



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 Shah Paper Mills Limited Vs. M/s Shree Rama Newsprint & Paper Limited
Company Appeal (AT) (Ins.) No. 1088 of 2022
Date of NCLAT's Judgement: December 21, 2022.

Facts of the Case: -

The appeal is filed under Section 61 of the IBC by M/s Shah Paper Mills Limited (hereinafter referred as “Appellant”) against the order dated 20.07.2022 passed by the AA. The AA through the impugned order has dismissed the Section 9 application filed against M/s Shree Rama Newsprint & Paper Limited (hereinafter referred as “Respondent”) for initiation of CIRP.

The Appellant stated that the last invoice seeking payment of Rs. 70,76,730/- was sent to the respondent on 29.07.2016, in reply of which the Respondent clearly admitted the liability to pay only Rs. 37,33,552/-. The Appellant further pointed out that on 27.12.2017 the Respondent was informed that the net receivable amount of Rs.55,23,253/- was due from them. The Appellant also submitted that no disputes had been raised by the Respondent with regard to deficiency in supply of goods. The Appellant issued a demand notice on 28.11.2018, reply of which was submitted by the Respondent on 11.12.2018 i.e. beyond the timeline prescribed under the IBC.

The Respondent submitted that there was change in the management of the company as per Share Purchase Agreement dated 21.05.2015 and all invoices pertaining to the period post-change of the management have been paid in full and that there were no outstanding dues. The Respondent contended that the present matter is not maintainable since the Appellant at no stage has crystallized the actual amount that had become due and that different outstanding amounts were claimed at different points of time. Further, it was contended that amount of Rs. 37,33,552/- was the balance amount in respect of the invoices raised before 25.07.2015, being the date on which the first invoice was raised by the Appellant post change of management of the Respondent company.

The question raised before the NCLAT is that whether the AA in the impugned order has correctly noted that as there was a serious dispute with regard to amount payable between the parties and the parties need to approach the proper forum in this regard.



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NCLAT's Observations: -

The Appellate Tribunal referring to the '*Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*' stated the while admitting or rejecting an application, AA must follow the mandate of Section 9 and in particular the mandate of Section 9(5) of the IBC.

The Tribunal further stated that the AA is not to enter into final adjudication with regard to existence of disputes between the parties regarding the operational debt but what has to be looked into is whether the defense raised by the Respondent is moonshine defense or not. There is no prior dispute regarding quality of goods or material supplied. The only dispute is the difference of views on the actual amount payable.

The Tribunal held that the AA has glossed over the fact that the Respondent has not controverted the outstanding liability of Rs. 37,33,552/-. Furthermore, the statement by the Respondent that no amount is due and payable to the Appellant, was made with the caveat that only invoices, post change in management, have been paid in full. It was further held that the Respondent's reply to demand Notice, that they are not liable for the claims prior to change in management, is not a tenable argument as change in management is an internal matter in which the Appellant had no role to play. The Respondent has tried to take advantage of their own wrong of being lackadaisical in reconciling the accounts in spite of nearly 30 requests made by the Appellant to do so.

Order/Judgement: The Impugned Order dated 20.07.2022 is set aside and the AA is directed to pass an order of admission of Section 9 Application.

Case Review: - Appeal is Allowed. No Costs.