

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 3511 of 2020**

**Rita Kapur**

**Appellant**

**Versus**

**Investcare Real Estate LLP and Others**

**Respondents**

**ORDER**

1 The appeal before the National Company Law Appellate Tribunal<sup>1</sup> arose from an order of the National Company Law Tribunal<sup>2</sup> dated 26 November 2019 rejecting the petition filed by the appellant under the Insolvency and Bankruptcy Code 2016<sup>3</sup>. The entire reasoning of the NCLAT is contained in one sentence, which is extracted below:

“From the above provisions of law, it is latently and patently clear that once the ‘Debt’ is converted into “Capital” it cannot be termed as ‘Financial Debt’ and the Appellant cannot be described as ‘Financial Creditor’.”

2 Apart from narrating the facts and the findings of the NCLT, there has been no independent application of mind by the NCLAT to the submissions which were urged on behalf of the appellant.

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1 “NCLAT”

2 “NCLT”

3 “IBC”

- 3 A substantive appeal is provided against the decision of the NCLT under the provisions of Section 61(1) of the IBC. A further appeal to this Court under Section 62(1) is envisaged on a question of law. Hence, it is necessary for the NCLAT when an appeal is filed under Section 61(1) to evaluate the facts and the submissions independently and to record its reasons. The impugned order does not meet that standard.
- 4 Hence, in the absence of any cogent reasoning on the part of the NCLAT, we allow the appeal and set aside the impugned order dated 2 September 2020. Company Appeal (AT) (Insolvency) No 111 of 2020 shall accordingly stand restored to the NCLAT for disposal afresh. We clarify that no opinion is expressed on the rival contentions which are left open to be addressed before the NCLAT on remand.
- 5 The appeal is accordingly disposed of.
- 6 Pending applications, if any, stand disposed of.

.....J.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[Surya Kant]**

New Delhi;  
February 25, 2022  
CKB

ITEM NO.32                      Court 4 (Video Conferencing)                      SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.3511/2020

RITA KAPUR

Appellant(s)

VERSUS

INVESTCARE REAL ESTATE LLP & ORS.

Respondent(s)

(With appln.(s) for IA No.107635/2020-EX-PARTE AD-INTERIM RELIEF)

Date : 25-02-2022 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s)

Mr. Santosh Kumar, AOR

For Respondent(s)

Mr. Abhijeet Chatterjee, Adv.  
Mr. Amit Sinha, Adv.  
Mr. Pawan Sharma, Adv.  
Mr. Santosh Kumar Pandey, AOR

UPON hearing the counsel the Court made the following  
O R D E R

- 1 The appeal is disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)  
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)  
Court Master

(Signed order is placed on the file)