



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Number 232

(July 14, 2025)

Innovators Cleantech Pvt. Ltd. vs. Pasari Multi Projects Pvt. Ltd.
Company Appeal (AT) (Insolvency) No. 115 of 2024
Date of NCLAT Order: 07th July 2025

Facts of the Case: -

The present appeal, has been filed by Innovators Cleantech Private Limited in the capacity of Operational Creditor (hereinafter referred as 'Appellant') u/s 61 of the IBC 2016, assailing the impugned order dated 28.08.23 passed by the Adjudicating Authority/AA. The application u/s 9 of the IBC was filed against the Corporate Debtor Pasari Multi Projects Pvt. Ltd. (hereinafter referred as 'Respondent') by the Appellant, who had been engaged to provide design built services for the development of a commercial-cum-hotel project named "Biowonder." A Letter of Intent (LoI) dated 09.07.15 was issued by the CD for a total contract value of ₹10.68 crore.

Pursuant to this, the Appellant commenced the project work and raised Running Account Bills (RABs) from RAB-01 to RAB-18, for which a payment of ₹5.51 crore was made by the CD. However, the Appellant subsequently raised RAB-19 for ₹4.91 crore, which remained unpaid despite reminders. Accordingly, the Appellant issued a demand notice dated 12.02.19 for ₹4.91 crore, but later withdrew it due to a clerical error in the computation of dues, particularly an omission of payment already received.

In the meantime, the CD terminated the contract on 14.02.19 and filed Civil Suit on 16.04.19. Thereafter, a fresh demand notice u/s 8 of the IBC was issued by the Appellant on 25.04.19 for a reduced amount of ₹4.75 crore after adjusting the earlier payment. The CD through a reply dated 03.05.19, disputed the revised claim and highlighted the existence of disputes. Consequently, the Appellant filed an application u/s 9 of the IBC on 20.07.19 before the AA, which was dismissed on the ground of pre-existing disputes between the parties. Aggrieved by this dismissal, the Appellant preferred the present appeal before the Appellate tribunal challenging the correctness of the findings of the AA.

The main issue raised before the Appellate Tribunal was:

- (i) Whether there was any genuine pre-existing dispute surrounding the debt claimed by the Appellant to be due and payable to them by the CD.



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NCLAT's Observations:

The NCLAT examined whether there was a genuine pre-existing dispute between the Appellant and the Respondent/CD. It noted that the first demand notice dated 12.02.19 was admittedly withdrawn due to typographical errors, and a fresh demand notice was issued on 25.04.19. The second notice contained substantial changes in particulars such as amount claimed, date of default, and last payment received which demonstrated that it was a novated notice, not a continuation of the first. Thus, the AA correctly held that the civil suit filed on 16.04.19 preceded the second demand notice and constituted a pre-existing dispute.

The Appellate Tribunal also observed that the contract was terminated by the CD on 14.02.2019, which predated second demand notice and for that reason even predated receipt of the first demand notice by the CD. Additionally, several emails exchanged between the parties from 2017 onwards highlighting issues relating to quality, quantity, delay in work, introduction of new commercial and financial terms, inflated billing, and abandonment of work. These communications established that disputes were already in existence before the issuance of the second demand notice.

The Appellate Tribunal emphasized that u/s 9 of the IBC, even a plausible contention of a pre-existing dispute is sufficient ground to reject an application, and the AA is not required to conduct a detailed investigation. It held that the present dispute was not only plausible but well-documented, and that the application was rightly dismissed. The Appellate Tribunal found no merit in the appellant's claim that the order was contrary to the Supreme Court's ruling in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*

Order/Judgement: The Appellate Tribunal upheld the AA's rejection of the Section 9 application, holding that the revised demand notice dated 25.04.19 was a fresh notice, not a continuation of the earlier one. It found that the Civil Suit filed on 16.04.2019, contract termination on 14.02.2019, and prior email correspondence collectively established the existence of a pre-existing dispute. The Tribunal also noted that the Appellant remains free to seek other legal remedies.

Case Review: Appeal Dismissed. No order as to costs.