National Judgment Writing Competition 2022-23

Moot Preposition

1. Indiva a South Asian Country is known for its scenic natural beauty, diversified cultures, and diversified cuisine. This region is mostly comprised of many communities of tribal populations living there from times immemorial. The Indivian Education System has its own share of issues and challenges which need to be resolved so as to provide better and improved education to children, who are the future of the country.

2. A major shift in the education system can be observed from the pre and post-British rule till today in Indiva. Initially, children were educated in Gurukuls which was later modified and the modern education system was introduced. After Indiva became independent, the constitution committed to six fundamental rights, of which one was the Right to Education. It allowed free education for every child between the age of 6 and 14 years. The education system is mainly divided into pre-primary, primary, elementary and secondary education, which is followed by higher studies. However, there are many drawbacks and loopholes in this system which if curbed can work for the overall development of the country.

3. The appellant (Rastogi Consultancy services Limited), With its Corporate Office at TSC House, Laveline Street, 21 K.S. Marg, Fort, Jumbai- 400001 is a global Information incorporated Circa 1996 is a company that assist in providing infrastructures for conduct of various online examinations for its clients. The appellant entered into a contract with SK classes, an IIT coaching firm incorporated Circa 2002 with its address at 4/B Dirgha Marg road, opposite Shivalik campus Fhane 400701 to assist in providing infrastructure for conduct of their mock test on regular intervals of 3 months.

4. This contract was initiated in the month of February 2018.For the purpose of this contract the appellant entered into a facilities agreement with Sudhanshu Agarwal Education Solutions Private Ltd. (Respondents) incorporated Circa 2005 with its office at. 502, G Square Business Park, Opp. Sanpada Station, Sector 30-A, Vashi, Navi Jumbai- 400703 on 1 December 2019. The Facilities Agreement obligated the Respondents to provide premises with certain specifications and facilities to the appellant for conducting examinations for educational institutions.

Clause 11(b) of the Facilities Agreement had specific indications which stated that both parties have the right to terminate the contract when there is an apparent breach of contract by either party. The clause of the agreement reads as follows:

(b) Termination for Material Breach. Either party may terminate this Agreement immediately by a written notice to the other Party in the event of a material breach which is not cured within thirty days of the receipt of the said notice period."

5. It has been submitted on behalf of the appellant that there were multiple lapses by the Respondent in fulfilling its contractual obligations, which it failed to remedy satisfactorily in a timely manner. The appellant continuously emailed the respondents about the breaches in their contract with regard to the lack of services in the maintenance of the institutions, staff, and other major facilities lapse.
6. The appellant issued a notice of termination dated 10 June 2020 in terms of Clause 11(b) of the Facilities Agreement. The termination notice stated thus:

"Despite continuous reminders on the adverse condition of services provided, there has been little to no response from your side on the fulfillment of adequate duties as part of the contract which includes as follows

- Not maintaining the minimum level of the skillset of personnel on the exam.
- Furnishing and proper designing guidelines are not in accordance to the terms of the written contract.
- rooms furniture and other amenities are not up to the mark.
- Temperature and ventilation in labs, server room, and UPS rooms not being maintained.
- Housekeeping staff on the premises is inadequate.
- Cleanliness and upkeep of the center is inadequate.

7. The respondents were also engaged in the business of automotive parts and were simultaneously involved in many other financial transactions which went into losses due to which the corporate restructuring process has been initiated on 10th march 2020 to review the company and its position instead of leading it up to wind up. These apparent developments were not known to the appellant. The information regarding the same was conveyed to the appellant by the third party involved in a similar position to the appellants.

8. On behalf of the Respondents, it was submitted that certain routine operational requirements were highlighted by the appellant from time to time, which were rectified within a reasonable duration, and they had allegedly invested Rs. 8.35 crores to fulfill their contractual obligations, they argued that all the material faults as pointed out by the appellant had been resolved in the stipulated period of time and the issuance of the termination notice on the ground that no material breaches have occurred, and, in any event, a thirty days' period is to be given to a party to cure the defects before the agreement can be terminated under Clause 11(b) of the Facilities Agreement.

9. The respondents took the case to NCLT by objecting that the entire purpose of the corporate restructuring process is to help in the revival process of the company and according to Section 14 of the IBC which clearly indicates that no suits could proceed against the company going through the process of the corporate restructuring process, denies the appealing right to file for termination of this contract.

10. Proceedings before the NCLT and NCLAT

The NCLT passed an order dated 18 December 2020 granting an ad-interim stay on the termination notice issued by the appellant and directed the appellant to comply with the terms of the Facilities Agreement and respect the clauses of the notice period and other ramifications of the contract. The NCLT observed that prima facie it appeared that the contract was terminated without serving the requisite notice of thirty days which seems to be a requirement in the facilities agreement.

Aggrieved by the order, the appellant preferred an appeal before the NCLAT. The NCLAT by its order dated 24 June 2021 upheld the order of the NCLT observing that it had correctly stayed the operation of the termination notice since the main objective of the IBC is to ensure that the Corporate Debtor remains a going concern.

The NCLAT referred to Section 14 to highlight that a moratorium is imposed to ensure the smooth functioning of the respondent's company to safeguard its status as a going concern.

The appellant indicated that they did not file for termination because the company was going through the restructuring, but due to the concerns that they had lost about 40 lacs due to the breach of contract on part of the respondents which needed to be repaid and since the respondent will not be declared a dead company just because of this single transaction, there is no necessity for the stay of termination proceedings which would benefit the appellant's to resolve their financial losses from the respondents.

Aggrieved by the orders of both NCLT and NCLAT, the appellants have filed an appeal to the Supreme court against the stay order in the termination of the contract.

Two issues are raised in the Supreme Court

1. Whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate upon the contractual dispute between the parties; and
2. Whether in the exercise of such a residuary jurisdiction, it can impose an ad-interim stay on the termination of the Facilities Agreement.

11. Appeal Hearing In The Supreme Court Of Indiva.

Senior Counsel Mr. Vishwas Rana appeared on behalf of the Respondents and contested the following arguments

a. Answering the question put forth on the powers of the NCLT to interfere with the commercial contracts, the tribunal has jurisdiction under Section 60(5)(c) of the IBC to adjudicate issues relating to fact or law in respect of a company undergoing CIRP which states as follows
"(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—
(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

b. The Corporate Debtor was not given a thirty days' notice to cure the breach in terms of Clause 11(b) of the Facilities Agreement. The termination notice refers to a notice dated 3 October 2018, which has not been placed on record. The Corporate Debtor had rectified any minor deficiencies that were brought

to its notice by the appellant promptly. Thus, the allegation that there were material breaches of the agreement by the Corporate Debtor is incorrect;

c. The appellant became aware that CIRP has been initiated against the Corporate Debtor and had immediately terminated the agreement thereafter.
d. The Respondent had two main sources of income – a dealership of Martin a renowned Auto-mobile company and an agreement with the appellant. The dealership was terminated before the initiation of CIRP, thus the only existing source of income as of the date of initiation of CIRP was the Facilities Agreement, for which the Respondent has incurred a substantial capital expenditure of Rs. 8.35 crores. The termination of the agreement would adversely affect the Respondent.
e. It should also be noted that Section 14 of IBC is not exhaustive and the NCLT has the power to interfere I the exception when the party's going concerned or the entire restructuring process is in jeopardy, which is as enunciated in the entire problems of the respondent whose sole income is now questionable.

12. Mr. Randhir Dash appeared as the senior counsel on behalf of the appellants to initiate the contentions as enunciated by the respondents and argued in the Court as follows:

a. The NCLT has misread the provisions of IBC under section 60 which gives them residual powers for interference with the commercial case. A read of the provisions indicates that the NCLT under Section 60 (5) (c) of the IBC cannot invoke its residuary powers where there is a patent lack of jurisdiction. IBC does not permit a statutory override of all contracts entered with the Corporate Debtor. A third party has a contractual right of termination.
b. As indicated numerous times about the deficiency on part of the respondent in providing services of infrastructure as promised by them, there was little to no conclusion of such complaint or any proof of observance on part of the respondents. There is proof of multiple emails that indicate that the termination was not a sudden decision by the appellant as there had been service lacking quite prior to when the termination proceeding had originally started.
c. It is evident that the appellant had time and again informed the respondent that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the respondent. The trajectory of events makes it clear that the alleged breaches noted in the termination

notice were not a smokescreen to terminate the agreement because of the insolvency of the Respondent.

d. The Facilities Agreement is not the sole contract of the Corporate Debtor, termination of which would lead to its corporate death. The Corporate Debtor is in the business of automotive parts, which is evident from the main objects of its Memorandum of Association which itself depicts the fact that this single transaction cannot lead to the corporate death of the respondent in any manner whatsoever.

e. Arguing on the usage of the Moratorium as depicted in section 14 of the IBC which prohibits any transaction material to the process of restructuring to end prematurely. This is counter-indicative of the actual interpretation of the clause which states that:

"Moratorium (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor"

13. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period. Admittedly, the appellant is neither supplying any goods or services to the Respondent in terms of Section 14 (2) nor is it recovering any property that is in possession or occupation of the respondent as the owner or lessor of such property as envisioned under Section 14 (1) (d). It is availing of the services of the respondent and is using the property that has been leased to it by the respondent. Thus, Section 14 is indeed not applicable to the present case.

The case is now waiting for judgment after hearing arguments from both sides.

DISCLAIMER: This problem is a hypothetical Moot Problem. It is only for academic purposes, having no concerns with any of the pending/decided cases before any court, and all details and names of parties are fictitious and have nothing to do with reality, even if found similar it is coincidental. the constitution and other laws of Indiva are pari Materia to the Constitution and other laws of India.