

**Learning Curve-1004**

November 02, 2023

**Application u/s 9 is not maintainable if the OC returned the principal amount paid by the CD during the pendency of CIRP application.**

CASE TITLE	Shah Paper Mills Ltd V/s Shree Rama Newsprint & Papers Ltd.
CASE CITATION	IA No. 123 of 2023 in CP (IB) No. 251 of 2019
DATE OF ORDER	October 18, 2023
COURT/ TRIBUNAL	NCLT, Ahmedabad

**BRIEF FACTS:**

AA rejected the Section 9 application on the ground that there was a serious dispute about the actual amount payable by the Applicant to the Respondent. The Respondent then filed an appeal with the NCLAT. NCLAT accepted the appeal and asked the NCLT to reconsider its decision within one month. The Applicant tried to pay the entire amount of debt to the Respondent by way of a DD, however, the Respondent refused the DD and returned it to the applicant. The applicant filed an application before the AA to reject the said application filed u/s 9 of the IBC by the Respondent for initiation of CIRP.

**DECISION:**

The Hon'ble NCLT, Ahmedabad, held that,

*"It is noted that the Corporate Debtor made an attempt to pay the principal amount twice – once by sending demand draft and then by transferring the amount through RTGS but that was returned by the Operational Creditor. The Operational Creditor wants to pursue application u/s 9 only for payment of interest also on the basis of invoices. By considering the subsequent events and decisions relied upon by the Corporate Debtor we are of the considered opinion that the Operational Creditor's intent of filing section 9 application is not at all resolution of Corporate Debtor but the recovery of its dues. It is also noteworthy that in the process of resolution, the priority of Operational Creditors are much below the Financial Creditors. **The provisions of the Code are essentially intended to bring the Corporate Debtor to its feet and are not for money recovery proceedings...***

*we are of the view that section 9 Petition in C.P. No.251 of 2019 does not deserve to be admitted therefore, in view of the above observations, I.A. No. 123 of 2023 is allowed and consequently, C.P. No. 251 of 2019 stands rejected."*