



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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M/S. S.S. ENGINEERS Vs. HINDUSTAN PETROLEUM CORPORATION LTD. & ORS.

CIVIL APPEAL NUMBER 4583 of 2022

DATE OF SUPREME COURT JUDGMENT: JULY 15, 2022

CIRP should not be initiated to penalize solvent companies for non-payment of disputed dues.

Facts of the Case: -

HPCL Biofuels Limited (HBL), a wholly owned subsidiary of Hindustan Petroleum Corporation Limited, had floated tenders in order to enhance the capacity of its Boiling Houses. The Appellant M/s. S.S. Engineers, which is also the Operational Creditor (OC), submitted its offer in pursuance of the tenders. Subsequently, purchase orders were issued by HBL in favour of the Appellant in November, 2012. Later, it transpired that there were a few shortcomings in performance of contract by the Appellant. HBL wrote various letters and emails to the Appellant stating that the Appellant had acted in violation of the General Terms and Conditions of the contract, by raising improper invoices for materials not supplied, not renewing bank guarantees, failing to effect supplies and complete work within the stipulated period. It alleged that the services rendered, and materials supplied by the Appellant were of poor quality as a result of which HBL had to suffer losses and procure materials from other vendors. HBL also contended that there was no payment outstanding from HBL to the Appellant in view of the same. Subsequently, the Appellant issued two demand notices under Section 8 of the IBC, in 2017 and 2018, respectively, to HBL although HBL replied to the demand notices disputing the claim. Thereafter, the Appellant filed an application for initiation of CIRP against HBL, under Section 9 of the IBC.

The NCLT admitted the application for initiation of CIRP filed by the Appellant, rejecting the contention raised by HBL that there were pre-existing disputes between the parties in respect of the claim of the Appellant. Following this, an appeal was preferred to the National Company Law Appellate Tribunal (NCLAT) which was allowed, and the order passed by the NCLT was set aside. Subsequently, the Appellant filed an appeal in the Supreme Court challenging the order passed by the NCLAT.

The question to be adjudicated upon was whether the application of the OC under Section 9 of the IBC, should have been admitted by the NCLT.



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Supreme Court's Observations: -

The Supreme Court referred to the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited* to deal with the issue of existence of dispute. The Court observed that when examining an application under Section 9 of the IBC, the Adjudicating Authority (AA) would have to examine (i) whether there was an Operational Debt exceeding ₹1,00,000 (ii) whether the evidence furnished with the application showed that debt was due and payable and had not till then been paid; and (ii) whether there was existence of any dispute between the parties or the record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such dispute. If any one of the aforesaid conditions was not fulfilled, the application of the OC would have to be rejected. In the present case, the correspondence between the parties showed that HBL was disputing the claims of the Appellant on the contention that the Appellant was backing out from its commitments and not adhering to the timeframes as per the contract, thereby causing losses to HBL. Due to this, HBL was constrained to procure materials from other vendors and had to incur losses. Hence, HBL declined to release money claimed by the Appellant on the ground of poor quality of work and breaches of the terms and conditions of the Purchase Order. The Court observed that the correspondences between the parties evince the existence of real dispute. Going by the test of existence of a dispute, it was clear that HBL had raised a plausible defense. There was no amount outstanding from HBL to the Appellant; rather there was a recovery due from the Appellant. The Apex Court found that there was a pre-existing dispute with regard to the alleged claim of the Appellant against HPCL or its subsidiary HBL. "It was not for the AA (NCLT) to make a detailed examination of the respective contentions and adjudicate the merits of the dispute at this stage," said the Court.

The Court also remarked that the NCLT while exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum and it is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an OC. It was patently clear that an OC can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. However, if the debt is disputed, the application of the OC for initiation of CIRP must be dismissed. The NCLT committed a grave error of law by admitting the application of the OC, despite a pre-existing dispute. The NCLAT rightly allowed the appeal filed on behalf of HBL.

Order: -

The Supreme Court found no ground to interfere with the judgment of the NCLAT impugned in this appeal.

Case Review: - The appeal was dismissed.