



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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**Akbar Travels of India Pvt. Ltd. vs. Ritco Travels & Tours Pvt. Ltd.
Company Appeal (AT) (Insolvency) No. 402 of 2024
NCLAT Judgement dated April 03, 2024**

Facts of the Case: -

The present appeal is filed by the M/s Akbar Travels of India Pvt Ltd. (hereinafter referred as 'Appellant') against M/s Ritco Travels & Tours Pvt Ltd. (hereinafter referred as 'Respondent') after being aggrieved by the impugned order dated 30.11.23 passed by the Adjudicating Authority in which AA dismissed the application filed u/s 9 of the code by the Appellant.

The Respondent, an international travel agent recognized by the International Air Transport Association (IATA), received bulk booking orders for SOTO tickets from M/s Elumatec UK Limited, a global corporate client, in April 2017. The Respondent referred these booking orders to the Appellant, another IATA-recognized travel agency dealing with international organizations. The Appellant processed and issued air tickets for M/s Elumatec UK Limited's passengers from April 4 to April 13, 2017, with payments made through credit cards provided by M/s Elumatec UK Limited. The Appellant invoiced the Respondent for services rendered, totaling ₹1,25,87,533. Concerns were expressed by the Appellant regarding potential Agency Debit Memos (ADMs) from airlines if credit card payments failed, to which the Respondent assured responsibility for any such debits through various emails.

However, the respondent failed to pay various ADMs, leading the Appellant to issue a demand notice dated 22.08.18, under Section 8 of the IBC, seeking payment of ₹ 1,21,52,221. Instead of payment, the Respondent raised allegations against the Appellant and denied liability. Consequently, the Appellant filed a petition under Section 9 of the IBC before the AA in C.P. (IB) No. 26/9/JPR/2019. On 30.11.23, the AA dismissed the petition on the grounds of a pre-existing dispute between the parties, resulting this appeal filed by the Appellant in Appellate Tribunal.

The main issues raised before the Appellate tribunal is: (i) Whether the Appellant and the Respondent are having relationship of CD and Operational Creditor.

(ii) Whether there is any pre-existing dispute between the parties which will disallow initiation of CIRP proceedings.



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NCLAT Observations: -

The Appellate Tribunal observed that the Appellant acted upon the referral instructions of the Respondent and issued air tickets based on credit card details provided by the Respondent. Additionally, the Respondent explicitly undertook responsibility for any debit notes arising from these transactions. The Respondent's plea that no debt existed, and that the Appellant was not an Operational Creditor is untenable, as evidenced by the operational relationship between them.

Upon issuance of the demand notice under Section 8 of the IBC on 22.08.18, the Respondent disputed it in its reply dated 08.09.18 and police complaints were filed, indicating a criminal nature to the dispute. While placing its reliance on the judgment pronounced by the Apex Court in *Mobilox Innovations Private Limited Vs. Kirussa Software Private Limited (2018)*, the NCLAT said that conditions precedent for triggering CIRP under Section 9 of the IBC must be met. From the correspondence, it's evident that a pre-existing dispute exists, which is plausible and not a patently feeble legal argument.

The Appellate tribunal further stated that the Appellant must prove that the debt is due, unpaid, and undisputed. While no contract is on record between the parties but there is evidence of a pre-existing dispute. Thus, the requirements under Section 9, as per judicial pronouncements, are not fulfilled. Therefore, due to the pre-existing dispute, the AA correctly rejected the Section 9 Application under the IBC.

Order/Judgement: The Appellate Tribunal didn't find any error in the impugned order dated 30.11.23 passed by the AA.

Case Review: The Appeal is dismissed without costs.