



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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Chipsan Aviation Private Limited Vs. Punj Llyod Aviation Limited Pvt. Ltd
Company Appeal (AT) (Insolvency) No.261 of 2022
Date of NCLAT's Judgement: November 10, 2022.

Advance payment made by Operational Creditor fall within the four corners of the Operational Debt

Facts of the Case: -

Chipsan Aviation Private Limited hereinafter referred as ("Appellant") filed appeal after being aggrieved by the order dated 06.01.2022 passed by the AA that rejected the Section 9 application holding that advance payment made by Operational Creditor to the Corporate Debtor does not fall within the four corners of the Operational Debt. The Appellant on 28.03.2016 advanced an amount of Rs.60 lakhs to the Punj Llyod Aviation Limited hereinafter referred as ("Respondent") for aviation related services, which were neither provided nor the advance paid was refunded. After payment, there has been several emails correspondence between the Appellant and the Respondent. Further, the amount of Rs.60 lakhs was continuously shown as advance received from the customers during 2015-16, 2016-17 and 2017-18 in the Financial Statement of the Respondent. On 19.09.2019, the Appellant issued a Demand Notice under Section 8 which was delivered on Respondent on 21.09.2019. The Appellant filed a Section 9 application demanding an amount of Rs.97,40,055/- (Rs.60 lakhs as principal amount and rest interest).

Respondent while refuting the claims of the Appellant pleaded that there was no privity of contract between him and the Appellant and there is no operational debt in existence under Section 5(21) of IBC. It was further pleaded that Application under Section 9 is barred by limitation as the advance payment was made on 28.03.2016 and the Application has been filed after expiry of the three years. The Appellant contended that advance payment was made for the purposes of providing aviation services and the Draft Agreement was forwarded to the Respondent but was never signed by him. The advance amount was towards obtaining goods and services, hence it falls within the Operational Debt. Relying upon *Construction Consortium Ltd. vs. Hitro Energy Solutions Pvt. Ltd.* case, the appellant submitted that the order of the AA is knocked out and the Application under Section 9 was liable to be admitted.

The question raised before the Appellate Tribunal is that whether the advance payment made by Operational Creditor to the Corporate Debtor fall within the four corners of the Operational Debt or not?



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NCLAT's Observations: -

The Appellate Tribunal while adjudicating the appeal held that although there is no contract between the Appellant and the Respondent for providing an aviation service, the payment of Rs.60 lakhs to the Respondent, which is reflected by Bank transaction cannot be denied. The definition of Operational Debt as contained in Section 5(21) defines Operational Debt as a claim in respect of the Provision of Goods and Services. Repeated correspondence between Appellant and Respondent indicates that the communication was in regard to goods and services. Thus, the correspondence as encapsulated shows that an amount of Rs.60 lakhs was advanced for providing goods and services. However, neither goods and services could be provided, nor any Agreement could be entered between the Appellant and the Respondent.

Referring the view of Hon'ble Supreme Court in Construction Consortium Limited case the Appellate Tribunal held that the advance payment of Rs.60 lakhs was clearly an Operational Debt and the AA committed error in rejecting Section 9 Application.

The Appellate Tribunal further stated that although submission regarding objecting Section 9 Application on the ground of limitation have been noticed by the AA but has not been dealt with. Hence, order dated 06.01.2022 rejecting Section 9 Application on the ground that advance payment paid is not an Operational Debt is hereby set aside.

Order:- The Section 9 Application before the AA to be heard and decided afresh after hearing both the parties.

Case Review: - Appeal Allowed.