



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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**CROWN TOBACCO COMPANY PVT. LTD. VS. CRALE FOODLINKS PVT. LTD& ORS.
COMPANY APPEAL (AT) (INSOLVENCY) NO. 951 OF 2020
DATE OF NCLAT JUDGMENT: 30th SEPTEMBER 2021**

Facts of the Case: -

This Appeal has been filed by Crown Tobacco Company Pvt. Ltd. (Appellant/Operational Creditor 'OC') being aggrieved and dissatisfied by the order passed by the National Company Law Tribunal 'NCLT', Mumbai Bench (Adjudicating Authority 'AA') whereby the AA dismissed the Company Petition holding that the same is not maintainable before the AA and is liable to be dismissed.

The facts of the case are that the Appellant in possession of a Restaurant, Bar, Bakery and Eating House licenses in a premises in Mumbai. Whereas, Respondent/Corporate Debtor 'CD' had the requisite expertise and skill in the hospitality industry and therefore, approached the Appellant with a proposal to operate a Restaurant and Lounge Bar from the premises and entered into agreement. The Agreement provided for a minimum monthly conducting fee, subject to yearly revisions.

The Appellant subsequently indicated that it did not wish to extend or renew the agreement beyond the expiration, but Respondent no. 2 & 3 (Mrs. Leonys Pereira and Mr. Craig Pereira) before the expiry of the agreement filed a Suit before the Court of Small Causes Bandra, claiming tenancy rights in the business premises. Subsequently the agreement expired and since the Appellant was not interested in continuing with the business arrangement any longer, the Respondent vacated the possession of the business premises. However, the monthly conducting fee and utility bill were not paid.

Meanwhile, in the suit filed by Respondent, seeking tenancy rights in the Business Premises, the Court passed order confirming that the Respondent was in fact running a business under agreement with the Appellant and subsequently the Hon'ble High Court of Bombay status quo to the same.



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The Appellant repeatedly reminded to clear outstanding amount and on receiving no response, sent a demand notice under section 08 of IBC 2016 to which respondent denied liability to pay any outstanding amount. Thereafter, Appellant filed petition under Section 09 of IBC and AA dismissed the petition stating that the same is barred by limitation, however, the petitioners may institute necessary recovery proceedings against the CD for recovery of dues in respect of the claims that are within limitation. Hence, this appeal.

NCLAT's Observations

The Appellate Tribunal admitted the facts stated before it in the appeal and was of the considered view that there was pre-existing dispute between the parties and two cases also pending one before the Hon'ble Bombay High Court and other before the Court of Small Causes Bandra. It also stated that AA rightly concluded that total amount of 14,62,205/- (Municipal Taxes) claimed by the Appellant from 2010 to 2017 and the Petition under Section 9 of the IBC was filed in 2018, so all claims prior to 2015 were time barred and agreed with the findings in the order passed by AA.

Order: -

The Appellate Tribunal agreed with the order passed by the AA while dismissing the Company Petition under Section 9 of the IBC filed by the Appellant and affirmed the same. Further, it found no merit in the instant Appeal and dismissed the same.

Case Review: - Appeal Dismissed