

Case Snippets

Volume 03, Number 06 (February 5,2020)

Sirpur Paper Mills Ltd. Vs. I.K. Merchants Pvt. Ltd. (Formerly Known as I.K. Merchants)(10th Jan)(High Court Calcutta)

The petitioner prays for setting aside of an Award dated 7th July, 2008 and contends that the present application under Section 34 of The Arbitration and Conciliation Act, 1996 (the Act) cannot be proceeded since Corporate Insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (the IBC) has been initiated against the petitioner as the Corporate Debtor.

The question which arises therefore is whether the present application under Section 34 of the Act should be kept in abeyance by reason of the provision of the IBC being invoked by operational creditors against the petitioner.

High Court observed that it is evident from the dates that the impugned Award of 7th July, 2008 is a culmination of a dispute between the parties which existed before the initiation of corporate insolvency proceedings against the petitioner. It is also true that once the Award was challenged by the petitioner (Award Debtor) in 2008, the debt became disputed and subject to a decision in the Section 34 proceedings. This court is not inclined to agree with the contentions of the petitioner that the challenge to the Award cannot be considered by reason of the proceedings under the IBC. This is by reason of the fact that the respondent award-holder could not have filed a claim before the NCLT/IRP since the Section 34 proceedings had not been decided in favour of the said respondent in 2017 and hence there was no final or adjudicated claim as on that date.



Further, once the stage under Section 14 of the IBC, namely, moratorium with regard to continuation of pending proceedings against the Corporate Debtor has been declared to be over, no further embargo remains for continuing to hear suits and other proceedings to which the Corporate Debtor (the petitioner in this case) is a party. In any event, Section 14(a) contemplates suits or continuation of pending proceedings “against” the Corporate Debtor and it is only the other sections which create roadblocks for transferring or disposing of any assets of the Corporate Debtor. In this case, the petitioner being the Corporate Debtor/Award Debtor cannot be permitted to take refuge under the provisions of the IBC for relegating the claim of the respondent award-holder to a limbo for an indefinite period of time on the specious plea of the respondent not having gone before the NCLT.

Hon’ble High court held that for the reasons as stated above, this Court finds no basis for relegating the Section 34 to the backburner.

Hence if application under Section 34 of The Arbitration and Conciliation Act, 1996 is processed before commencement of proceedings under IBC then decision given in application under Section 34 of The Arbitration and Conciliation Act, 1996 shall prevail. Proceedings under provisions of IBC will not be of any hindrance.

