

INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-820

August 16, 2022

A Banker's certificate is not mandatorily required as documentary evidence of default, to trigger CIRP under Section 9 of the Code.

CASE TITLE	M/s Quippo Infrastructure Limited v. M.R. Nirman Private Limited ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1516 of 2019
DATE OF ORDER	05.08.2022
COURT/ TRIBUNAL	NCLAT, New Delhi
PROVISIONS REFERRED	Section 8 and 9 of IBC
CASE LAW REFERRED	Macquarie Bank Limited v. Shilpi Cable Technologies Ltd.

Brief of the case:

This appeal was preferred under section 61 of IBC against the impugned order of NCLT, Kolkata whereby the NCLT rejected the application filed under section 9 of IBC on the grounds that proof of delivery of demand notice under section 8 was not found and claim of receipt of money is not evidenced by the documentary evidence of Banker's certificate or details of check or DD etc.

Decision:

Relying on the Supreme Court Judgement wherein Hon'ble Apex Court observed that clear evidence of default cannot only be in the shape of certificate, Hon'ble NCLAT allowed the appeal and held that,

"..Speed Post receipt and tracking consignment report evidencing that the Demand Notice was indeed duly served the contention of the Learned Sr. Counsel for the Respondent /Corporate Debtor that the Section 8 notice was never delivered upon is untenable, specially keeping in view that the address written is the registered Office address, which is undisputed....Having regard to the fact that the Demand Notice, as mandated under Section 8 of the Code, was duly served upon the Respondent / Corporate Debtor, we are satisfied that the requirement under Section 8 of the code, is complete.

..From the aforesaid ratio, it is clear that a Banker's Certificate is not mandatorily required to trigger CIRP under Section 9 of the Code. It is significant to mention that this Tribunal has not gone into the merits of the matter with respect to 'debt' or 'default', we only addressed to the issue of the service of Demand Notice on the Corporate Debtor and that a Banker's certificate is not essential to trigger CIRP under Section 9 of the Code.."

QR CODE FOR FULL ORDER/JUDGEMENT:



¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDgtMDUvY291cnRzLzZGFpbHkvMTY1OTY5OTI4NTE4ODQ0MTc4MTM2MmVkdMA1NTFmNjMxLnBkZg==