

IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



K.K CAPITAL SERVICES LIMITED VS. SRISTI HOSPITALITY PRIVATE LIMITED COMPANY APPEAL (AT) (INS)320 OF 2019

Brief Facts

Appellant K.K. Capital Services Pvt. Ltd. filed an Application u/s 9 of IBC,2016 against the Sristi Hospitality Pvt. Ltd. (Corporate Debtor) before NCLT, Mumbai Bench on 31st January, 2019 where the application for initiation of the corporate insolvency resolution process was rejected on the account of disputed claim.

Corporate Debtor had a running loan account with JM Financial Asset Reconstruction Company Limited (JMFARC) and was in great financial stress and accordingly approached the Appellant and requested to look for any other Bank or NBFCS which can take over its loan account running with JMFARC. An agreement was signed between the Appellant and Corporate Debtor which provided that an amount of Rs. 57.50 Lakhs would be paid by the Corporate Debtor to the Appellant on successful sanction of loan.

The Appellant got the loan approved in favour of the Corporate Debtor by Indiabulls. After successful sanction of the loan, Appellant raised an invoice and demanded its professional fees. Ten post- dated cheques were issued by Corporate Debtor in favour of the Appellant. Out of which 3 cheques were taken back by the Corporate Debtor. Two cheques become stale and five cheques were dishonoured.

The Appellant sent a demand notice under Negotiable Instruments Act, 1881 but no reply was ever received. Then appellant filed a complaint u/s 138 of Negotiable Instruments Act, 1881. Appellant also sent a demand notice u/s 8(1) of IBC,2016. In reply to the notice for the first time a frivolous dispute was raised by the Corporate Debtor. However, no payment was made then the Appellant has filed the Application under Section 9 of I&B Code, before the Adjudicating Authority.



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA (IPA ICAI)**

K.K CAPITAL SERVICES LIMITED VS. SRISTI HOSPITALITY PRIVATE LIMITED COMPANY APPEAL (AT) (INS)320 OF 2019

Decision

NCLAT held that the Adjudicating Authority while examining the Application if found some discrepancies in the documents and the application then instead of rejecting the application, should have sought clarification from the Applicant. Unfortunately, in this case, Ld. The Adjudicating Authority has considered the discrepancies which are not disputed by the Corporate Debtor.

From the record it has been observed that the Corporate Debtor has defaulted to pay more than Rs. 1 lakh and in absence of any pre-existing dispute and the record being completed, we hold that the application u/s 9 of IBC,2016 under Section 9 preferred by the appellant was fit to be admitted.

For the reasons of aforesaid we set aside the impugned judgment dated 31st January,2019 and remit the case to Adjudicating Authority for admitting the application u/s 9 of IBC,2016 after notice to the Corporate Debtor to enable the Corporate Debtor to settle the matter prior to the admission. The Appeal is allowed with aforesaid observations and directions.

Link to the Order

<https://ibbi.gov.in/uploads/order/2020-06-16-101949-y7prn-d3d9446802a44259755d38e6d163e820.pdf>

