

**CIRP cannot be initiated on sham transaction entered between related parties: NCLAT New Delhi**

<b>CASE TITLE</b>	Zoom Communications Pvt. Ltd. vs. M/s. Par Excellence Real Estate Pvt. Ltd. <sup>1</sup>
<b>CASE CITATION</b>	Company Appeal (AT) (Ins.) No. 619 of 2022
<b>DATE OF ORDER</b>	27.07.2022
<b>COURT/ TRIBUNAL</b>	NCLAT, New Delhi
<b>SECTION/ REGULATION REFERRED</b>	Section 9 & 65(1) of the Insolvency & Bankruptcy Code, 2016

**Brief of the case:**

In the pertinent appeal, a loan of Rs.7 Crores was obtained from India Bulls in favour of the Corporate Debtor. The said loan was applied by the CD and co-applicant Mr. Gulshan Jhurani, the Director of the Operational Creditor. An application was filed under section 9 of the Code for seeking initiation of CIRP against CD over a debt of Rs.57,25,000/- which was process fee for procuring the loan for the Corporate Debtor.

The Adjudicating Authority dismissed the petition and observed that the Operational Creditor and the Corporate Debtor were having common director, Mr. Gulshan Kumar Jhurani. Therefore, upon piercing of corporate veil the Adjudicating Authority held that the Parties were related parties and the transaction was a sham transaction, which is not permissible under the Code. Hence, an appeal was preferred before the NCLAT against the order dated 17.05.2022.

**Decision:**

Hon'ble NCLAT, Delhi Bench affirmed the order of Adjudicating Authority with the following observations –

*“...we are of the considered view that the aforesaid transaction, which had taken place between the two related Companies in the year 2015 is sham and the CIR Process cannot be initiated on the basis of such a sham transaction...*

*.... Since, the said transaction has turned out to be a sham transaction, we are of the considered view that both the parties are in collusion and the present Application has not been filed for the resolution of Insolvency rather, the parties have attempted to kickstart the CIR Process with a malicious intent for a purpose other than the resolution of insolvency of the Corporate Debtor, which is not permissible under the IBC 2016..”*

**QR CODE FOR FULL ORDER/JUDGEMENT:**



<sup>1</sup> [https://www.livelaw.in/pdf\\_upload/zoom-communications-428933.pdf](https://www.livelaw.in/pdf_upload/zoom-communications-428933.pdf)