SYNERGY IPE

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Synergy Insolvency Professionals LLP

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Inside this Issue

The Insolvency and Bankruptcy board of India has issued discussion paper deals with the issue of number of assignments handled by Insolvency Professionals (IPs) under the Corporate Insolvency Resolution Process (CIRP) and Liquidation (including Voluntary Liquidation) Process under the Insolvency and Bankruptcy Code, 2016 (the Code). Currently, the Code of Conduct for IPs stipulated vide IP Regulations provide that IP must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments, neither the Code nor the Board has put any restriction on number of assignments to be handled by IP at a given point of time. IBBI observed that, a few IPs are handling too many assignments under the Code, which is detrimental to the institution of IP in the long run. Keeping in mind the provisions of the Companies Act, 2013, the skewed work allocation amongst the IPs and the observations of Hon'ble Supreme Court /Hon'ble Adjudicating Authority, and given the expansive and intense responsibilities of an IP in corporate processes, IBBI has proposed guidelines to IPs advising them to limit the maximum number of assignments handled by them, to

five, at a given point of time, subject to the same being in line with the matrix given below:

Turnover of CD	No of Cases*
<= ₹ 1000 Cr	5
> ₹ 1,000 Cr < = ₹ 5,000 Cr	4
> ₹ 5,000 Cr < = ₹ 10,000 Cr	3
> ₹ 10,000 Cr	2
> ₹ 50,000 Cr	1

*any assignment as IRP, RP or Liquidator (including Voluntary Liquidation) for the given CD

The board has therefore, invited public comments on the above to be submitted electronically by 25th July 2020 at IBBI website.

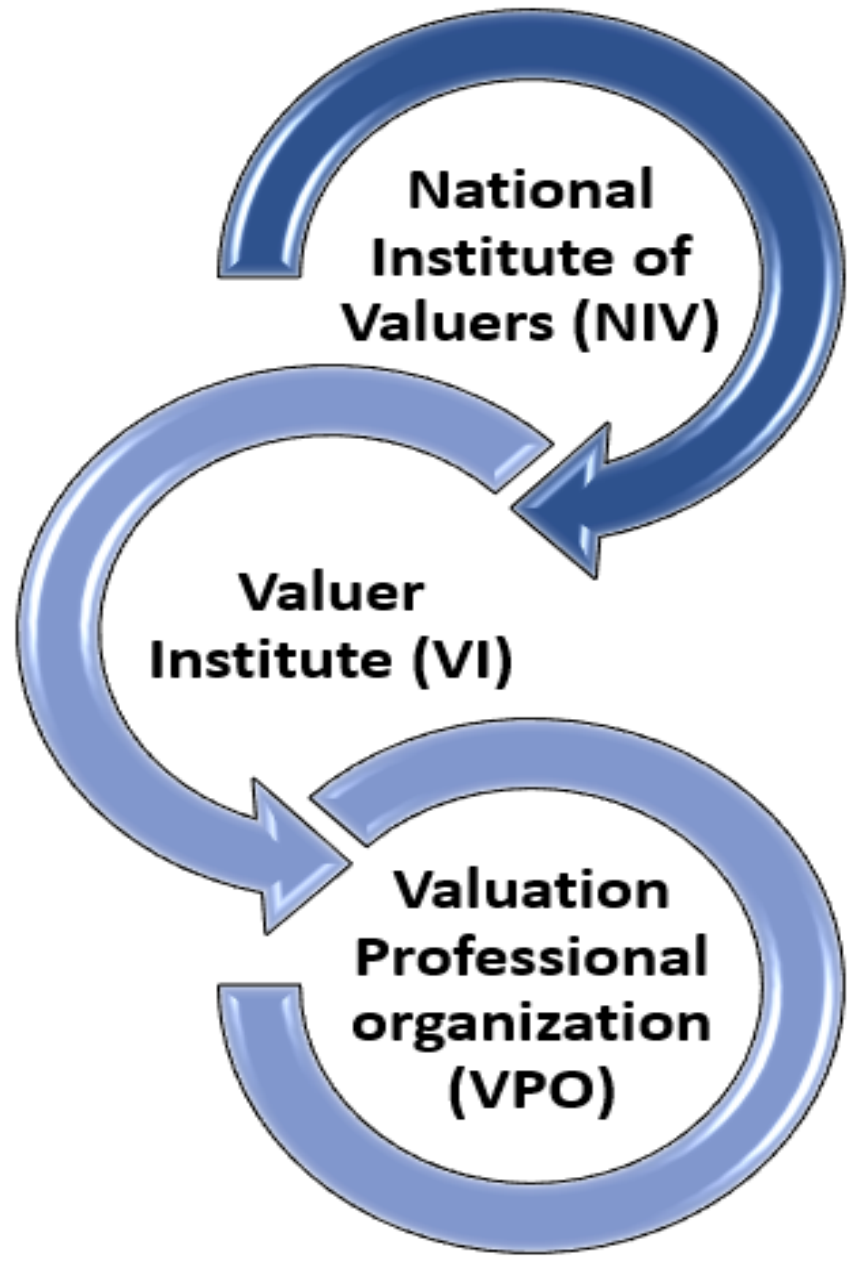
Pursuant to the guidelines issued by IBBI for Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals & Bankruptcy Trustees Recommendation Guidelines, 2020,

the IBBI has issued a final list of IPs to act as Interim Resolution Professionals, Liquidators, Resolution Professionals. Around 978 IPs have applied to form part of the Panel from different zones all across India.

S.N	NCLT Zones	No of IPs
1	New Delhi	209
2	Ahmedabad	63
3	Allahabad	44
4	Amravati	9
5	Bengaluru	31
6	Chandigarh	103
7	Cuttack	28
8	Chennai	98
9	Guwahati	3
10	Hyderabad	92
11	Indore	10
12	Jaipur	30
13	Kochi	19
14	Kolkata	92
15	Mumbai	147
Total		978

Report of the Committee of Experts on Institutional Framework for Regulation and Development of Valuation Professionals. The Committee of Experts to examine the need for an institutional framework for regulation and development of valuation professionals, constituted vide order No.12/9/2019-PI dated 30th August, 2019, presents this report to the Government of India.

Structure under proposed regime



The report is accompanied by a draft of 'Valuers Bill, 2020'. The Committee had extensive consultation - online and in roundtables - with the stakeholders - registered valuers organizations, registered valuers, other valuers and other professionals, professional institutes, trade and industry, and academicians. The committee in its report recommended formation of national institute of Valuers (NIV).

From the Founder's Desk

CA Praveen Agrawal

(Founder Synergy IPE)

At the outset, I extend heartiest greetings to all of you. We have started our wonderful journey last year to service our nation. Synergy insolvency professional IPE is registered as Insolvency Professional Entity (IPE) with Insolvency and Bankruptcy Board of India (IBBI) vide Registration no. IBBI/IPE/0104. The designated partners of IPE are registered Insolvency Professionals (IP) under Insolvency and Bankruptcy Code, 2016 (IBC) having expertise and rich experience to advice on / carry out all aspects of Insolvency Resolution, Restructuring, Bankruptcy & Liquidation. he partners have rich experiences in different industry verticals and have provided services in the areas of Audit, IFRS, Domestic & International Taxation, Company Law, RBI and FEMA matters and representation before various regulatory authorities viz. NCLT, NCLAT, ITAT etc. The partners have also acted as knowledge partners to various organizations in variety of professional matters. The partners are also eminent speakers on diverse professional matters on various public platforms.

We have created a complete eco-system to assist in carrying out the entire Corporate Insolvency Resolution Process and Liquidation process smoothly having identified and empaneled various qualified and experienced Chartered Accountants, Company Secretaries, MBAs, Insolvency Professionals, Industry Experts, Legal experts, IT experts, Advertising Agencies, Valuers etc. The partners are also eminent speakers on diverse professional matters on various public platforms.

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Pending from Praveen sir

Issue of the Month

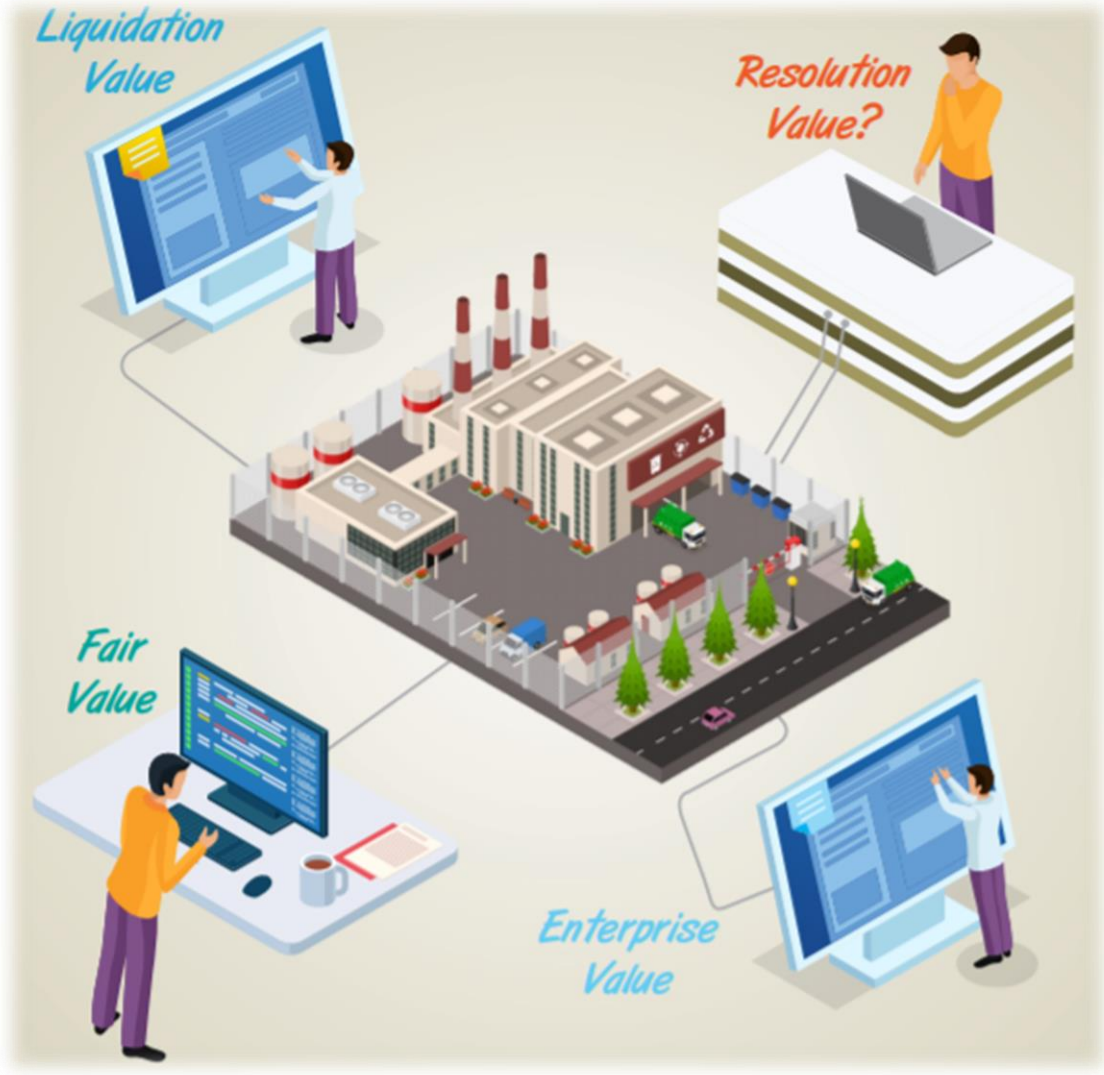
Whether India should introduce Pre-packaged insolvency?

Pre-packaged insolvency is a kind of insolvency resolution procedure, where a restructure plan is agreed in advance before declaring insolvency. In developed countries such as USA, Canada and UK pre-packs are pretty common.

The main benefit of a pre-pack insolvency resolution mechanism is the continuity of the business, the company get protected by the court. This gets rid of debts and contracts, but does not get rid of employees due to the transfer of undertaking. Another big advantage is pre-pack sale avoids the costs to run the company in the hands of Insolvency professional, and the company may not have the requisite funds to run a business and would often have to raise interim finance. It also avoids the Insolvency professional taking on

the risks associated with running a business. The value of the business may also deteriorate during resolution period. Pre-packs avoid lengthy negotiations with creditors enabling expeditious insolvency resolution with minimal involvement of courts and tribunals, benefits always come with some challenges. The downside of pre-pack insolvency resolution is that it can be used for shedding liabilities of the relatives of promoters in priority to other unsecured creditors. The general concern is that the pre-pack insolvency professional, in agreeing to the pre-pack in consultation with the company's management team and its secured creditors, may favours the interests of the managers and secured creditors ahead of those of the unsecured creditors. Also, the speed and secrecy of the transaction often lead to a deal being executed, about which the unsecured creditors know nothing and offers them little or no return.

There may often be a suspicion that the consideration paid for the business may not have been maximized due to the absence of open marketing.



There may often be a suspicion that the consideration paid for the business may not have been maximized due to the absence of open marketing.

Credit may have been incurred inappropriately prior to the pre-pack and this may not be fully investigated.

The IBC so far, has proved to be a beneficial legislation for India as it endeavours to save the life of a company in distress. With its primary focus to ensure revival and continuation of the company by protecting it from its own management and from death by liquidation really distinguish IBC from other recovery legislations such as SARFAESI.

However, COVID-19 have confined millions of people to their homes, shutting down business, ceasing almost all the economic activities. Due to the emerging financial distress

faced by most companies on account of the large-scale economic distress caused by COVID 19, Government has increased the threshold to 1 Crore form earlier 1 Lakh and suspended fresh filings under the Code for a period of six-month, however, its impact on easing out the pressure on industry is yet to be seen. As we are seeing the current economic situation is going beyond control with infections increasing at alarming pace despite rigorous lockdowns to flatten the curve, no major sigh of relief is being seen. Now the major challenge for the government is, for how long would it be able to keep IBC suspended? What should be done for speedy resolution after the suspension period is over, so as to preserve the assets of the corporate debtor?

Considering the current situation and aforesaid pros and cons of Pre-Packed insolvency resolution, for early restructuring of debt, I think Government should device suitable mechanism for Pre-Packed insolvencies in India to give some ray of hope to the moribund corporates.

By CA Karun Nagpal

Partner Synergy Insolvency professional LLP

Latest updates & amendments

IBBI Registered Valuation exam

Syllabus for IBBI Registered Valuation exam has been updated from 16th June. IBBI resumed conduct of exams with limited slots at select 30 locations across India but the entry is strictly subject to follow of social distancing norms and wearing of masks along with a Coronavirus self-declaration form for each candidate who is appearing for the exam.

IBBI Disciplinary matters

In the matter of Vijay Kumar Garg, Insolvency Professional

In this case it was decided that the aforesaid IP, by way of engaging his own affiliate Duff & Phelps India Private Limited, has converted the noble insolvency profession to a business, converted professional client relationship to that of money lending and borrowing, manipulated the market for insolvency

professional services, attempted to siphon off crores of rupees from the ailing CD to its partner in crime, acted under the influence of one creditor, and contravened every provision of the Code, Regulations and the Code of Conduct for ulterior purposes.

- 25% of fees was to be paid back as penalty
- IP was directed to do the pre-registration training and clear Limited Insolvency Exam again
- was restricted from taking any new assignment till satisfaction of directions given

In the matter of Mr. Dhanamjaya Reddy Lebaka, Insolvency Professional

In this case, the continued requirement of being 'fit and proper person' under the provisions of Insolvency & Bankruptcy Code, 2016 has been breached. The IP has not disclosed the fact of pending criminal proceedings against him at the time of applying for registration. Therefore, the registration granted to him under regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 thus cancelled.

In the matter of Mr. Kanwal Chaudhary, Insolvency Professional

In this matter, the Disciplinary Committee observed that the IP has displayed a negligent approach during the conduct of CIRP. He had appointed two unregistered entities as registered valuers of CD. Also the list of creditors presented by him before the committee in meeting do not contain the complete details as per requirement of Regulation 13 of CIRP Regulations. He had also allowed one unauthorized transaction and lastly the IP had in the various communications with the stakeholders, used letterheads indicating his profession as an Advocate but there is no indication of his registration as an Insolvency Professional or his capacity as IRP or RP in the CIRP of CD. In view of the above:-

- his registration as an Insolvency Professional shall be suspended for three months
- Shall not seek or accept any process or assignment or render any services under the Code during the period of suspension

From the Jury

Important ruling by the Supreme Court of India dated 10th June 2020

BIKRAM CHATTERJI AND OTHERS Vs UNION OF INDIA AND OTHERS VARIOUS IAS IN WP (C) 940 OF 2017

Facts of the case

An interim application has been filed by Royal golf Link City Projects Private Limited (the 'company') for modification of an earlier order by which Court directed that a sum of Rs.48.52 crores, which was the principal amount received by the company from the Amrapali Group to be repaid along with 12% interest and the attachment of 30 villas was to continue unless otherwise ordered.

In this regard, an undertaking was also required to be furnished by CFO as well as by all the Directors to deposit the amount as ordered. The Court directed that 25% of the amount be paid in first tranche, 30% in second tranche and the remaining amount in third and final tranche. The interest was to be calculated until the date of the payment. The Company, after construction, was to give 30 villas to the Amrapali Ultra Homes as per the Agreement entered into between them. A sum of Rs.48.52 crores was received as the principal amount by the company.

This application has been filed to modify the order passed by Court because the company though deposited a sum of Rs.48.52 crores, but it had extreme hardship in depositing 12% of interest on the amount.

Contentions of the Applicant:

- It was submitted that due to litigation, the goodwill of the project has been severely affected, and construction work was considerably slowed down due to lack of funds. The vendors have stopped offering credit. The existing buyers were not making payments.
- The average yearly collections had also dropped from Rs.61.86 crores in the year 2018-19 to Rs.17.85 crores in 2019-2020. Despite part injunction lifted by Court, the project could register new sales of only 15 units, and only Rs.1.42 crores could be recovered. The banks had also stopped making further disbursement of the retail loans to individual home buyers. Fourteen buyers had cancelled their units.
- The RERA had ordered a refund of 6 units along with interest upon the complaints filed before it.
- A loan was taken at a very high rate of 21% in order to deposit the amount. It would be difficult to repay the loan in case interest was not waived. Home buyers' interest was at stake as the project had been delayed for more than three years due to the injunction of Court.
- The Court directed various entities to deposit the amount with the Registry and did not direct payment of any interest, but in the case of the applicant, interest had been ordered to be paid.

Decision

The Apex Court held that financial hardship in complying with Court direction of paying interest cannot

override unjust enrichment enjoyed by holding huge money of flat buyers for substantial period.

Thus no merit was found in the application, and the same was dismissed. The Company was directed to deposit interest within six weeks, failing which appropriate action would be taken for violation of undertaking furnished by the CFO and the Directors and for violation of the order passed by Court.

Reasoning given by the Apex Court

- The value of money increased at the hands of the Company and the value of houses and villas which were to be handed over to Ultra Homes, has also been appreciated. Considering over all facts and circumstances of the case, a reasonable interest rate of 12% was ordered.
- As it was the money of home buyers, which was diverted, they must have a refund of their money with a reasonable rate of interest. It was found that the hardships, which are pointed out, are all commercial one and the company is bound to disgorge the advantage it received out of huge money of Rs.48.52 crores, which remained with it for a substantial period; otherwise, it would tantamount to unjust enrichment.
- It cannot be taken as a ground that in the other judgments/ orders, the interest was not imposed on other entities. It had been imposed on the facts and circumstances of the case on the Company. It is open to imposing interest and on other persons/ entities. The question is quite open as interest was not dealt with in the judgments as contended by the Appellant, and only the aspect of findings of Forensic Auditors was dealt with.

Important NCLAT Decision - Dated 15th June 2020

SHRI BIJAY PRATAP SINGH Vs. UNIMAX INTERNATIONAL AND Anr. CA(AT)(Ins)No. 1273 of 2019

Facts of the case

The assesse is a shareholder of the Corporate Debtor. He had filed this appeal against the order of the NCLT against the Operational Creditor and CD. The OC was engaged in supply of aluminum frame work with standard accessories and was supplying goods to the CD for a real estate project being undertaken by him. In this case the issue under consideration was regarding non-payment of certain bills of the OC by the CD. It was argued by the appellant that there was a pre-existing dispute amongst

the parties regarding the release of payment of pending invoices by the CD.

Decision

The NCLAT held that service of demand notice at registered office of the Corporate Debtor is a sufficient compliance as per section 9 even if the same is not received by hand and denial of payment to Operational creditor cannot be accepted as just and proper, once the receipt of 'Goods' has been acknowledged by the CD, merely on the pretext of a dispute without substantiation.

This Tribunal holds that it was Sufficient service; of the Demand Notice. As such, the plea taken on behalf of the Appellant that there was no service affected upon the CD is not acceded to by this Tribunal. The other plea taken that there was no service by hand or electronic mail service to the CD relegates to the background and it pales into insignificance because of the fact that failure/omission to effect service by hand or electronic mail service is not fatal to the instant case. In as much as the 2nd Respondent /CD had committed default as per definition Section 3(12) of the Code which defines **default** and in spite of notice the 2nd Respondent had failed to effect the payments due to 1st Respondent / OC and an amount of Rs. 61,24,637/- was due as on date of filing of application before the Adjudicating Authority (hereinafter referred to as 'AA') coupled with interest @ 24% p.a., this Tribunal without any haziness comes to a consequent conclusion that the view arrived at by the AA that the 2nd Respondent/CD had committed default and ultimately admitting the application filed by the 1st Respondent/OC is free from any legal infirmities. Resultantly, the present Appeal fails and the same is accordingly dismissed but without costs.

Reasoning given by the AT

One of the essential features for consideration of an Application u/s 9 is service of notice. A mere perusal of the paragraph 11 of the Impugned Order passed by the AA patently indicates that a perusal of the pleadings showed that the proper service was effected on the registered office of the 2nd Respondent/ Corporate Debtor. Also, it was observed by AA that there was no change in the address of CD in the MCA Record which also shows the same address. Even the Resolution

passed by CD on 27.03.2019 had shown the same Registered Office address. Therefore, AA had very rightly adverted to Section 27 of the General Clauses Act and Section 20 of the Companies Act, 2013 read with Rule 35 of the Companies (Incorporation) Rules, 2014 in and by which the service is to be effected on the Registered Office address and that process was carried out. Therefore, this Tribunal holds that it was Sufficient service of the Demand Notice The other plea taken that there was no service by hand or electronic mail service to CD relegates to the background and it pales into insignificance because of the fact that failure/omission to effect service by hand or electronic mail service is not fatal to the instant case.

It is not in dispute that the 2nd Respondent / CD had procured the goods from the 1st Respondent / OC on several occasions and that CD had acknowledged the receipt of Goods. Suffice it for this Tribunal to significantly point out that the 1st Respondent / OC had supplied Aluminum / M.S. Shuttering Material to the CD. Section 5(21) defines operational debt, If a Debt is due and payable one to the OC by the Operational Debtor then the said Debtor will squarely come within the purview of the ingredients of the definition of Section 5(21) of the Code. In a given case, if it is exhibited that there is a clear default of minimum of Rs. 1/- Lakh, then the dispute in regard to quantum of the amount claimed cannot be an hindrance in admitting an Application/ Petition filed either u/s 7 or 9.

NCLAT Decision - Dated 12 th June 2020

K.K. CAPITAL SERVICES LIMITED VS. SRISTI HOSPITALITY PRIVATE LIMITED CA(AT)(INS)NO. 320 OF 2019

Facts of the case

The Appellant is in business of Financial Advisor and Legal Consultancy Services. The Siristi Hospitality Pvt. Ltd. (CD) had a running loan account with JMFARC, however it was under great financial stress due to heavy interest being charged by the JMFARC. The CD 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 CD which provided that an amount of Rs. 57.5 Lakhs would be paid by the CD to the

Appellant on successful sanction of loan. The Appellant got the loan approved in favour of the CD by Indiabulls. The CD agreed to terms of loan of Indiabulls and happily accepted the loan which was 10 % cheaper than its running loan account with JMFARC. The Appellant after, successful sanctioned of the loan raised an invoice and demanded its professional fees from the CD, for the same ten post-dated cheques were issued by CD in favour of the Appellant. Out of which 3 cheques were taken back by the CD and against each cheque paid cash Rs. 5 Lakh. Two cheques become stale and 5 cheques were dishonored. The Appellant sent a demand notice under NI Act, but no reply was ever received. Then appellant filed a Complaint u/s 138 of NI Act. Thereafter, the Appellant for operational debt sent a demand notice u/s 8(1) to the CD. In reply to the notice for the first time frivolous dispute was raised by CD. However, no payment was made then the Appellant has filed Application u/s 9.

Decision

The NCLAT decided that an application filed under section 9 of the Code cannot be rejected merely on the basis that the claim of the OC is in dispute with the Corporate Debtor.

We are of the view that AA has erroneously, rejected the Application at the time of admitting the Application the AA has only to see whether there is an Operational Debt exceeding Rs. 1 lakh as defined in Section 4, and whether the documentary evidence furnished with the Application shows that the aforesaid debt is due and payable and has not yet been paid. From the record, as we find that the CD 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 preferred by the appellant was fit to be admitted. Therefore, we set aside the impugned judgment and remit the case the AA for admitting the application u/s 9, after notice to the CD to enable the CD to settle the matter prior to the admission.

Reasoning given by the AT

The AA while examining the application should have sought clarification from the Appellant.

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THANK YOU

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