observed by ROC that the instrument of CSOP could be securities, if it were a "derivative" and/or "rights or interest in securities", considering that the holders were ostensibly promised that they would be rewarded based on future valuation of the Company.

11. Considering all these factors, ROC sent show cause notice to the company for issuing securities in violation of section 42 sub-section 2, 6 & 7.

Company's contention

1. It was a zero-revenue company in FY 2021-22.

2. The CSOP agreement was entered into with the subscribers/evangelists with a view to grow the customer base and the business of the Company. The role of evangelists on behalf of the Company was to work to promote the products and/or services of the company.

3. The rewards to the subscribers would be in the form of discount/concessions on the products of the Company, etc. Hence, the Company was of the understanding that the said amount was in the nature which is similar to subscription/membership fees.

4. Company has duly paid GST on the amount collected form the subscribers by treating the same as "supply" u/s 7 of the CGST Act, 2017.

5. On the issue of accounting treatment and the legal basis of CSOP, the subject Company submitted a "legal opinion" by Tyke, which stated that, as per ICAI Accounting Standards, CSOPs are community benefits, in the form of incentives provided by the Company over its lifetime. Hence, the same is simultaneously booked as an expense for the company and represented as a provision(long-term/short-term).

6. The Company has neither released any public advertisements nor utilized any media, marketing or distribution channels or agents to inform the public at large about such an issue of securities.

7. CSOP is not deriving its values from any price or index of prices of underlying securities. Neither is it a commodity derivative nor is it declared by the Government to be "derivative".

ROC's contentions

1. The opinion did not clearly indicate the specific accounting standard and thus the accounting treatment was not properly explained.

2. On being asked by the ROC, the statutory auditor of the company replied that, The CSOP transaction was unique. It was the first time that he encountered these transactions in course of his audit and Institute of Chartered Accountants of India (ICAI) had not provided any guidance or accounting treatment for this kind of transaction.

3. The financial statements of the subject Company unequivocally declared that

the CSOP holders would be able to unlock value based on future valuation.

4. The website of Tyke listed out the benefits of Stock Appreciation Rights [SAR] and stated that they can be typically settled through issuance of shares and cash payments.

5. The signed agreement of CSOP, laid down the defining features of CSOP, it clearly linked it with the valuation of the equity shares of the subject Company. The payment provided to CSOP holder for each CSOP was to be calculated on the fair market value of the equity shares.

6. It was seen that from the reply of the subject Company that its stance that CSOPs issued by it were not in the nature of Stock Appreciation Rights [SAR] was misleading, and untrue. Thus, it appeared that the CSOPs were "securities" as defined under the Companies Act, 2013.

7. Under Section 42(2) of the Act r/w Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, a company making private placement offer shall not make it to more than 200 persons in aggregate in a financial year. It is observed that the subject company issued "securities" in the form of CSOP to 565 subscribers and has violated the said provisions.

8. Under section 42(6), the company was required to allot the securities within 60 days which has not been done.

9. Under section 42(7), no company issuing securities under section 42 shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue.

10. Use of Tyke platform for raising securities, putting pitching information, raising money from general public through platform amounted to issuance of public advertisements or utilization of media, marketing or distribution channels or agents to inform the public at large about such an issue.

Decision and penalty

1. Reference was given to definition of securities under section 2(81) of the Companies Act, 2013 which derives its meaning from the definition of securities specified under the Securities Contracts [Regulation] Act, 1956 whereby the term securities is defined so as to include "derivative" under clause (ia).

2. "Derivative" is further defined in Section 2(ac) of the Securities Contracts [Regulation] Act, 1956 whereby it is defined that

   "Derivative" includes

   (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

   (B) a contract which derives its value from the prices, or index of prices, of underlying securities.

3. The definition of derivative as noted above, includes "a contract which derives its value from the prices, or index of prices, of underlying securities". It is apparent that CSOP's value is

linked to the equity securities of the subject Company at the inception stage, capital restructuring stage and the payout stage. Besides this, **CSOPs have other trappings of securities like transferability and maintenance of a register.** Thus, CSOP is clearly a 'derivative' as per section 2(ac) clause (B) of the Securities Contracts [Regulation] Act, 1956 as it clearly derives its value from the equity shares. In turn, CSOP is also "securities" being covered under section 2(h)(ia) of the Securities Contracts (Regulation) Act, 1956. Therefore, the provisions of section 42 of the Companies Act, 2013 would get triggered in the present case.

Violation	***Penalty imposed on company/ director(s)***	***Calculation of penalty amount as per Section 446B***	***Total penalty-imposed u/s 42 of the Companies Act, 2013***
Section 42(2)	Solargridx Ventures Private Limited	₹ 2,00,000	₹ 2,00,000
	Hardik Bhatia	₹ 1,00,000	₹ 1,00,000
	Devansh Manish Kumar Shah	₹ 1,00,000	₹ 1,00,000
	Konda Venkata Prasanth Sai	₹ 1,00,000	₹ 1,00,000

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	Konda Venkata Prasanth Sai	₹ 1,00,000	₹ 1,00,000

Other than this penalty, the company was ordered to refund the subscription money to all the subscribers since the securities were not allotted within 60 days from receipt of money.

SEBI – Case 1

Adjudication Order In The Matter Of Rupa and Company Limited

Facts of The Case:

1. Securities Exchange Board of India ('SEBI') investigated trading activities in the scrip of Rupa and Company limited ('RCL/Company'). SEBI undertook investigation into the trading activities in the scrip of RCL from February 01, 2021, to June 30, 2021. Investigation was conducted inorder to ascertain whether certain entities had traded in the scrip of the Company while in possession of the unpublished price sensitive information. SEBI found that twenty-three entities were found to be trading during the UPSI period, but no adverse findings were observed in respect of twenty-two entities.

2. SEBI further noted that RCL had announced financial results for the quarter and year ended March 31, 2021, on May 31, 2021 (post market hours i.e., 17:39:00 IST). SEBI AO further stated that there was an increase of around 183% in profits for year ended March 31, 2021, and the Company had declared a special dividend of ₹ 6/- per share for year ended March 31, 2021. SEBI further noted that the disclosures of quarter and year ended March 31, 2021, result led to a price rise of around 20% in scrip of RCL on NSE and BSE both on June 01, 2021. So, increase in profits was alleged as unpublished price sensitive information by SEBI.

3. On further investigation SEBI suspected that the trading done by one entity out of the twenty-three investigated entities (as mentioned in point 1 above), i.e., Nigeria Capital and Infrastructure Ltd. ('Noticee 1/NCIL') in the scrip of RCL was based on financial results of RCL for quarter and year ended March 31, 2021. SEBI further alleged that this UPSI was shared by Mr. Sushil Patwari ('Noticee 2/Sushil'). SEBI alleged that Sushil was an insider as he was independent director & member of Audit Committee of RCL and promoter director of NCIL. SEBI further alleged that Sushil was in possession of data relating to financial results for quarter and year ended March 31, 2021, before its dissemination to public and Sushil leaked financial results for quarter and year ended March 31, 2021, to NCIL. SEBI further noted that Mr Sanjeev Kumar Agarwal, CFO, NCIL was taking trading decisions on behalf of NCIL. SEBI alleged that Sushil has leaked financial results for quarter and year ended March 31, 2021, to Mr Sanjeev Kumar Agarwal.

4. In view of the same SEBI alleged Noticee 1 and Noticee 2 to be in violation of the provision of SEBI Act, 1992 ('SEBI Act') and SEBI (PIT) Regulations, 2015 ('PIT Regulations').

Charges Levied

1. Noticee 2, alleged to have violated the provisions of Sections 12A(d) of the SEBI Act and Regulation 3(1) of the PIT Regulations by communicating financial results for quarter and year ended March 31, 2021, to Noticee 1.

2. Noticee 1 alleged to have violated the provisions of Sections 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations by trading while in possession of financial results for quarter and year ended March 31, 2021.

Contentions by Noticee 1 and Noticee 2

A. Noticee 2 was not in possession of financial results for quarter and year ended March 31, 2021, before they got disseminated to stock exchange

1. SEBI stated that Mr. Arihant Kumar Baid, Manager-Finance of RCL, had shared draft financial results of RCL for the quarter and year ended on March 31, 2021, with whole time directors and independent directors of RCL, including Noticee 2, via email on May 30, 2021.

2. SEBI further highlighted that on investigation, Noticee 2 had admitted that he was in receipt of mail dated May 30, 2021, containing draft financials and related papers of RCL. Noticee 2 however contended that as finance head of NCIL, i.e., Notice 1, had passed away, he was busy with completion of finalization of the accounts and audit of Noticee 1. Noticee 2 hence contended that he did not open the said email and accordingly he was not in possession of financial results for quarter and year ended March 31, 2021. Noticee 1 further contended that the trade in the scrip of RCL was done by them based on the price movements observed in the other scrips of the similar sector. Notice 2 further contended that trading decisions for Noticee 1 were not taken by Noticee No.2 but by the CFO of Noticee 2, Mr. Sanjeev Kumar Agarwal. Noticee 2 and 1 further contended that there was no evidence produced by SEBI of communication of UPSI by Noticee 2 to Noticee 1 and quoted the judgement of Hon'ble Supreme Court in ***Balram Garg vs. SEBI*** in support of the same which had emphasised on the reliance of direct evidence for the purpose of establishing violation of insider trading regulations while demonstrating the communication of unpublished price sensitive information. Noticee 2 pleaded that he should not be held liable for insider trading.

Submissions by the Adjudicating Officer, SEBI ('SEBI AO')

A. Noticee 2 was not in possession of financial results for quarter and year ended March 31, 2021, before they got disseminated to stock exchange: SEBI AO stated that regulation 3 sub-regulation (1) and regulation 4 sub-regulation (1) of PIT Regulations 2015 pre-supposes certain essential ingredients for consider a case under insider trading such as:

1. There must be an insider.

2. There must be unpublished price sensitive information in existence.

3. There must be a communication of unpublished price sensitive information, and suspected entity must have traded based on such communication.

SEBI further dealt with the above-mentioned ingredients along with some facts as follows:

1. Noticee 2 was an Insider: SEBI AO after investigation noted that Noticee 2 was the independent director of RCL since

November 17, 2003, which was also confirmed by Noticee 2 himself vide e-mails dated December 22 and 23, 2022 as well as by Noticee 1 vide letter dated July 22, 2022. Further SEBI AO noted that Noticee 2 was also the member of the audit committee of RCL since June 2004 and the said facts were confirmed by Noticee 1 and RCL as well as from the annual report for the financial year 2020-2021 of the RCL. Hence SEBI stated that Noticee 2 was an insider as per regulation 2(1)(g) of PIT Regulations.

2. **There must be UPSI in existence:** SEBI AO while quoting Regulation 2(1)(n) of PIT Regulations stated that unpublished price sensitive information means any information, relating to a company, directly or indirectly, that is not published by the company or its agents and is not specific in nature and which, if published is likely to materially affect the price of securities of company and shall be including, information relating to significant changes in policies, plans or operations of the company. SEBI AO noted that financial results for the period ended on March 31, 2021 were announced by RCL on May 31, 2021 at 17:36:46 hours. Pursuant to the announcement, on NSE, price of the scrip moved from closing price of ₹ 396.80 on May 31, 2021 to a closing price of ₹ 476.15 on June 01, 2021. On BSE, price of the scrip moved from closing price of Rs.396.50 on May 31, 2021, to a closing price of ₹ 475.80 on June 01, 2021. SEBI AO in this regard noted that said financial results of RCL for the period ended on March 31, 2021, was Unpublished Price Sensitive Information ('UPSI') in terms of Regulation 2(1)(n) of the PIT Regulations, as it was directly related to RCL and when published, it materially affected the price of the scrip of the company.

3. **Noticee 2 was in Possession of UPSI received via Email:** SEBI AO noted that Mr. Arihant Kumar Baid, Manager-Finance of RCL, *vide* e-mail dated May 30, 2021, shared the financial and related papers with whole time directors and independent directors of RCL including Noticee 2 as he was member of audit committee of RCL. Further as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and also as per the 'Terms of Reference of Audit Committee' of RCL, one of the role of the audit committee was "reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to." Hence, SEBI AO denied accepting the submission of Noticee No.2 made in this regard to claim that as he had not opened the e-mail as he was busy in preparation of financials of Notice no.1 and hence, he was not privy to the UPSI. Hence SEBI AO concluded that Noticee 2 was in possession of the UPSI, consequently rendering him an insider under Regulation 2(1)(g) of the PIT Regulations.

4. **Commencement of UPSI period:** SEBI AO stated that the preparation of financial results was commenced from first week of May 2021 and was finalized on May 31, 2021, hence the UPSI period was taken from May 01, 2021, to the date of announcement of results i.e., May 31, 2021 ['UPSI Period'].

5. **There must be a communication of UPSI, and suspected entity must have traded based on such communication:** SEBI AO in this regard noted that Noticee 2 was the promoter of Noticee 1 in the year 2020-2021. Noticee 2 was also common director in RCL and NCIL and was part of audit committee of RCL. SEBI AO further noted that Noticee 1 had not traded in the scrip of RCL since 2018 till May 30, 2021, i.e., one day prior to the UPSI period. Further, after a gap of around three years, Noticee 1's first trade was only on May 31, 2021, wherein it bought 5000 shares at 09.50 am at a limit price of ₹ 426.4/- Also sold all the 5,000 shares on June 01, 2021, at 09:15 am at a limit price of ₹ 474.3/-, immediately after UPSI became public. In this process Noticee 1 made a profit of ₹ 2.37 lakh. Hence SEBI AO noted that, fact that the Noticee 1 had not been able to convincingly justify its sudden indulgence in trading in the scrip of RCL and connection between Noticee 2 and Noticee 1 clearly showed an irresistible conclusion that the trades were executed under the influence of and/or possession of the said UPSI.

6. **With respect to communication of UPSI:** SEBI AO noted that Noticee No.2, being the promoter chairman of Noticee No.1 in executive capacity, had reasonable influence over the trading decisions of Noticee No.1. Therefore, though the CFO (Mr. Sanjeev Kumar Agarwal) was authorized to take trading decisions (who was authorized by Noticee No.2 himself), the facts coupled with the timing and trading pattern of Noticee No.1, it was evident that Noticee No.1 had traded in the scrip of RCL on the basis of UPSI. SEBI AO concluded the question regarding possibility of communicating the UPSI by Noticee No. 2 to Noticee No. 1, by mentioning that in cases of insider trading, direct evidence is seldom available and generally conclusion is arrived by relying on the chain of circumstances as mentioned in ***SEBI vs. Kishore Ajmera (2016) 6 SCC 368***. Hence since all the ingredients of regulation 3(1) and 4(1) of PIT Regulations 2015 were found to be present in the instant adjudication order SEBI successfully established the charges against Noticee 1 and Noticee 2.

Penalty

1. NCIL (Noticee 1) was penalized under Sections 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations with ₹ 10,00,000/-.

2. Mr. Sushil Patwari (Noticee 2 – Independent director of RCL) was penalized under Sections 12A(d) of the SEBI Act and Regulation 3(1) of the PIT Regulations with ₹ 10,00,000/-.

IBC – Case 1

In the matter of Paschimanchal Vidyut Vitran Nigam Limited (Appellant) v.s Raman Ispat Private Limited and Ors (Respondent) at the Supreme Court dated 17th July 2023

Facts of the Case

- The NCLT in its order allowed an application directing the District Magistrate (**DM**) and Tehsildar, Muzaffarnagar, to immediately release a property (previously attached) in favour of the liquidator of the Respondent, Raman Ispat Private Limited (**Corporate Debtor/CD**), to enable its sale and

thereafter, distribution of the sale proceeds in accordance with the provisions of Insolvency and Bankruptcy Code,2016 (IBC).

- In 2010, the appellant Paschimanchal Vidyut Vitran Nigam Limited (Paschimanchal) and CD had entered a contract for supply of electricity. The said contract provided that a 'charge' would be constituted on the assets of the CD in case of any outstanding electricity dues.
- Paschimanchal raised bills for electricity dues from time to time. However, it continued to remain unpaid, hence, on 12 January, 2016, Paschimanchal attached the properties of the CD.
- On 23 January, 2016, the Tehsildar created a charge on the CD's properties, thereby, restraining a transfer via sale, donation, etc.
- On 11 April, 2017, CD got admitted into Corporate Insolvency Resolution Process (CIRP) upon filing an application u/s 10 of IBC.
- On 31 January, 2018, the National Company Law Tribunal (NCLT) passed a liquidation order and appointed a liquidator.
- The liquidator alleged that unless the attachment orders of the DM and Tehsildar, were set aside by the NCLT, no buyer would purchase the property of the CD due to uncertainty about the authority of the liquidator to sell the property. The liquidator also took the plea that Paschimanchal's claim would be classified in order of priority prescribed under Section 53 of the IBC, and Paschimanchal would be entitled to pro rata distribution of proceeds along with the other secured creditors from sale of liquidation assets.
- On 5 March, 2018, the DM ordered auctioning of the CD's properties for recovery of outstanding dues. The NCLT directed the DM and Tehsildar to release the attached property to enable the sale and distribution of the sale proceeds in accordance with the IBC. The liquidator's position ultimately led the NCLAT to direct the DM and Tehsildar to immediately release the attached property in its favour so as to enable sale of the property, and after realisation of the property's value, to ensure its distribution in accordance with the relevant provisions of the IBC. The NCLAT also endorsed NCLT's reasoning that Paschimanchal fell within the definition of 'operational creditor', which could realize its dues in the liquidation process in accordance with the law.
- Aggrieved by the order of the NCLAT, Paschimanchal approached the Hon'ble Supreme Court seeking appropriate reliefs/remedies.

Arguments of the Appellant

- Sections 173 and 174 of the Electricity Act, 2003 (Act) had an overriding effect on all other laws except Consumer Protection Act, 1986; the Atomic Energy Act, 1962; and the Railway Act, 1989. Being a special law relating to all aspects of electricity – generation, transmission, distribution and adjudication of disputes – it had primacy over all other laws, including the IBC, which was a 'general' law dealing with corporate insolvency implemented much later.

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- In terms of the Act, and the regulations framed under it, a special mechanism for recovery of electricity dues existed. The rights of electricity suppliers like Paschimanchal, therefore, were not subordinate and subject to the 'priority of claims' mechanism under the IBC. Therefore, Paschimanchal could opt to independently stay out of the liquidation process and recover its due.
- *Also replied on the judgement of Supreme Court – in which Board of Trustees, Port of Mumbai v. Indian Oil Corporation, wherein the court had ruled that port dues, under the Major Port Trust Act, 1963 overrode all other claims, including those of secured creditors in liquidation proceedings. Section 238 of IBC could not override Sections 173 and 174 of the Act, since the latter (i.e. the Electricity Act) is a special enactment, and would prevail over the IBC, which is a later general law, dealing with insolvency.*
- *Also replied on the judgement- in State Tax Officer v. Rainbow Papers Ltd., in which court held that by virtue of a security interest created in favour of the government for tax claims under the Gujarat Value Added Tax Act, 2003, tax authorities i.e., the government, was a secured creditor under the IBC. The court held that if a resolution plan excluded such tax or statutory dues payable to the government, it would not be in conformity with the provisions of the IBC and, as such, would not be binding on the State.*
- Electricity dues were also 'security interests' in favour of electricity service providers. Also, relied on the definition of 'secured creditor' which meant "a creditor in favour of whom security interest is created.
- A reading of the definitions of 'security interest' and 'transfer' indicated that the intent of the IBC was to include, in the concept of 'security interest', all claims, including statutory claims arising in law, against the corporate debtor. Thus, obligations and statutory charges were also 'security interests'

Arguments of the Liquidator

- Under the IBC, creditors were classified either as secured or unsecured. Further, a highlight of the IBC was the distinction between the financial and operational creditors, and their differential treatment with regards to recovery.
- Bankruptcy Law Reforms Committee Report, 2015 and the UNCITRAL Legislative Guide on Insolvency Law, stipulate that government dues were not given priority under the IBC. This formed the backdrop of the legislation. In fact, the Statement of Objects and Reasons to the IBC stipulates alteration in the priority of payment of government dues.
- Section 52(3) of the IBC, before realization of security interest by secured creditors, the liquidator had to verify the existence of security interest from the records maintained by an information utility or by such other means as may be specified by the Insolvency and Bankruptcy Board of India (IBBI).
- Registration of any charge was mandatory u/s 77 of the Companies Act, 2013 (the Act, 2013) It was highlighted

that Section 48 of the Transfer of Property Act, 1882 (TPA) dealt with priority of rights, and inter-se priorities amongst creditors prevailed in the distribution of assets in liquidation proceedings and referred the order of ***Jitender Nath Singh vs. Official Liquidator & Ors.*** and ***ICICI Bank Ltd. vs. Sidco Leathers Ltd.***

- It was submitted that government dues were placed in the 'waterfall mechanism' under Section 53(1)(e)(i) of the IBC.
- Even under the old Companies Act, 1956, Section 529A provided priority to the debts due to the secured creditors and the workers, and Section 530 made payment of taxes subject to the priority embodied in Section 529A. Similarly, priority of debts due to secured creditors and workers was reflected under Section 326 of the Act, 2013. Section 327 made payment of taxes subject to the priority embodied in Section 326.
- Electricity dues did not enjoy any priority, and cited High Court rulings, especially the judgment of the Calcutta High Court in the ***West Bengal State Electricity Distribution Company Limited vs. Sri Vasavi Industries Limited & Anr.*** It was submitted that creation of charge under a law was a matter of fact which had to be proved. In the present case, the statute merely enabled recovery of electricity dues as though they were recovery of arrears of revenue. That did not result in the creation of 'security interest' in favour of the appellant. Moreover, such interest was not registered in accordance with the Liquidation Regulations and Section 77 of the Act, 2013.
- In case of apparent overlapping between the two entries, the doctrine of 'pith and substance' had to be applied to find out the true nature of the legislation and the entry within which it fell – reliance was placed on the decisions of ***Union of India & Ors. vs. Shah Goverdhan L. Kabra Teachers' College*** and ***UCO Bank & Anr. vs. Dipak Debbarma & Ors.***. Having regard to this principle, IBC was thus a special law dealing with the entire subject matter of insolvency, bankruptcy and winding up of companies. Its provisions were later than those of the electricity Act. Despite Sections 173 and 174 of the Act, by virtue of Section 238 of IBC, the provisions of the latter would prevail and have overriding effect. It was submitted that the law under IBC was constantly evolving since its inception in 2016. Reliance was placed on ***Innoventive Industries Ltd. vs. ICICI Bank & Anr.***, and ***Swiss Ribbons (P) Ltd. vs. Union of India*** which upheld the IBC, and emphasized the overriding nature of the enactment, by virtue of Section 238.

Held

- The court highlighted the scheme of the IBC and analysed the waterfall mechanism provided u/s 53 of the IBC which provides for the order of distribution of assets. Section 53 confers Government debts and operational debts lower priority in comparison to dues owed to unsecured financial creditors. It is imperative to note that a secured creditor must make an informed decision, at the very outset of the liquidation process whether to relinquish its secured interest. In case

the creditor relinquishes its interest, then its dues rank high in the waterfall mechanism. If the creditor chooses not to relinquish its security interest, and instead enforce it, but is unsuccessful in realizing its dues, then it will stand lower in priority, and accordingly, will have to await distribution of assets upon realization of the liquidation estate.

- The rationale behind giving higher priority to secured creditors who relinquish their interest was provided in the Report of the Insolvency Law Committee (2020), which noted that Section 53(1)(b) of the IBC intends to replicate the benefits of security even when it has been relinquished, to promote overall value maximisation.
- The Court also analysed the Government dues u/s 53(1)(e) and opined that owing to the hierarchy stipulated in Section 53 of IBC, government dues must be understood separate from dues owed to secured creditors. Additionally, dues payable to corporations created by statutes need not necessarily constitute 'government dues. Such corporations may be operational, financial, or secured creditors, depending on their nature of transactions. Whereas, on the other hand, dues which are payable to the Treasury, such as tax, tariffs, etc., broadly fall within the scope of Article 265 of the Constitution as 'government dues' and hence, governed by Section 53(1)(e) of IBC.
- The Court opined that even though Paschimanchal had government participation, the same does not render it a government or a part of the state government as its functions can be replicated by other entities (both private and public). Therefore, the Hon'ble Supreme Court has held that dues payable to Paschimanchal do not fall within the description of 'government dues' as under Section 53(1)(e) of the IBC.
- Section 238 of the IBC has an overriding effect over the Act, even when the Sections 173 and 174 of the Act have primacy/overriding effect over other statutes.
- The Court also relied on the seminal cases of ***Innoventive Industries Ltd. vs. ICICI Bank*** and ***Principal CIT vs. Monnet Ispat & Energy Limited.,*** wherein the Hon'ble Supreme Court upheld the non-obstante clause of IBC, which would prevail over the Maharashtra Relief Undertaking (Special Provisions) Act, 1958, and the Income Tax Act, 1961, respectively.
- The rationale that the Supreme Court wished to reaffirm in this case was that the IBC is a special statute that accounts for the dues of all creditors to be disbursed as per the waterfall mechanism during CIRP. More importantly in the case of ***State Tax Officer vs. Rainbow Papers Ltd.,*** the applicability has been confined to its own factual circumstances, thereby limiting its effect on treatment of government dues under the IBC.
- In sum, this case -re-affirms the importance of section 53 in the context of reclaiming dues, and the strength of the non-obstante clause of IBC in section 238 in relation to other statutes.

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