



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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Laxman Singh (Ex-Director) of Divinesear Logistics Pvt. Ltd. Vs. Kerry Indev Logistics Pvt. Ltd.
Company Appeal (AT)(Insolvency) No. 1002 of 2022
Date of NCLAT Judgement: August 10, 2023

Facts of the Case: -

The Present appeal is filed by the Mr. Laxman Singh, Ex-Director of the Corporate Debtor M/s Divinesear Logistics Pvt. Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 18.02.22 passed by the Adjudicating Authority.

M/s Kerry Indev Logistics Pvt. Ltd. (hereinafter referred as 'Respondent-1') provided freight forwarding services to the CD. The Respondent-1 claimed that there were outstanding dues of ₹9,26,970/- along with an interest amount of ₹1,38,055/- for the services rendered. The Respondent-1 in the capacity of Operational Creditor served the demand notice dated 01.10.19, u/s 8 of the IBC. As no response was received from the CD the Respondent-1 filed Section 9 application for initiating CIRP before the AA, following which the AA admitted the Section 9 application.

The Appellant stated that they only referred clients to Respondent-1 for freight transportation and received commission in return. The Appellant stated that no contractual agreement existed between them, and they couldn't be held responsible for the dues as they weren't the consignee or beneficiary of the services. The Appellant also claimed that there was a pre-existing dispute to the Respondent no.1 and the security cheques were issued to secure commission for customer referrals and asserted that they are the Operational Creditor, not the Respondent-1.

The Respondent-1 contended that they fulfilled export services assigned by the CD and provided relevant Bills of Lading. The Respondent-1 submitted invoices with partial payments from the CD and stated that the cheques issued by the CD as a commission advance for referring a customer were rejected by the bank. Further, the Appellant did not raise any pre-existing dispute either before the issue of demand notice on in the reply thereof.

The Respondent-1 further informed the Tribunal about its intention to withdraw the CIRP and stated that the issue related to excessive fees demanded by the RP (hereinafter referred as Respondent-2) was the reason for delay in filing withdrawn application.

The AA allowed the initiation of CIRP of the CD and dissatisfied with the AA's decision to accept the Section 9 application while disregarding pre-existing dispute, the Appellant filed this appeal.



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NCLT Observations:-

The Appellate Tribunal after examining the submission of both the parties held that the emails shared between both the parties are clear admission of operational debt and the contention of the CD that there is no admitted debt is specious and lacks substance.

The Appellate Tribunal further held that there is nothing on record to suggest that the Appellant raised any pre-existing dispute before receipt of invoices or at any period prior to the issue of demand notice. Even the complaint of delay, purportedly received by the Appellant from its customers, does not seem to have been shared with the Respondent-1 prior to filing Section 9 application.

The Appellate Tribunal acknowledged that aggrieved with the hefty fees of the RP, the Respondent-1 filed a complaint before IBBI and held that the RP is expected to charge his fees in a transparent manner which should be reasonable reflection of the works undertaken rather than maximizing their own personal benefits. The Appellate Tribunal further held that the RP should have facilitate the withdrawal of CIRP application, as desired by the sole CoC member, without unduly prolonging the proceedings. It is commonsensical that for recovery of a claim of about ₹10 lakhs, incurring an expenditure of ₹19 lakhs by way of fee/expenses of the RP is outlandish and that too when there seems to be no possibility of revival of the CD.

Order/Judgement: By Exercising its inherent powers given under Rule 11 of (NCLAT Rules), the Appellate Tribunal orders the closure of CIRP proceedings in the interests of justice. The CD is relieved from the rigors of the CIRP, and the RP is not entitled to demand any fees or expenses beyond the amount of ₹8 lakh that has already been received.

Case Review: Appeal stands disposed of. No costs.