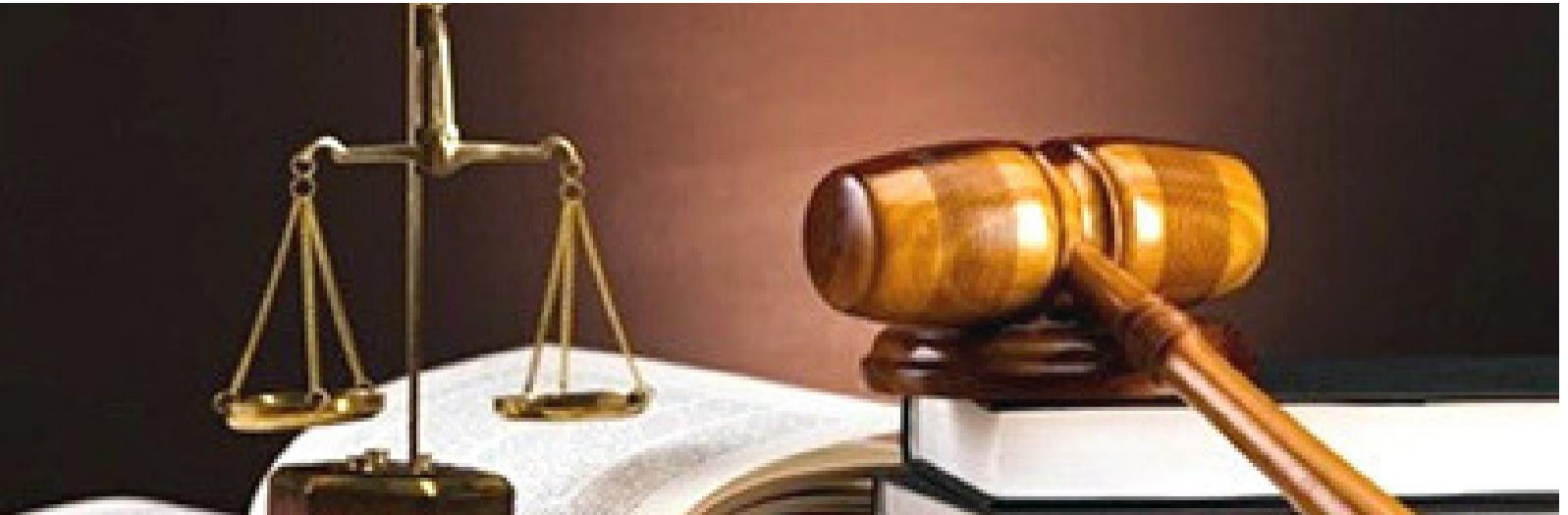


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



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

Brief Facts

The Respondent, here an OC of CD filed application under Section 9 of the Code against CD alleging that the 'CD' committed default in making the payment to an extent of US \$1,258,219.42 inclusive of interest @ 15% per annum. The NCLT, Mumbai Bench admitted the application.

the Appellant, Director has challenged the said order. Learned Counsel appearing on behalf of the Appellant referred to the Agreement reached between the parties and submitted that as per the Agreement and as the Office of the Respondent, any suit or case is maintainable only in the Court at Germany. No case can be filed in any Court in India. Therefore, Counsel has raised the question of jurisdiction of the NCLT, Mumbai Bench in entertaining the application under Section 9 of the Code.

Decision

- a.** It was held that CIRP is not a 'suit' or a 'litigation' or a 'money claim' for any litigation; No one is selling or buying the 'CD' a 'Resolution Plan'; It is not an auction; it is not a recovery, which is an individual effort by the creditor to recover the dues through a process that had debtor and creditor on opposite sides; and it is not liquidation. The object is mere to get resolution brought about, so that the Company do not default on dues. **[Para 3]**
- b.** Pursuant to Section 408 of the Companies Act, 2013, the NCLT has been constituted in different States. As admitted, the Registered Office of the 'CD' was situated in Mumbai, it was held that the NCLT, Mumbai Bench has the jurisdiction to entertain an application under Section 9 of the Code and the Appellant cannot derive advantage of the terms of the Agreement reached between the parties. **[Para 4]**

Link of the Order

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



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