

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

Paschimanchal Vidyut Vitran Nigam Ltd (PVVNL) filed an appeal before Hon'ble Supreme Court ("SC") challenging NCLAT & NCLT Order releasing the property in favour of Liquidator of Raman Ispat Private Limited (RMPL/Corporate Debtor/CD) for enabling sale/auction of assets of CD via Liquidation Process under the IBC ("Code") and rejecting the interpretation that the Electricity Act, 2003 overrides Section 238 of the IBC Code.

By virtue of Tehsildar, Muzaffarnagar by Order No. 1423F dated 23.01.2016 and Section 173 & 174 of Electricity Act, 2003 PVVNL created a charge on the assets of the CD for recovery of existing electricity dues.

The Hon'ble SC stated that Section 238 of the Code overrides the provisions of the Electricity Act, 2003. In addition to the same the Hon'ble SC applied the Doctrine of Pith & Substance by analysing the intent of the Code and more specifically the 'waterfall mechanism' envisaged at Section 53 of the Code and Bankruptcy Law Reforms Committee Reports in the same context and observed that the provisions of the Code treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

PVVNL relied their argument on Rainbow Paper Judgement, to which the Hon'ble SC noted that the judgment in Rainbow Papers did not notice the 'waterfall mechanism' under Section 53 and also opined that judgment in Rainbow Papers has to be confined to the facts of that case.

Therefore, PVVNL were allowed to file their claim with the Liquidator but they could not proceed to sell the assets of the CD to recover their dues. The asset had to be handed over to the Liquidator for following the process given in the Code.