

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-773

June 01 2022

**IBC is not intended to be a substitute to a recovery forum and also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked.**

<b>CASE TITLE</b>	Subhash Chandra Goyal Sole v. K B Ispat Private Ltd. <sup>1</sup>
<b>CASE CITATION</b>	Company Appeal (AT) (Ins) No. 166 of 2022
<b>DATE OF ORDER</b>	30.05.2022
<b>COURT/ TRIBUNAL</b>	NCLAT, New Delhi
<b>SECTION/ REGULATION REFERRED</b>	Section 3,(10) (11) & (12); Sec 5(20) &(21), Section 8 & 9 of IBC
<b>CASE LAWS REFERRED</b>	<ul style="list-style-type: none"><li>• Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd</li><li>• Transmission Corporation of Andhra Pradesh limited Vs. Equipment Conductors and Cables Limited</li></ul>

## **Brief of the case:**

This appeal was filed by the Appellant- Subhash Chandra Goyal, sole proprietor of Goyal Enterprises under section 61 of IBC against the impugned order passed by NCLT, Ahmedabad Bench.

CD had approached the Appellant for providing supplies of Sponge Iron etc. goods to the CD which will be used by the CD as raw materials / process materials for its plant. Appellant stated that there is a default in the payment and it is an unpaid operational debt and hence it is just and equitable that CIRP be initiated against the CD.

## **Decision:**

Hon'ble NCLAT dismissed the appeal and held that,

*“Application has been filed with the sole motive of chasing for payments. Now Hon'ble Supreme Court has already settled the matter that the provisions of the Code is not intended to be a substitute to be a recovery forum. IBC is not intended to be a substitute to a recovery forum and also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked. The Code cannot be used whenever there is existence of real dispute and also whenever the intention is to use the Code as a means for chasing of payment or building pressure for releasing the payments.*

*In view of the above stated position fact and law, we are unable to disagree with the Adjudicating Authority and uphold the view of the Adjudicating Authority. The Appeal is dismissed.”*



QR CODE FOR FULL ORDER/JUDGEMENT:

<sup>1</sup>[https://efiling.nclat.gov.in/nclat/order\\_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDUtMzAvY291cnRzLzlvZGFpbHkvMTY1MzIxMjE0ODE0MTU4NjUyMDYyOTRiMjU0ZWRIb2MucGRm](https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDUtMzAvY291cnRzLzlvZGFpbHkvMTY1MzIxMjE0ODE0MTU4NjUyMDYyOTRiMjU0ZWRIb2MucGRm)