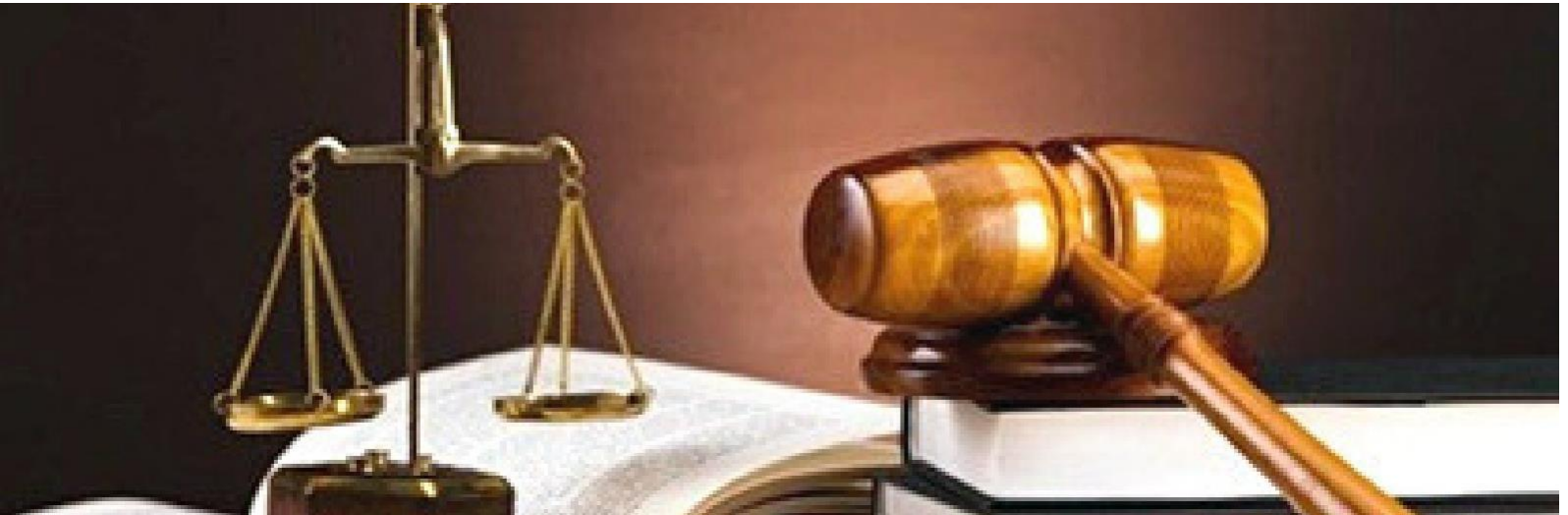# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016

Excel Metal Processors Limited Vs. Benteler Trading International GMBH and Anr

Brief Facts

In this case the respondent company was a German Company. Respondent filed an application under sec 9 of the Insolvency and Bankruptcy Code,2016 against the appellant alleging that the 'Corporate Debtor' committed default in making the payment. The Adjudicating authority (NCLT) admit the application. Appellant has challenged the said order while referring to the agreement reached between the parties and raised the question of jurisdiction of the NCLT, Mumbai Bench.

Decision

- It was held by the NCLAT that since the NCLT has jurisdiction to entertain an application under the IBC, the parties cannot derive the advantage of the terms of the Agreement where parties agreed that any suit or case is maintainable only in Courts outside India.

- The appellant referred to the agreement between the parties stating that any suit or case is maintainable only at the Court of Germany and hence no case can be filed in India.

- The NCLAT reiterated its earlier stance in the case of *Binani Industries Limited v. Bank*

of Baroda & Anr (Company Appeal Insolvency No.82 of 2018) wherein it was held that CIRP is not a suit or litigation or a money claim for any litigation. The object is to get resolution brought about so that the Company does not default on dues.

- According to Section 408 of the Companies Act, 2013 the NCLT has been constituted in different states. The Central Government has notified and vested power on them to deal with matters situated in the territory where registered offices of the companies are situated.

- Hence the appellant shall not derive advantage of the terms of agreement between the parties and the NCLT bench, Mumbai (where the office of the appellant is situated) shall have the jurisdiction to entertain the application under Section 9 of the Code.

Link of the Order

https://ibbi.gov.in/uploads/order/4384c6a0705053a3e2cf747a60f6c692.pdf

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