

## Case Snippets

### Volume 03, Number 15 (April 8, 2020)

#### Beacon Trusteeship Ltd. Vs. Earthcon Infracon Private Limited & Anr. (CIVIL Appeal No (S).7641/2019) Decided on 18<sup>th</sup> February 2020 (Supreme Court)

The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal.

#### **Section 65 read with Sections 7 & 8 of the Insolvency and Bankruptcy Code, 2016 – Fraudulent or Malicious Initiation of Proceedings**

In the present case Respondent no. 1 and appellant entered into Debenture Trust Deed (DTD). A Petition was filed by the appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016, against Respondent No.1. On 11.06.2019, Demand Notice under Section 8 of the IBC was issued by the Operational Creditor/Respondent No.2 against Respondent No.1. Based on notice issued on 11.06.2019 under Section 8 of the IBC, Respondent No. 2/Operational Creditor filed proceedings including under Section 9 of the Arbitration and Conciliation Act, 1996. This application was admitted by NCLT and then appeal was made to NCLAT. NCLAT, dismissed the appeal, hence present appeal.

The appellant submitted that the three invoices based on which the proceedings have been initiated are vague and prima facie proceedings have been initiated in a collusive manner by Respondent Nos. 1 and 2.





## Decision of the Supreme Court:

Considering the provision of Section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority.

In case, a proper application is filed, aspect whether the proceedings have been initiated in collusive manner will be looked into, in accordance with law and the appropriate orders have to be passed, considering the facts and circumstances of the case. We have made it clear that we have not commented on the merit of the case. We set aside the impugned order passed by the NCLAT and dispose of the appeal in accordance with the aforesaid direction.

