

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CASE ANALYSIS - LALIT KUMAR JAIN V. UNION OF INDIA & ORS.

AUTHORED BY - TANVI JAIN

5th Year BBA LLB

CHRIST (Deemed to be University), Bangalore

LALIT KUMAR JAIN V. UNION OF INDIA

FACTS

This case arises out of a Notification dated 15.11.2011 issued by the Ministry of Corporate Affairs that effectuated certain provisions under Part III of the Insolvency and Bankruptcy Code, 2016 (IBC from hereon), that dealt with the execution of various rules relating to the Personal Guarantors and their liability towards Corporate Debtors in cases of insolvency. The Petitioners in the present case were directors, promoters, managers, or chairpersons of companies who had given their personal guarantees in such capacities which had been invoked in the present case.

Following this notification, demand notifications were issued to a large number of personal guarantors proposing to initiate the Insolvency Proceedings under IBC, 2016, on various counts. One of the major grounds was that recovery proceedings had been initiated after the invocation of guarantees. As a result, the Insolvency Resolution Process was initiated against some of the petitioners under part III as personal guarantors which led to a number of petitions being filed by the promoters of companies Bhushan Power Steel, Punj Lloyd amongst others u/s Art. 226 of the Constitution of India, later the Apex Court decided on the common question of law relating to the validity of the notification.

ISSUES

- 1) Whether the notification dated 15.11.2011 issued by the Ministry of Corporate Affairs, Central Government ultra vires the authority and powers of the Government?
- 2) Whether the approval of the resolution plan relating to the Corporate Director discharges the liability of the personal guarantors towards the Corporate Debtors?

LAWS APPLICABLE

The legal provisions applicable in the present case are as follows:

- a) Section 1(3) of the Insolvency and Bankruptcy Code, 2016,
- b) Sections 78, 79, 94-187 of the Insolvency and Bankruptcy Code, 2016 in relation to Personal Guarantors which were sought to be enforced,
- c) Sections 238 and 243 of the Insolvency and Bankruptcy Code, 2016,
- d) Sections 2(e) and 2(g) of the Insolvency and Bankruptcy Code, 2016,
- e) Section 128 of Indian Contracts Act, 1872,
- f) Sections 239(2)(g), (h) and (i), 239(2)(m) to (zc), 239(2)(zn) to (zs) of the Insolvency and Bankruptcy Code, 2016,
- g) Section 24 and 31 of the Insolvency and Bankruptcy Code, 2016,
- h) Section 60(2) of the Insolvency and Bankruptcy Code, 2016.

ANALYSIS

The Writ Petition was filed under the ambit of Article 32, wherein the Petitioners contended that the notification (dated 15th November 2019) issued by the Central Government constituted as an act of 'Excessive Delegation' as they argued that the Government lacked the legislative or statutory authority to impose restrictions on the Code's enforcement. It was further argued that the Central Government's powers were ultra vires towards the enforcement of Sections 78, 79, 94-187, etc., of the Code in relation to personal guarantors solely, as stated in the contested notification. According to Section 1(3) of the Code,

*"It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed a reference the commencement of that provision."*¹

Primarily, the Hon'ble Court, in this case, upheld the Notification dated 15th November 2019 passed by the Central Government permitting the creditors to file for bankruptcy (insolvency proceedings) against personal guarantors, i.e., allowing the bankers to initiate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 ("Code"), either concurrently with or after the Corporate Insolvency Resolution Process ("CIRP") is completed. As a

¹ Lalit Kumar Jain v. Union of India & others SCC OnLine SC396 2021

corollary, the authority delegated to the Central Government under Section 1(3) relates solely to the time(s) at which various Code provisions may be implemented; it does not permit the Central Government to announce the implementation of specific Code provisions or to restrict the application of such provisions to certain groups of individuals. The petitioners categorized this particular Section 1(3) of the Code to be a 'conditional legislation' instead of a 'delegated legislation'; that is, in these legislations, the power is limited and can be exercised once in respect of the subject matter or class of subject matters.

The petitioners further contended that Section 243 of the IBC, which would have repealed the only two Acts that permitted the filing of insolvency proceedings against an individual, was not implemented by the Central government, resulting in two self-contradictory legal procedures for insolvency of the personal guarantors. It was also asserted that a guarantor's liability is coextensive with the principal debtor's. However, by claiming in both the corporate debtor's and the personal guarantor's bankruptcy processes, the impugned notification enables creditors to unjustly enrich themselves. Filing a 'double recovery' suit that is against the corporate debtor and the personal guarantor would be impermissible under the code. Thus, any obligation owed by its guarantors must likewise be extinguished, being coextensive by virtue of Section 128 of the Indian Contract Act, 1872, since the claims against the principal debtor are extinguished upon the completion of the insolvency process.

Furthermore, Mr. Vishwanathan and Mr. Rai (Senior Counsels for) debated the constitutionality of applying laws differently across regions based on various factors, citing legal precedents and the interconnectedness in the 2018 Amendments between corporate debtors and personal guarantors. Petitioners challenge the government's selective application of the Code to personal guarantors, calling it ultra vires. They argue Section 1(3) allows only phased implementation across regions or categories, not selective targeting. They claim delegated legislation differs from conditional legislation, making selective targeting by the executive illegal. They support their claim by citing court rulings. Essentially, they say the government cannot pick and choose which parts of the Code to apply to specific groups.

The following were In the Delhi Laws Act case², a divided Supreme Court ruled essential legislative functions, like repealing laws, cannot be delegated by Parliament to the executive. While agreeing on some limitations, Chief Justice Kania questioned the validity of delegating

² Delhi Laws Act, 1912, In re v. Part 'C' States (Laws) Act, 1951 SCR 747.

lawmaking power to the executive for "Part C States". The Hamdard Dawakhana case³ established a clear distinction between conditional legislation and delegated legislation. Conditional legislation grants discretion to an external authority to determine the commencement, application method, and scope of a law. Delegated legislation, in contrast, authorizes an administrative body to supplement a law's framework with necessary details, but not to modify its fundamental principles or implementation.

The Sabanayagam case⁴ defines three types of conditional legislation: a) Starting/stopping the application of a law in cases. b) Partially withdrawing a law's application for certain groups. c) Filling in details for future policy (subjective or objective). For categories a and b, subjective decisions based on class, not individual cases, may not require hearings. Principles of natural justice can still apply but depend on specifics. In the Lachmi Narain case⁵, the court addressed the power of the Central Government under Section 2 of the Part C States Act, 1950, to extend enactments to Union territories. The court emphasized that whether termed conditional, ancillary, or subsidiary legislation, the power is essentially a form of delegated legislation. It ruled that the power to modify an enactment during extension is limited to necessary adjustments for local conditions, avoiding alterations that change essential features or legislative policy. The court held that such modifications must occur simultaneously with the extension, not subsequently.

Throwing light upon a pre-amendment scenario, this case notes that all individuals including personal guarantors to corporate debtors were treated under one umbrella class under the un-amended code's Section 2(e). This led to challenges by the Central government in applying the provisions of Part III of the Act selectively only to personal guarantors, but which now has been widened by sub-categorizing individuals into Sections 2(e), (f), and (g) which has helped the government to apply Insolvency and bankruptcy code not only to personal guarantors but also to corporate debtors. Similarly, other changes have been highlighted which elucidate how certain provisions of the Act aimed to extend provisions to personal guarantors to strengthen the corporate insolvency resolution process.

The court in this case also discussed how it is irrelevant and inappropriate to apply the term

³ Hamdard Dawakhana v. Union of India, 1960 (2) SCR 671.

⁴ State of Tamil Nadu v. K. Sabanayagam, (1998) 1 SCC 318.

⁵ Lachmi Narain v. Union of India, (1976) 2 SCC 953.

“liquidation” to a personal guarantor who is an individual by referring to the legal maxim of “*reddendo singula singulis*” explaining that when a sentence in a statute contains several antecedents and consequences, each phrase or expression should be understood in relation to its appropriate object⁶ which in turn highlights the importance of considering the specific language and context of legislative provisions to determine their intended meaning.⁷ The same was held by the court in the case of *Rajendra K. Bhutta v. Mhada*⁸ where the court applied the legal principle discussed in *Koteswar Vittal Kamath*. The Hon’ble Court acknowledged how the acceptability of such phased implementation was brought in the cases of *Javed v. State of Haryana*⁹ and *Pannalal Bansilal Pitti*.¹⁰

The Court also emphasized in the case of *SBI v V. Ramakrishnan*¹¹ as to why an application u/s 60(2) of the Code was not allowed since the proceedings against personal guarantors were outside the jurisdiction of the National Company Law Tribunal (NCLT) and the IBC. However, due to the non-obstante clause in Section 238, the impugned notification brings any future proceedings against personal guarantors under the ambit of the IBC now. The court also rejected the argument that the application of the IBC to personal guarantors is incongruous, emphasizing the common adjudicating forum provided by NCLT. Thus, the Hon’ble court deemed the action of extending the IBC to personal guarantors, as a valid legislative exercise.

The court also affirmed the validity of the impugned notification and clarified the treatment of personal guarantors under the Code, recognizing their distinct status and procedural aspects. The rationale of the court behind the same was adopted from the case of *Vijay Kumar Jain v. Standard Chartered Bank*¹² where the court addressed the right of erstwhile Directors to participate in Committee of Creditors (CoC) meetings lies in their continued liability as personal guarantors against creditors since such directors, often guarantors, have a vital interest in resolution plans as such plans bind them and the fact that the regulations affirm the vital interest of these individuals in resolution plans. This court has highlighted that an approved resolution plan does not absolve guarantors of their liabilities under the contract of guarantee while referring to the *Maharashtra SEB* case, stating that even if the principal debtor's liability

⁶ *Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.* (1969) 1 SCC 255.

⁷ *Id.*

⁸ *Rajendra K. Bhutta v. MHADA*, (2020) 13 SCC 208.

⁹ *Javed v. State of Haryana*, (2003) 8 SCC 369.

¹⁰ *Pannalal Bansilal Pitti v. State of A.P.*, (1996) 2 SCC 498.

¹¹ *SBI v. V. Ramakrishnan*, (2018) 17 SCC 394.

¹² *Vijay Kumar Jain v. Standard Chartered Bank*, (2019) 20 SCC 455.

is discharged under insolvency or company law, the guarantor's liability continues¹³ and or that they have a continued liability.

Furthermore, this judgment is one of the sought-after judgments in advancing a protective approach in insolvency as the creditors are at liberty to recover their debts from both the corporate debtor and the personal guarantor simultaneously. In elucidating the implications of the interim moratorium stated under Section 96 of the Code, the Court has stated that the purpose of the moratorium is to secure creditor protection and surety and hence held the provision to be protective in nature, allowing creditors to recover dues easily. The principles of natural justice may mandate a comprehensive evidentiary hearing or conversely, thus grant minimal opportunity to the victims or affected stakeholders in the present case to provide justifications to the allegations made against said parties. The Court has emphasized that the resolution professional lacks the authority to adjudicate on the matter in the absence of an opportunity for the debtor to furnish an explanation and present evidence substantiating the payment of the debt.

Additionally, the Court clarified that the insolvency professional, after conducting the required processes, must mandatorily submit a report containing recommendations on either rejection or acceptance of the application providing sufficient justifications for the same. The right of the debtor to file a representation is deemed sufficient compliance with the *audi alterum partem* requirements.

CONCLUSION

The Hon'ble Supreme Court in this case upheld the validity of the issued notification by the Ministry, which essentially allowed the creditors to initiate the insolvency proceedings against the personal guarantors under the Insolvency and Bankruptcy Code, 2016. This ruling has contributed to the jurisprudence of Insolvency Laws and provided clarity in respect of Personal Guarantor's Liability which has streamlined the process for ensuring an overall expedited process beneficial for creditors. In conclusion, this landmark decision paved the way for an effective reassessment required on the part of banks and underscores the importance of preparedness in navigating the evolving landscape of personal insolvency under the Insolvency and Bankruptcy Code.

¹³ Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. and Wvg. Mills Ltd., (2002) 5 SCC 54.