



## **Volume 04, Number 04 (January 29, 2021)**

### **Silvassa Cement Products Pvt. Ltd. Vs. Noor India Buildcon Pvt. Ltd.**

**Company Appeal (AT) (Insolvency) No. 675 of 2020 (NCLAT)**

**Date of Order: 21 January 2021**

**Incompleteness is distinct from non-maintainability, the latter having broader contours. Dismissal of application as being non-maintainable for technical defect is not warranted.**

#### **Facts of the case: -**

Application filed by the Appellant – Operational Creditor under Section 9 of the IBC seeking initiation of CIRP against the Respondent – Corporate Debtor was dismissed by the Adjudicating Authority (NCLT, Ahmedabad Bench) on the issue of non-maintainability which relates to omission in appending of signatures on the application in the prescribed format in Form 5 and the same being notarized. The Appellant argued that the AA violated the mandate of law in not providing opportunity for rectifying the defect.

#### **NCLAT's observations: -**

We take notice of the fact that the Adjudicating Authority has noticed the Board Resolution passed on 28th September 2018 authorizing one Mr. Praveen Kumar B. Mundra, Manager to file legal proceedings including proceedings under I&B Code. Once the filing of the application under Section 9 was backed by the Board Resolution and Adjudicating Authority had noticed that two Advocates viz. Mr. Niraj Shah and Mr. Dhruv K. Dave had signed the petition, albeit without recording date, there was hardly any justification on this score for holding that the application was non-maintainable. Incompleteness is distinct from non-maintainability, the latter having broader contours. If, there was any shortcoming in regard to filing of Vakalatnama or making endorsement in regard to date in the prescribed format, Appellant could be provided an opportunity in terms of mandate of proviso under Section 9(5) of the I&B Code.

Thus, we find that the Adjudicating Authority who was required to pass the order of admission or rejection of the application being satisfied about the completion of the application and proof of debt and default as mandated under Section 9(5) has failed to provide opportunity of rectifying the defect as noticed and allowing the applicant to bring it in conformity with the requirements of law.

The order of AA was set aside. Appeal is disposed off with aforesaid observations.





**Pondicherry Extraction Industries Pvt. Ltd. Vs. Bank of Baroda**  
**Company Appeal (AT) (Insolvency) No. 471 of 2020 (NCLAT)**  
**Date of Order: 20 January 2021**

Adjudicating Authority has no jurisdiction to examine the documents annexed with the application under Section 10 of IBC. Besides, pendency of any action against corporate debtor under SARFAESI Act 2002 or/and under Section 19 of DRT ACT cannot be a ground to reject an application under Section 10 of IBC.

**Facts of the case:-**

The Financial Creditor (FC) i.e Bank of Baroda issued a demand notice under section 13(2) of the SARFAESI Act 2002 against the borrower, the appellant (Guarantor), and another Guarantor. The shareholders of the Corporate Applicant at the Extraordinary General Meeting (EGM) approved initiation of CIRP. The FC argued that the CIRP was initiated to defeat the SARFAESI measure and the application was incomplete. The applicant was aggrieved by the order of NCLT Chennai (AA) which rejected the CIRP.

**NCLAT's Observations: -**

The question for our consideration is that whether Rule 7 of Adjudicating Authority Rules empowers the Adjudicating Authority (AA) to examine the documents filed with the application under section 10 of IBC. In this matter the NCLAT relied on judgement in *Unigreen Global Pvt Ltd.* (supra).

Besides, Section 10 of IBC does not empower the AA to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of AA Rules. Aforesaid Rule 7 provides the procedure for filing the application under Section 10 of IBC. It does not empower the AA to examine the financial statements annexed with the application. Further, as in *Unigreen Global Pvt. Ltd.* (supra) that if any action has been taken by the financial creditor under SARFAESI Act 2002, against the Corporate Debtor or a suit is pending against the corporate debtor under Section 19 of DRT ACT before a Debt Recovery Tribunal or appeal pending before the Debt Recovery AT cannot be a ground to reject an application under Section 10 of I&B Code.

The order of AA was set aside. Appeal disposed off.

