

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



National Sewing Thread Co. Ltd. Vs. Superintending Engineer, TANGEDCO & Anr.

Brief Facts

In the present case, National Sewing Thread Co. Ltd. (Petitioner), a public limited company formed under the MSME Act of 2006, received financial assistance from the Indian Overseas Bank (IOB). Due to significant business losses, the petitioner was unable to service its loan, which was designated as a Non-Performing Asset by IOB. On March 24, 2017, IOB awarded the aforementioned loan to Alchemist Asset Reconstruction Company Ltd. (Financial Creditor).

The Financial Creditor initiated a Corporate Insolvency Resolution Process ('CIRP') against the Petitioner with the National Company Law Tribunal (NCLT) in accordance with Section 7 of the Insolvency and Bankruptcy Code, 2017. An Interim Resolution Professional ('IRP') was appointed, and a Committee of Creditors ('CoC'), with IOB as the sole financial creditor, was formed.

The CoC accepted the Resolution Plan, which was subsequently approved by the NCLT on December 6, 2021. The Financial Creditor received partial compensation under the scheme, as the petitioner's assets were much less valuable than its liabilities. Operational creditors were to be compensated pro rata at 1% of their claim value. The approval of the Resolution Plan allowed the petitioner to get out of debt.

However, on 19.01.2022, Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO') submitted a Demand Notice claiming Rs. 32 Lakhs in unpaid power rates owed by the petitioner from June 2019.

The petitioner replied by citing the Supreme Court's ruling in *Ghanashyam Mishra & Sons (P) Ltd., v. Edelweiss Asset Reconstruction Co. Ltd.* and asserting that all unpaid debts, including those not covered by the Plan, were eliminated after the NCLT approved the Resolution Plan. TANGEDCO nevertheless cut off the petitioner's power supply. The petitioner requested a temporary LT Energy connection on February 24, 2022, but TANGEDCO rejected the request and demanded that the petitioner settle the outstanding electricity bills.

Before the Madras High Court, the petitioner filed a writ of certiorari and mandamus, seeking to overturn TANGEDCO's Demand Notice and further order it to deliver the energy connection.

Decision

The Madras High Court noted that the petitioner could not abuse the Clean Slate Theory by hiding material, particularly since its management which retained authority had an obligation to reveal it.

The Court noted that the petitioner, as an MSME, actively participated in the resolution process and effectively offered a resolution plan that was approved by the NCLT. Furthermore, the same promoters continued to run the company and omitted to reveal the petitioner's duty to TANGEDCO for outstanding electricity bills during the resolution process. As a result, the petitioner cannot dismiss the interests of secret creditors when the suspended Board was given the option to reveal all creditors during the resolution process.

The Court also questioned why the Financial Creditor selected IBC over SARFAESI, especially given it was only assured reimbursement through asset sales. It discovered a suspected collaboration between the petitioner and its sole financial creditors.

It stated that an MSME is currently in a debt trap, with one secured financial creditor and potentially numerous operational creditors, none of whom included TANGEDCO. The IBC seeks to preserve MSMEs as going concerns; however, if the financial creditor had truly wanted to support the goal

without liquidating the petitioner, it could have used the SARFAESI Act, specifically Section 13(4)(b), to take over the petitioner's management, which would have protected both the petitioner and its operational creditors.

The Court found that the petitioner and the Financial Creditor could have reached an arrangement to sell the non-core assets in order to repay the Financial Creditor. Unlike the SARFAESI Act, the IBC was used to challenge the Clean State Theory, which absolved all other creditor claims.

In conclusion, the Madras High Court dismissed the Writ Petition, stating that the petitioner cannot evade its obligation to pay TANGEDCO's outstanding energy dues.

[Link of the Order](#)

<https://ibbi.gov.in/uploads/order/c8987e609ed48e979a660272e44cf573.pdf>



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