



# 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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**Mr. Keshav Kantamneni v. M/s Kishan Chand Suresh Kumar and Mr. Lingumgunta Venkata Shyam Sundar**

**Company Appeal (AT) (CH) (Ins.) No. 260/2021**

**Date of NCLAT's Judgement: December 12, 2022**

### Facts of the Case: -

Mr. Keshav Kantamneni (hereinafter referred as “Appellant”), being Ex-MD of the M/s Uniply Industries Limited (“CD”), preferred appeal against the order dated 04.10.2021 passed by the AA, wherein the application for initiation of CIRP against CD was admitted by the AA and Moratorium was declared. In the application, M/s Kishan Chand Suresh Kumar’s (hereinafter referred as “Respondent”) submitted that the appellant has defaulted for the principal amount of Rs. 3,25,00,000/- along with the interest of Rs 46,34,301/- upto 20.02.2020.

The Appellant submitted that he was transacting with the Respondent over a long period of time and owing to reasons and factors beyond control, the Appellant was precluded from duly honoring the payment obligation. The appellant contended that the amount claimed to be in default is based on the “Memorandum of Compromise” and therefore the claim shall not be considered as “Operational Debt”. Further, the appellant submitted that the claimed amount is partially due from M/s Uniply Décor Limited, (a Group Company of the CD), who is not a party of the proceedings.

Relying on the judgement in *Amrit Kumar Agrawal v. Tempo Appliances Pvt Ltd*, *Nitin Gupta v. International Land Developers Pvt Ltd.*, the Appellant contended that the default of payment of settlement agreement do not come under the definition of Operational Debt.

The Respondent submitted that in spite of the number of opportunities and time given, the Appellant didn’t pay the outstanding amount. Moreover, it was submitted that the RP had identified the ‘Preference’, ‘Undervalued’ & ‘Extortionate Transactions’ worth Rs 563 Crores done by the CD with KKN Holdings Pvt Ltd (a Group Company of the CD) managed by the Appellant. Further, the Respondent contended that the timelines of the defaults was before the Covid-19 phase and the stand of the Appellant that the he was prevented from making payments cause of Covid-19 pandemic is incorrect.

The Respondent citing the judgements in *Infobay Interactive India Pvt Ltd v. Clear Channel India Pvt Ltd.*, *M/s Sahaj Bharti Travels v. M/s HCL Technologies Ltd*, contested that since the default amount is more than 1 Lakh and is undisputed, the application under Section 9 is fit to be admitted.

The question raised before the NCLAT is that whether the AA in the impugned order has correctly admitted the application filed under Section 9 of the IBC.



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## **NCLAT's Observations: -**

The Appellate Tribunal was of view that although the Appellant contended that the Unpaid Dues under a Settlement Agreement is not an Operational Debt and that violation of 'Memorandum of Compromise' cannot be a basis to initiate CIRP, it is evident from the Memorandum that the 'Outstanding Principal Amount' is still unpaid.

The AA is only to ascertain the existence of a lawful debt payable by the opposite party and whether any default is committed or not. The extent or details of the 'Debt' to be decided are not to be gone into by the AA in dealing with the application preferred by the Operational Creditor.

The Appellant has not produced any document evidencing the 'prevalent of Pre-existing Dispute, either prior to the issuance of Notice under Section 8 or in reply thereof. Further, the Appellant has not repudiated that the sum is 'Due and Payable' to the Respondent.

**Order:** The act of admitting the Section 9 application by the AA as per Section 9(5) of the IBC is free from any legal infirmities.

**Case Review: -** Appeal is Dismissed. No Costs.