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INSOLVENCY & BANKRUPTCY

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PUBLISHED 6 July 2024

INTRODUCTION:

In the case of **Ms. Sangita Arora v IFCI Limited & Anr.**, the Hon'ble NCLAT held that the interim Moratorium is enforced from the date of filing of the Application made under section 95 of Insolvency and Bankruptcy Code 2016 and not from the date it is numbered by the registry.

BRIEF FACTS OF THE CASE:

The Appellant executed personal guarantees in favour of the IFCI securing the Rupee term loan of the Corporate Debtor, Supertech Limited. On the commission of default by the Corporate Debtor, IFCI filed an Application under Section 95 of IBC 2016 initiating Corporate Insolvency Resolution Process (CIRP) against the Appellant on 02.06.2021. The Application was registered on 09.08.2021.

Another Financial creditor – PNB Housing Finance Ltd. (PNBHFL) filed application under Section 95 on 24.07.2021, which was registered on 02.08.2021. However, no order was passed in the Application filed by PNBHFL. Thereafter in the application of IFCI, the Adjudicating Authority passed an order appointing the Resolution Professional (RP).

Aggrieved by this order, the Appellant filed an appeal before the Bench of NCLAT.

CONTENTIONS OF BOTH PARTIES:

The counsel for the Appellant contended that the Application by the PNBHFL was registered before the application of the IFCI and thus, the interim moratorium was enforced on the Application filed by PNBHFL and no order could be passed in the Application of the IFCI. Relying on the Judgment of the **Kerala High Court in Jeny Thankachan v. Union of India & Ors**, it was submitted that the Application is complete when it is defect free and registered by the Adjudicating Authority and not when it is merely filed.

The counsel for the Respondent contended that a three Member Bench of NCLAT in **Krishnan Kumar Basia v. State Bank of India** had already decided on the issue. It had held that the filing date of the Application is the date when it is e-filed and not when it is registered. It further contended that the reliance on the Kerala High Court Judgment was misplaced.

DECISION OF THE NCLAT :

The Hon'ble NCLAT considered the relevant paragraphs of **Krishnan Kumar Basia** Judgment where the Bench held that the filing of an Application under Section 95 is on the date the application is filed and allotted number electronically and not when it is numbered. Applying the ratio, the Hon'ble NCLAT held that the Application by the IFCI was filed prior to the Application by PNBHFL and the Moratorium shall commence on the filing of the application by IFCI.

The NCLAT further observed that the Kerala High Court Judgment in **Jeny Thankachan** did not notice the statutory scheme of the NCLT Rules 2016. Thus, the Bench refused to accept the view of Kerala High Court. The Bench upheld the order of NCLT New Delhi Bench appointing a RP in the Application by IFCI.