

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-819

August 12, 2022

**Any Application to commence CIRP can be denied when the Creditor is using Insolvency process as an inappropriate substitute for Debt Recovery Procedures.**

<b>CASE TITLE</b>	M/s Agarwal Veneers v Fundtonic Service Pvt. Ltd. <sup>1</sup>
<b>CASE CITATION</b>	Company Appeal (AT) (Ins) No. 968 of 2020
<b>DATE OF ORDER</b>	05.08.2022
<b>COURT/ TRIBUNAL</b>	NCLAT, New Delhi
<b>PROVISIONS REFERRED</b>	Section 8, 9, 20 IBC
<b>CASE LAW REFERRED</b>	• Vidarbha Industries Power Ltd. vs. Axis Bank Ltd

## **Brief of the case:**

M/s Agarwal Veneers (Appellant) had filed a petition under Section 9 of IBC for initiation of CIRP against Fundtonic Service Pvt. Ltd. (Respondent). AA rejected the application stating that the Respondent is a going concern and at present giving employment to 20 employees. Hence, it would defeat the very purpose of the IBC, if a going concern is deemed insolvent. The Appellant contended that the MSME status of the Respondent could not have been a ground for dismissal of the petition, as Section 20 of the IBC clarifies that the objective of the IBC is not to put the Operational Creditor through rigours of the CIRP, but to maximize the value of assets of such persons, to promote entrepreneurship and balance the interest of all stakeholders.

## **Decision:**

Hon'ble NCLAT dismissed the appeal and held that,

*“16. The Preamble of IBC is carefully worded to describe the spirit and objective of the Code to be ‘Reorganisation’ and ‘Insolvency Resolution’, specifically omitting the word ‘Recovery’. The Parliament has made a conscious effort to ensure that there is a significant difference between ‘Resolution’ and ‘Recovery’. The Hon’ble Supreme Court has time and again observed that the fundamental intent of IBC is ‘maximising the value of assets’ in the process of ‘Resolution’...”*

*Any Application to commence CIRP can be denied when the Creditor is using Insolvency as an inappropriate substitute for Debt Recovery Procedures. If IBC is purely used for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent entity and is a going concern, the question of ‘Reorganising’ or ‘Resolution of the Company’ does not arise..”*

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



<sup>1</sup>[https://efiling.nclat.gov.in/nclat/order\\_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDgtMDUvY291cnRzLzZmZGFpbHkvMTY1OTY5NDU5MzY1MTIyMjE5NzYyZW5lZTExZjhmMDkucGRm](https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDgtMDUvY291cnRzLzZmZGFpbHkvMTY1OTY5NDU5MzY1MTIyMjE5NzYyZW5lZTExZjhmMDkucGRm)