

## Learning Curve-768

May 25 2022

### **CIRP cannot be initiated over defaults relating to non-payment of TDS: NCLAT, New Delhi.**

|                                     |  |
|-------------------------------------|--|
| <b>CASE TITLE</b>                   | Amitabh Roy v Master Development Management (India) Pvt. Ltd. <sup>1</sup> |
| <b>CASE CITATION</b>                | Company Appeal (AT) (Insolvency) No. 274 of 2022                           |
| <b>DATE OF ORDER</b>                | 18.05.2022   |
| <b>COURT/ TRIBUNAL</b>              | NCLAT, New Delhi   |
| <b>SECTION/ REGULATION REFERRED</b> | Section 9 of IBC   |

#### **Brief of the case:**

In 2018, the Operational Creditor had filed a petition under Section 9 of the IBC before NCLT, seeking initiation of CIRP against the Corporate Debtor over a default of Rs. 9,48,997/-. Parties entered into a Settlement Agreement which also mentioned that the claim is inclusive of Tax Deduction at Source (TDS) amount. After the settlement amounts were paid by the CD, the Operational Creditor filed an application before the NCLT seeking revival of the application stating that the claims of the Operational Debtor have been paid as per settlement terms, however, the TDS amount of Rs.66,884/- and Rs.1,10,820/- were not be paid to the Income Tax authorities.

#### **Decision:**

Hon'ble NCLAT, New Delhi set aside the order of NCLT and held that,

*“9. We are satisfied that in non-payment of the TDS amount by the Corporate Debtor there was no occasion for admitting Section 9 Application by the Adjudicating Authority. The Adjudicating Authority committed serious error in admitting Section 9 Application on the aforesaid submission of the Operational Creditor that non-payment of the TDS amounts is default. The consequences of non-payment of TDS are provided under Income Tax Act, 1961 and income tax authorities have ample powers to take appropriate action.*

*...Present is also a case where the Operational Creditor has misused the process of I&B Code in filing application for revival of Section 9 Application for non-payment of two TDS amounts. The process of I&B Code cannot be utilized for the above purpose, whereas present is not a case that Corporate Debtor has not paid any amount due to the Operational Creditor. We, are satisfied that Operational Creditor has misused the process of I&B Code. We, thus, allow this Appeal with a cost of Rs.1 Lakh (Rupees One Lakh only) on the Operational Creditor i.e. Respondent which shall be paid within a period of one month to the Corporate Debtor.”*

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



<sup>1</sup> [https://www.livelaw.in/pdf\\_upload/nclat-tds-418804.pdf](https://www.livelaw.in/pdf_upload/nclat-tds-418804.pdf)