

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO 3119 OF 2020

COMPACT ENTERPRISES INDIA PRIVATE LIMITED

APPELLANT(S)

VERSUS

JITENDRA IMPEX PRIVATE LIMITED

RESPONDENT(S)

O R D E R

Heard learned counsel for the appellant as also learned senior counsel for the respondent and perused the appeal papers.

The appellant is before this Court assailing the judgment dated 10.08.2020 passed by the National Company Law Appellate Tribunal, New Delhi (NCLAT). The respondent herein had filed an application under Section 9 of the Insolvency and Bankruptcy Code (IBC) since according to the respondent, the appellant was due to pay the amount as claimed and stated in the application. The appellant herein were termed as the Corporate debtors.

The National Company Law Tribunal (NCLT) through its order dated 23.08.2019, after taking note of the rival contentions, had arrived at the conclusion that the claim as made was not justified and the proceedings under IBC was not sustainable. The respondent herein claiming to be aggrieved by the said order was before the NCLAT. It is in that circumstance, the NCLAT had passed the judgment dated 10.08.2020 which is impugned herein.

Having heard learned counsel for the appellant as also learned senior counsel for the respondent at some length, we notice that the NCLAT having referred to the nature of the claim made has taken note that the amount as claimed by the appellant herein was to the extent of Rs.1,81,45,943/-. The appellant herein however contended that the claim as made is not sustainable but according to the statement of accounts maintained by the appellant herein only a sum of Rs.22,56,833/- was due to be paid. In that context, the NCLAT having taken note that in any event since the appellant herein had stated that they are due in a sum of Rs. 22,56,833/- which amounts to admission and such amount in any event being more than Rs. 1,00,000/- had pressed into service the decision of this Court in the case of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software pvt. Ltd. Reported in (2018) 1 SCC 353* and in that context was of the opinion that the application filed before the NCLT under Section 9 of IBC was sustainable and has accordingly remanded the matter.

Presently, we note that in the rival contentions which are urged before us though reliance is placed by the respondent herein to the confirmation of balance through the e-mail dated 17.05.2018, the appellant herein is disputing the same to be a genuine document. It is no doubt true that as contended by the learned senior counsel for the respondent a mere denial would not suffice.

Be that as it may, in the present circumstance when the claim as put forth by the respondent is to the tune of Rs.1,81,45,943/- after referring to the earlier deductions and the appellant herein is presently contending that only a sum of Rs.22,56,833/- was due and was offered to be paid but declined to be received by the respondent, the said amount itself was made the basis by the NCLAT to arrive at its conclusion that in any event, the due admitted is more than Rs. 1,00,000/-.

The said reasoning in this context would not be justified inasmuch the appellant having admitted that the amount of Rs.22,56,833/- was due, were also ready to pay the said amount. According to them that was the only amount due. Therefore, what was required of the NCLAT was to arrive at the conclusion as to whether any amount over and above Rs.22,56,833/- was due and if the conclusion was to the effect that the amount above Rs.22,56,833/- was due, the NCLAT would have been justified in remitting the matter to the NCLAT .

Presently, it is not in dispute that insofar as the said amount of Rs.22,56,833/-, the appellant have already deposited the same before the NCLT. Therefore, in the present circumstance we are of the opinion that the judgment dated 10.08.2020 is liable to be set aside and the matter is to be remitted to the NCLAT to undertake the said exercise to find out as to whether any amount more than Rs.22,56,833/- is due as claimed by the respondent herein and thereafter arrive at its conclusion in accordance with law.

Needles to mention that on the said determination as indicated being done, the NCLAT will also keep in view the principles laid down in the case of Mobilox (supra) with regard to the pre-existing dispute or otherwise, insofar as the amount beyond the extent as has been indicated above.

In this regard, all contentions of the parties are left open to be urged before the NCLAT.

With the above observations and direction the appeal is disposed of.

.....J.
[A.S. BOPANNA]

..... J.
[DIPANKAR DATTA]

NEW DELHI;
APRIL 18, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 3119/2020

COMPACT ENTERPRISES INDIA PRIVATE LIMITED

Appellant(s)

VERSUS

JITENDRA IMPEX PRIVATE LIMITED

Respondent(s)

(IA No. 90118/2020 - APPLICATION FOR EXEMPTION FROM FILING TYPED DOCUMENTS, IA No. 89327/2020 - EX-PARTE STAY, IA No. 57487/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 89328/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 90115/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 89326/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 18-04-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s) Mr. Mahesh Agarwal, Adv.
Mr. Rajesh Banati, Adv.
Mr. Ashish Sareen, Adv.
Mr. Vikram P. Singh, Adv.
Ms. Aanchal Mullick, Adv.
Mr. Ankit Banati, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Mr. Dhruv Mehta, Sr. Adv.
Ms. Pooja Dhar, AOR
Mr. Vikas Mishra, Adv.
Mr. Arihant Jain, Adv.
Mr. Sachit Gawri, Adv.
Mr. Aayush Garg, Adv.
Ms. Vidushi Chaudhary, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of signed order.

Pending application(s) shall stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)(RAM SUBHAG SINGH)
BRANCH OFFICER

(Signed order is placed on the file)