

INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-826

August 26, 2022

Pre-existing dispute cannot be the ground of rejecting section 9 application, where corporate debtor failed to file appeal against the decree of commercial court within the prescribed time limit.

CASE TITLE	Jangsher Singh Choudhary vs. Ram Kripal Singh Construction Pvt. Ltd.. ¹
CASE CITATION	Company Appeal (AT) (Ins) No. 739 of 2021
DATE OF ORDER	08.08.2022
COURT/ TRIBUNAL	NCLAT, New Delhi
SECTION/ REGULATION REFERRED	Section 9(5)(d) & 61 of the Insolvency and Bankruptcy, 2016
CASE LAW REFERRED	Mobilox Innovations Pvt Ltd v/s. Kirusa Software Pvt. Ltd. K Kishan v/s. Vijay Nirman Company Pvt Ltd. Ahluwalia Contracts (India) Ltd. v/s. Raheja Developers Ltd. Innoventive Industries Ltd. v/s. ICICI Bank and anr.

Brief of the case:

The present appeal has been preferred against the order of NCLT, Kolkata wherein NCLT dismissed the section 9 application primarily on the ground that there was a pre-existing dispute.

Sh. Jangsher Singh Choudhary, proprietor of M/s Capital Fire Engineering Co, the Operational Creditor filed section 9 application as the corporate debtor committed default in paying operational debt of Rs. 1,38,63,233.65 against the Corporate Debtor i.e. M/s Ram Kripal Singh Construction Private Limited. In 2014, a suit for recovery was filed by the Operational Creditor as the Corporate Debtor did not pay the debt and the learned judge decreed the suit. On non-payment a notice under section 8 IBC was issued to the CD. Later an application was filed under section 9 of IBC for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor which was rejected by NCLT, Kolkata Bench on the grounds that there was a pre-existing dispute between the parties. Hence, the present appeal was preferred before the NCLAT, New Delhi.

Decision:

Hon'ble NCLAT allowed the appeal and held that,

"11..... Meaning thereby that on the date of filing of application under Section 9 of the IBC or till before 19.08.2019, there was nothing on record to show as to whether the judgment and decree was assailed before the Appellate Court or not. In such situation, it can be inferred that the Appellant was under an impression that the said judgment and decree has attained its finality. If there was any dispute in respect of judgment and decree obviously the Respondent would have immediately filed appeal against the judgment and decree which was not done and it was done after about expiry of more than 4(four) months from the date of filing of application under Section 9 of the IBC. In such situation the 'Adjudicating Authority' was required to consider that before the Tribunal, there was no pre-existing dispute.

12. In the facts and circumstances of the present case, it is evident that on the date of filing of the application under section 9 of the IBC, there was no dispute nor at the stage of notice under Section 8 of the IBC any dispute was raised. In such circumstances, we are of the considered opinion that the Adjudicating Authority has committed error in outrightly rejecting the application under Section 9 of the IBC."



QR CODE FOR FULL ORDER/JUDGEMENT

¹ <https://ibbi.gov.in/uploads/order/fa4bd59f626841f60a1f76b59932a5e4.pdf>