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02nd September 2023 – Issue 415

Ministry of Corporate Affairs vide notification dated August 23, 2023, has provided Condonation of delay in filing Form-3, Form-4, and Form-11 under section 67 of Limited Liability Partnership Act, 2008 read with section 460 Companies Act, 2013

- MCA vide notification dated August 23, 2023, has provided Condonation of delay in filing Form-3, Form-4 and Form-11 under section 67 of Limited Liability Partnership Act, 2008 read with section 460 Companies Act, 2013.
- To address the difficulties faced by LLPs and as part of Government's constant efforts to promote ease of doing business, the Ministry, in exercise of its power under section 67 of the Limited Liability Partnership Act, 2008, has decided to grant one-time relaxation in additional fees to those LLPs who could not file the Form-3, Form-4 and Form-11 within due date and provide an opportunity to update their filings and details in Master-data for future compliances.
- The notification is herein attached.

[Click Here](#)

Ministry of Corporate Affairs vide notification dated September 01, 2023, has issued Limited Liability Partnership (Second Amendment) Rules, 2023

- MCA vide notification dated September 01, 2023, has issued Limited Liability Partnership (Second Amendment) Rules, 2023.
- The new Rules have replaced the existing Form-3 and Form-4 with new Form-3 and Form-4.
- The notification is herein attached.

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PROCEEDINGS UNDER IBC AND PROCEEDINGS UNDER ARBITRATION CANNOT GO IN PARALLEL

The Appellant KK Ropeways entered into a rent agreement with The Respondent, M/s Billion Smiles Hospitality Pvt Ltd for the purpose of operating a food court in a complex owned by the Appellant. As per the terms of the agreement, the Respondent was to make monthly payments for certain charges including water, electricity, and common area maintenance. However, the Respondent failed to uphold the terms and conditions of the agreement and defaulted on monthly payments for rent and other incidental charges.

Further, the Appellant invoked the arbitration clause, and an ex-parte award was passed in favor of the Appellant for recovery of Rs. 26,33,022 along with interest. Aggrieved by the order, the Respondent filed an appeal under Section 34 of the A&C Act 1996 before the Delhi High Court.

During the pendency of the appeal, the Appellant for execution of the Arbitral Award issued a demand notice under the provision of IBC for payment of operational debt. Four months after the notice, the Appellant filed for initiation of CIRP against the Respondent under Section 9 of IBC with Rule 6 of the IBC AAA Rules 2016.

However, vide order dated 27th April 2021 NCLT dismissed the Appellant's application for initiation of CIRP on the ground that the Operational debt in question was deemed to be a 'dispute' in the pending Appeal against the Arbitral Award. Thus, the present appeal was filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 against the order dated 27th April 2021.



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The Learned Counsel for the Appellant contended that if the Debt is not barred by limitation, an Operational Creditor can institute proceedings under Section 9 of IBC, and as such the Arbitral Award can be treated as an Operational Debt. Relying on various judgments' it was the contention of the Appellant that certain things should be kept in mind when examining an application under Section 9 of the act such as i) Whether there is documentary evidence of the debt that is due has not been paid? ii) Whether there is an existence of a dispute between the parties filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute.

NCLAT's Decision

The NCLAT noted that a 'Dispute in existence' means and includes raising a dispute before a Court of Law or an Arbitral Tribunal before the receipt of notice under Section 8 of IBC and such dispute continues even when there is a challenge to an Arbitral Award.

Upholding NCLT's decision, the Tribunal further held that Arbitration Proceedings and proceedings under IBC cannot go in parallel. It was also held to initiate a corporate insolvency resolution process against a corporate debtor, there should not be a real existing dispute between the parties in relation to the debt owed. The reasoning given by the tribunal was that the Insolvency Code cannot be used prematurely, nor can it be a substitute for debt enforcement procedures.

NCLAT also made it clear that the object of the code is to initiate the insolvency process only in those cases where a real dispute between the parties as to the debt owed does not exist. As such, a petition filed under Section 34 against an Arbitral Award shows that a pre-existing dispute that starts at the stage of proceedings in an award continues even after the Award until the final adjudication takes place.



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The Tribunal Thus, it was held an application cannot be filed under Section 9 of IBC for the purpose of Executing an Arbitral Award when the dispute in question is the same for which an appeal is pending under Section 34 of A&C Act 1996.

Case Name: **KK Ropeways Ltd. v. Billion Smiles Hospitality (P) Ltd.**

Date: **12th July 2023.**

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