



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

26th October 2022

"Everything you can imagine is real"

➤ **Corporate insolvency: Rethinking irregular transactions**

In a landmark judgment in the matter of Anuj Jain Vs Axis Bank Ltd (February, 26 2020), the Supreme Court upheld the recovery of 758 acres of land valued at over Rs 5,300 crore, which was lost through irregular transactions.

Till June this year, 786 applications have been filed to claw back Rs 2,21,104 crore allegedly lost through irregular transactions by firms undergoing the corporate insolvency resolution process (CIRP). If this value is retrieved fully, several firms would be rescued. If this value was not alienated, many would not have got into CIRP in the first place.

Source: Business Standard

Read Full news at: https://www.business-standard.com/article/opinion/corporate-insolvency-rethinking-irregular-transactions-122102501086_1.html

➤ **Standard Of Pre-Existing Dispute Under IBC Is Not Equivalent To Principle Of 'Preponderance Of Probability': Supreme Court**

The Supreme Court Bench, comprising of Justice K.M. Joseph and Justice Hrishikesh Roy, while adjudicating an appeal filed in Rajratan Babulal Agarwal v Solartex India Pvt. Ltd. & Ors., has held that the standard with reference to which a case of a pre-existing dispute under the IBC must be employed, cannot be equated with the principle of preponderance of probability, which guides a civil court at the stage of finally decreeing a suit.

Background Facts Agreements were entered between Solartex India Pvt. Ltd. ("Respondent No. 1/Operational Creditor") and Honest Derivatives Pvt. Ltd. ("Respondent No. 2/Corporate Debtor") for the purpose of supply of coal, which was to be used in boilers that manufacture starch and allied products.

After sometime, Corporate Debtor had directed the Operational Creditor to discontinue the supply of coal, as the coal did not conform to the terms of the purchase order.

On 03.02.2018, the Operational Creditor issued a demand notice to Corporate Debtor under IBC and raised a claim for Rs. 21,57,700.38/- inclusive of interest.

The Corporate Debtor responded to the Demand Notice and in turn demanded a total amount of Rs.4.44 crores from Operational Creditor, as damages towards the supplied coal not being of the promised quality.

Thereafter, the Corporate Debtor also filed a civil suit against the Operational Creditor claiming damages.

The Operational Creditor had filed a petition under Section 9 of Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor.

The NCLT initiated CIRP against the Corporate Debtor on 28.05.2020 upon the premise that there was no pre-existing dispute. When the ex-Director of Corporate Debtor namely Mr. Rajratan Babulal Agarwal ("Appellant") went in appeal before the NCLAT contending that there was a 'pre-existing dispute', the appeal was dismissed. Thereafter, the Appellant had filed a second appeal before the Supreme Court.

Contentions Of The Parties

The Appellant argued that in a contract of sale of goods, a term may be a condition or a warranty. The Appellant had elected to treat the condition relating to the quality of the goods as a warranty. The Operational Creditor contended that the Appellant had written merely three emails before issuing the Demand Notice and none of those emails raised any dispute. Further, the Corporate Debtor continued to consume the goods supplied even after the alleged deficiency continued to exist.

Issue

Whether the Appellant has raised a dispute which can be described as 'a pre-existing dispute' as understood in *Mobilox Innovations Private Limited v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353?

Decision Of The Bench

The Bench observed that on 30.10.2016 an email was sent to the Operational Creditor by STDPL, which is a sister-concern of the Corporate Debtor, by making express reference to Corporate Debtor. The said email raised issues relating to the quality of the coal and pictures were attached for reference. The Bench opined that the NCLAT had erred in not taking the said email into consideration while determining existence of dispute.

While placing reliance on the *Mobilox* judgment, it was observed that IBC does not enable the Operational Creditor to put the Corporate Debtor into insolvency

resolution process prematurely over small amounts of default. It is for this reason that it is enough that a dispute exists between the parties.

The Bench opined that, "The standard, in other words, with reference to which a case of a pre-existing dispute under the IBC must be employed cannot be equated with even the principle of preponderance of probability which guides a civil court at the stage of finally decreeing a suit.

Once this subtle distinction is not overlooked, we would think that the NCLAT has clearly erred in finding that there was no dispute within the meaning of the IBC."

The Bench further observed that it cannot be oblivious to the limited nature of examination of the case of the Corporate Debtor projecting a preexisting dispute. Overlooking the boundaries of the jurisdiction can cause a serious miscarriage of justice besides frustrating the object of the IBC.

It was held that NCLAT had erred in its finding that there was no preexisting dispute. The appeal was allowed and the NCLAT judgment was set aside. Accordingly, the petition under Section 9 of IBC was rejected.

Source: Live Law

Read Full news at: <https://www.livelaw.in/top-stories/supreme-court-insolvency-and-bankruptcy-code-pre-existing-dispute-corporate-insolvency-resolution-process-cirp-212319>

