

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

4th January, 2023

Subject: Judgment¹ dated 4th January 2023, in the matter of Reliance Communication Limited V/s. Rajendra P. Bansal [Interim Application No. 1161 of 2020 in First Appeal No. 1539 of 2012]

Brief Facts -

In February 2010, the Respondent challenged his termination of services by the Reliance Communication Limited (CD). In June 2012, the Trial Court directed CD to pay the Respondent. In December 2012, on appeal, the Hon'ble High Court stayed the Order of the Trial Court but directed the CD to deposit the decretal amount (Rs.32,16,909/-) with the Trial Court for stay on the execution. In February 2013, the Respondent was allowed to withdraw part amount i.e. Rs. 15 Lac and remaining Rs. 17,16,909/- continued to be deposited with Trial Court. In May 2018, CIRP was initiated against the CD and in January 2020, the Respondent filed the present case before the Hon'ble High Court for release of the remaining sum of Rs. 17,16,909/-.

Observations of the Hon'ble High Court -

As CD is undergoing CIRP, following issues came for consideration before the Hon'ble High Court -

(i) Whether the Hon'ble High Court has the jurisdiction to entertain and dispose of this Application?

The Hon'ble High Court observed that –

- a. The NCLT is a statutory Tribunal and, therefore, its powers are circumscribed by the provisions of the statute which confers jurisdiction upon it. Unlike a civil court, the NCLT does not have general jurisdiction under Section 9 of CPC.
- b. The IBC does not confer any statutory power upon the NCLT to sit in appeal over a judgment and decree of a Civil Court, nor decide an interim application arising out of such civil appeal.
- c. The NCLT cannot exercise jurisdiction over every issue concerning the corporate debtor simply because the corporate debtor is in insolvency. It is only those issues which arise *solely* out of the insolvency of the corporate debtor that can be adjudicated upon by the NCLT under Section 60(5)(c) of the IBC.
- d. Wherever the matter in question falls outside the purview of the IBC, it is the forum which is otherwise vested with jurisdiction in law that is the right forum to adjudicate upon the said matter.

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The present case has nothing to do with the insolvency of the CD as the money was deposited before the insolvency commencement date. Accordingly, the NCLT could never sit in appeal over the judgment/decreed of a Civil Court.

(ii) Whether the amount deposited in the Trial Court is affected by the moratorium under IBC?

The Hon'ble High Court observed that –

- a. The moratorium under section 14 applies only to proceedings against the corporate debtor and only applies *qua* the assets and properties of the corporate debtor. If monies deposited in court or any other asset/property does not belong to the corporate debtor, the moratorium would not preclude/prevent a creditor from enforcing its rights against the monies/assets/properties.
- b. Once the decretal sum is deposited by the judgment debtor in court, it ceases to be the property of the judgment debtor and is *custodia legis*. The interest of the judgment debtor would only be to receive any balance after the claims of the judgment creditor are satisfied.

In the present case, as the CD ceased to be owner of the said amount, the said amount is unaffected by the moratorium under the IBC. Resultantly, there was no bar on allowing the withdrawal of the amount by Respondent.
