

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

Supreme Court Judgement:

In respect of the overriding effect of the Insolvency and Bankruptcy Code, 2016 (IBC) the Hon'ble Court has discussed the priority of claims as set out under Section 53 of the Code and stated that the government's dues placed at least priority therein.

Paschimanchal Vidyut Vitran Nigam Ltd. vs Raman Ispat (P) Ltd.,

Facts of the Case

Paschimanchal Vidyut Vitran Nigam Limited (PVVNL) preferred an appeal before the Hon'ble Court against the order of the National Company Law Appellate Tribunal (NCLAT). The NCLAT order upheld the lower tribunal's ruling, which allowed the release of property in favor of the liquidator of Raman Ispat Private Limited (Corporate Debtor) so as to enable the sale of property and, after realization, distribute the same in accordance with Section 53 of the Code. The Corporate Debtor owed arrears of electricity charges dues to PVVNL. PVVNL claimed that the dues owed by the Corporate Debtor are secured in terms of the Code as well as the Electricity Act, 2003 has an overruling effect over the Code. The Liquidator argued that the Code prevails over the Electricity Act, 2003. Further, the charge under Section 77 of the Companies Act, 2013, ought to have been created by PVVNL to prove its security interest, and PVVNL, being government dues, finds the least priority in terms of Section 53 of the Code.

Gist of the Hon'ble Supreme Court's Judgment

Based on the arguments of both the parties involved, the Apex Court dismissed the appeal filed by PVVNL. :

The Hon'ble Court held that by virtue of the provision stipulated under delegated legislation, dues owed to PVVNL create the first charge on the assets of the Corporate Debtor. Therefore, the conclusion that PVVNL is a secured creditor cannot be disputed.

Relying on its various judgments, the Hon'ble Court held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions open with non-obstante clauses.

With respect to the liquidator's arguments that dues owed to PVVNL were technically owed to the "government" and thus occupy a lower position in the order of priority of distribution under Section 53(1)(e) of the Code, the Hon'ble Court held that the "government dues" are not defined under the Code and referred to the definition given under the General Clauses Act, 1897. It furthermore, held that although PVVNL has government participation, however, that does not render it a government or part of the state government. Thus, it was held that dues to PVVNL are not government dues.

While doing so, the Hon'ble Court expressly discussed the waterfall mechanism laid down under Section 53(1) of the Code stated that the "government dues" would find the least priority in the distribution of proceeds in liquidation.

On the last point, the Hon'ble Court held that Section 3(31) of the IBC defines "security interest" in the widest terms. Therefore, in the Court's opinion, the liquidator cannot urge this aspect before it because of the concurrent findings of the National Company Law Tribunal (NCLT) and the NCLAT that PVVNL is a secured creditor.

In conclusion, the Hon'ble Court rejected the appeal. At the same time, the Court directed the liquidator to decide the claim exercised by PVVNL in the manner required by law within ten weeks from the date of pronouncement of the decision.