



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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**Beetel Teletech Ltd. Vs Arcelia IT Services Pvt. Ltd.
Company Appeal (AT)(Insolvency) No. 1459 of 2022
Date of NCLAT Judgement: September 11, 2023**

Facts of the Case: -

The present appeal is filled by the M/s Beetel teletech ltd. in the capacity of operational creditor (hereinafter referred as 'Appellant') after being aggrieved by the order dated 17.10.22 passed by the Adjudicating Authority.

The Corporate Debtor- M/s. Arcelia IT Services Pvt. Ltd. (hereinafter referred as Respondent) and the Appellant entered into a Channel Partner Registration Form with agreed-upon terms and conditions. The Respondent issued a purchase order on 25.10.2019, and the Appellant supplied goods and services, raising an invoice amounting to ₹1,32,45,904.84 on 31.12.2019. Despite reminders, the Respondent did not settle the payment in full and made certain payments post this invoice. These amounts were adjusted by the Appellant for the other previous pending invoices. The Appellant then issued a demand notice under Section 8 of the IBC, to which the Respondent did not respond. Subsequently, the Appellant filed a Section 9 application on 15.12.2021 seeking CIRP initiation against the Respondent.

The Appellant's Section 9 application was based on this remaining debt of ₹1,15,11,486, comprising a principal amount of ₹1,01,80,986 and ₹13,30,500 in interest at the agreed 18% annual rate.

The AA dismissed the Section 9 application on two grounds, firstly, the period for which interest has been claimed falls during the relaxation period granted under Section 10A of the code and secondly, the unpaid operational debt did not exceed the minimum threshold of Rs.1 crore as the part payment received from the Respondent were adjusted towards other debts due from him.

The Appellant contended that the AA erred in dismissing the application for not meeting the ₹1 crore thresholds and therefore filed this appeal.



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NCLAT Observations:-

The Appellate Tribunal while placing its reliance on the judgment delivered by the Apex Court in ***Ramesh Kymal vs. Siemens Gamesa*** held that the object and intent of Section 10A of the Code was to protect a CD from the filing of any Insolvency application during the Covid-19 pandemic, it was never intended to cover any default which occurred before section 10A period and continuing thereafter. The Tribunal relied upon ***Narayan Mangal vs. Vatsalya Builders & Developers Pvt. Ltd*** and observed that Section 10A of the Code signifies that no CIRP application can be initiated for any default in payment committed during the Section 10A period. However, if the default is committed prior to the Section 10A period and continues in the Section 10A period, there is no bar on the initiation of CIRP proceedings.

The Appellate Tribunal by interpreting Section 60 of the Indian Contract Act, 1872 observed that when a debtor makes a payment without any appropriation, the creditor has the discretion to wipe out any remaining debts. Further, in a debt where Principal Amount is outstanding and interest has also been accrued, any sum paid by the Debtor is applied by the creditor to the interest first.

Order/Judgement: The Appellate Tribunal held that the AA's findings that the criterion of minimum threshold limit of Rs. 1 crore is not met is not tenable. The Tribunal allowed the appeal and set aside the AA order stating that the finding is unsustainable. Section 9 application filed by the Appellant is revived and remanded back to the AA to be considered again in accordance with law.

Case Review: Appeal is allowed. No costs