

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## Sirpur Paper Mills Limited Vs. I.K. Merchants Pvt. Ltd. (Formerly Known as I.K. Merchants)

### **Brief Facts**

The petitioner, Award-debtor moved present application to High Court seeking to set aside an Award dated 7th July, 2008 passed by a Sole Arbitrator in arbitration proceedings between the respondent (claimant in the arbitration) and the petitioner herein. It was contended by the petitioner that proceeding under Section 34 of The Arbitration and Conciliation Act, 1996, became infructuous by reason of the management of the petitioner company (the Award-debtor) being taken over by a new entity following the approval of a Resolution Plan of the petitioner company by the NCLT under IBC. The petitioner's case is that by reason of the subsequent developments after the impugned Award, the application for setting aside of the Award is not maintainable any more. Therefore the issue under consideration for the High Court is whether the present application under Section 34 of the Act should be kept in abeyance by reason of the provision of the IBC being invoked by operational creditors against the petitioner.

### **Decision**

A decision-making process must be attuned to a dynamic legal landscape shaped by legislative intervention and judicial pronouncements. The most predictable aspect of law is its constant evolution. It would hence be judicial short-sightedness, even stubbornness, to hold on to a view when the law, in the meantime, has transformed into a different avatar. (Para12)

The principle essentially is to guard the court from abuse of process where the same matter in issue, which had been heard and finally decided by a court, is urged again between the same parties. This is unlike the present case as the question of maintainability of the application under Section 34 of the 1996 Act can be considered at any point of time on the legal aspect and particularly on the pronouncement of a decision relevant to the matter. (Para 13)

These facts would show that from the date of the admission of the application of initiation of the CIRP against the petitioner namely 18th September, 2017 until approval of the resolution plan on 16th May, 2018, the respondent, as an Award-holder had sufficient opportunity to approach the NCLT for appropriate relief... The Award-holder hence was under an obligation to take active steps under the IBC instead of waiting for the adjudication of the application under Section 34 of the 1996 Act. (Para 20)

Every litigant has a right to argue that an action commenced in a court of law or a statutory forum is not maintainable by reason of the law existing as on that date. A challenge to maintainability of an action must be considered by the court before the substance of the dispute is adjudicated on merits. A court must also decide whether the argument pertaining to maintainability is such that the entire proceeding is rendered infructuous. **The present proceeding is precisely such a case where deciding on the merits of the application, i.e. whether the Award should be set aside or sustained, would be a complete waste not only of judicial time as well as of the parties since the claim of the Award-holder has been extinguished upon approval of the Resolution Plan under Section 31 of the IBC.** Further adjudication on the legality of the impugned Award cannot lead to its logical conclusion and would hence be irrelevant. The parties would only be compelled to travel the road to further proceedings (appeal, enforcement etc.) without an end-point in the resolution to the dispute or any consequent relief to either of the parties. This surely cannot be the objective of any proceedings before any court of law. (Para 24)

### **Link of the Order**

<https://ibbi.gov.in/uploads/order/7175cad7c6b02d83ed1a758b33d04532.pdf>



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