



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 SMARTWORKS COWORKING SPACES PRIVATE LTD. Vs. M/S TURBOT HQ INDIA PRIVATE LTD.
Company Appeal (AT) (Insolvency) No. 772 of 2022
Date of NCLAT Judgement: May 23, 2023

Facts of the Case: -

The Present Appeal is filed by M/S Smartworks Coworking Spaces Pvt Ltd. in the capacity of Operational Creditor (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 08.04.2022 passed by AA.

The Appellant is engaged in the business of co-working and/or providing flexi office space. The Appellant entered into a Services Providers Agreement with M/s Turbot HQ India Pvt. Ltd. (hereinafter referred as 'Respondent') for the monthly rent of ₹ 3.52 lacs starting from 01.10.2018 to 30.09.2021. The Agreement had lock-in period of 36 months and did not create any right/title/interest in the property immovable or movable.

The Respondent via email dated 04.06.2019 informed the Appellant to end the contract by 01.09.2019 but the Appellant demanded the unpaid balance amount for the lock-in period. However, the Respondent stopped using the premises by 01.09.2019.

The Appellant issued demand notice to the Respondent under section 8 of IBC, 2016 claiming the Operational debt of ₹ 1.29 Crore but the same was denied by the Respondent. Thereafter, the Appellant filed the application under section 9 of IBC, 2016. The AA held that the amount claimed by the Appellant for the lock-in period is not an operational debt and rejected the section 9 application by its order dated 08.04.2022. Therefore, the Appellant filed the appeal.

The main issues arise before Appellate Tribunal is:

- (i) Whether the claimed amount considered as operational debt?
- (ii) Whether the agreement dated 17.08.2018 is compulsorily registerable instrument under the Registration Act 1908?
- (iii) Whether the agreement dated 17.08.2018 was originally engrossed on an unstamped paper?



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NCLAT Observations:

The Appellate Tribunal placing its reliance on the judgment given in “*Jaipur trade Expocentre Pvt. Ltd. v Metro Jet Airways training Pvt. Ltd.*” held that the debt claimed by the Appellant is clearly a claim within the meaning of IBC and the debt become due because of the Respondent default and the Appellant is fully entitled to initiate CIRP u/s 9 of IBC.

While addressing second issue the Appellant Tribunal stated that the agreement does not purport or operate to create, declare, assign, limit or extinguish any right, title of interest in immovable or movable property, and therefore the agreement was clearly not required to be compulsorily registered under section 17(b) of Registration Act.

The Appellate Tribunal further stated that when the Agreement was admittedly signed and executed between the parties and acted upon, mere fact that it not being engrossed on stamped papers shall have no consequence on the claim of the Appellant.

Order/Judgement: The debt claimed by the Appellant in section 9 application is an Operational Debt and the Agreement dated 17.08.2018 was not compulsorily registrable and agreement having not been executed on stamp paper was inconsequential.

Case Review: Appeal is allowed. AA to pass order of admission of Section 9 Application within a month. However, in the meantime the parties may enter into a settlement, if any.