

Case Snippets

Volume 02, Number 07 (December 25, 2019)

M/s. Bannari Amman Spinning Mills Ltd. vs. M/s. My Choice Knit & Apparels Pvt. Ltd (NCLAT) (Sep 3rd 2019)

In this case the Appellant moved an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) for initiation of the ‘Corporate Insolvency Resolution Process’ against respondent/ Corporate Debtor.

The Adjudicating Authority NCLT, taking into consideration the relevant facts, including the fact that the Respondent denied certain parts of the claim, dismissed the application mainly on the ground that the Corporate Debtor is a Micro, Small and Medium Enterprise (MSME)

The NCLAT clarified that as there being a default of more than 1 lakh and there is no pre –existing dispute between the parties, application under Section 9 cannot be rejected only on the ground that the corporate debtor is Micro, Small and Medium Enterprise (MSME).

It was held that there is no such provision under the Code which stipulates that an MSME does not come within the purview of Code or application under Sections 7 or 9 or 10 is not maintainable.



SBF Pharma Vs.Gujarat Liqui Pharmacaps Pvt. Ltd. (NCLAT) (25th November 2019)

In this case the appellant 'Operational Creditor' filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of the 'Corporate Insolvency Resolution Process' against 'Corporate Debtor' for default of Rs.10,47,500/-. In a petition under Section 9, it was shown that a sum of Rs.7,50,000/- was payable towards the principal amount and Rs.2,47,500/- towards interest and Rs.50,000/- towards legal charges, total amounting to Rs.10,47,500/-.

In this case Respondent wanted to settle the matter and issued Demand Draft for Rs.7,50,000/- towards the full and final payment. However, it was not accepted by the Appellant as it was stated by appellant that he has the right to get the interest over and above the principal amount.

The Adjudicating Authority NCLT by impugned order dated 15th July, 2019 rejected the application while taking into consideration the objective of the 'I&B Code' and the fact that efforts were earlier made by the Respondent to settle the issue but the 'Operational Creditor' refused to settle the same.

NCLAT while referring to Section 65 of I&B Code, held that it is clear that if, any person initiates the Insolvency Resolution Process or Liquidation Proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, such application is fit to be rejected.

