



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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(December 11, 2023)

Vinsari Fruitech Ltd. Vs. Effort BPO Private Limited
CP (IB) No. 330/MB/2023
Date of NCLT Judgement: December 05, 2023

Facts of the Case: -

The Present CIRP application is filled before the AA u/s 7 of the IBC by M/s Vinsari Fruitech Ltd. in the capacity of financial creditor (hereinafter referred as 'Applicant') against M/s Effort BPO Pvt. Ltd. (hereinafter referred as 'Respondent').

M/s One Modesto Logistics & Cargo Pvt. Ltd. (hereinafter referred as 'Modesto') availed a loan for an amount of ₹1,10,00,000/- from the Applicant. Modesto being unable to repay the said loan amount approached the Respondent to take over the said loan. As per Deed of Assignment dated 01.04.2021, Modesto assigned all its right, title and interest in the financial facility to the Respondent. The assigned outstanding debt of ₹ 1,10,00,000/- was repayable by the Respondent to the Applicant within a period of 6 months from date execution of the deed (i.e. 1 October 2021). In turn the Respondent would recover the said amount of ₹1,10,00,000/- along with interest at the 24% within a period of 12 months from Modesto.

However, the Respondent failed to repay the outstanding dues on given date. The Applicant issued the demand notice and the Respondent even after admitting its liability vide letter dated 6.10.2021 again failed to repay the loan amount.

The Respondent submitted that the assignment deed dated 01.04.21 is insufficiently stamped and unless the deed is impounded, CIRP can't be initiated.

NCLT Observations: -

The AA while placing its reliance in the judgment pronounced by the apex court in *N.N. Global Mercantile Pvt. Ltd. V Indo Unique Flame Ltd. and Ors.*, observed that an instrument which is not stamped or insufficiently stamped in accordance with the Stamps Act, is not an enforceable instrument. Hence it is a void contract in terms of Contract Act, and cannot be taken as evidence by the Court.



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The AA further held that the liability of the Respondent accrues from the insufficiently stamped Assignment Deed as the assignment which are legally carried out are only included in the definition of financial creditor under the code.

Order/Judgement: The AA asked the affected party to approach the Collector of Stamps to adjudicate the quantum of stamp duty payable on the document and thereafter upon payment of such duty, the party shall be at the liberty to file the appropriate application in terms of legally enforceable assignment deed.

Case Review: Application is dismissed.