



**National Company Law Tribunal,
Mumbai Bench**



Advocates
& Solicitors

**IBC provisions does not allow a Retired Partner
of a Firm to claim Retirement Dues from other
Partners or the Firm.**

Anil Vora HUF v. Kavya Build-Con Private Limited

Case No.	CP (IB) No. 2076/NCLT/MB-IV/2019
Date	7 January 2022
Court	National Company Law Tribunal, Mumbai Bench-IV
Coram	Hon'ble Member (Judicial) Mr. Kishore Vemulapalli Hon'ble Member (Technical) Mr. Rajesh Sharma

1. BRIEF FACTS:

- 1.1 Kavya Build-Con Private Limited ("**Corporate Debtor**") failed to make payment of a total sum of Rs.75,00,000/- (Rupees Seventy Five Lakh Only) as per the Retirement Deed which was executed between Anil Vora HUF ("**Operational Creditor**") and M/s Kavya KCD Developers ("**Firm**") on 31.12.2015. The Operational Creditor was a Partner in the aforementioned Partnership Firm.
- 1.2 Due to this default a petition was filed by the Operational Creditor which was dismissed by the National Company Law Tribunal, Mumbai Bench ("**Hon'ble Tribunal**") vide order dated 31.10.2018 declaring it to be infructuous. The Company Insolvency Resolution Procedure ("**CIRP**") was admitted against the Corporate Debtor in another Company petition. However, the Operational Creditor filed its claim before the Insolvency Resolution Professional ("**IRP**").
- 1.3 Thereafter, the Corporate Debtor challenged the admission order dated 31.10.2018 before the National Company Law Appellate Tribunal ("**NCLAT**") wherein the Operational Creditor filed an Intervention Application. However, the NCLAT set aside the petition admitting CIRP of the Corporate Debtor and the Intervening Application by the Operational Creditor was not taken into consideration.
- 1.4 A Civil Appeal before the Hon'ble Supreme Court of India was filed by the Operational Creditor, wherein the Hon'ble Supreme Court granted liberty to the Operational Creditor to file a fresh petition which was to be decided on its own merits. Hence, a petition before National Company Law Tribunal was filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") against the Corporate Debtor.

2. ISSUE RAISED:

- Whether the retirement amount arising out of the Partnership Firm constitutes the Operational Debt?

3. SUBMISSIONS OF THE OPERATIONAL CREDITOR/PETITIONER:

- 3.1 The Operational Creditor argued that the Firm issued a cheque which was dishonoured by a return memo dated 18.04.2016 by the Operational Creditor's Bank with a remark 'fund insufficient'.
- 3.2 It was asserted by the Operational Creditor that the Corporate Debtor being a Partner of the Firm is jointly and severally liable for the payments as the Corporate Debtor had issued a cheque which bought the entire right, title and interest of the Operational Creditor in the said Firm.
- 3.3 It was further submitted by the Operational Creditor that firstly the debt fell due was on 31.12.2015 which was the date of Deed of Retirement and thereafter on 18.04.2016 which was the date on which cheque was dishonoured.

4. SUBMISSIONS OF THE CORPORATE DEBTOR/RESPONDENT:

- 4.1 The Operational Creditor is seeking the enforcement of the Deed of Retirement dated 31.12.2015 executed between the Partners of Firm, who were duly registered under the provisions of the Partnership Act, 1936. Both Operational Creditor and Corporate Debtor were also the Partners of the said firm, therefore it was argued by the

Corporate Debtor that under the IBC there is no specific provision with respect to the proceedings to be initiated against the Partnership Firm.

- 4.2 It was submitted that the Operational Creditor is not entitled to initiate the CIRP against the Corporate Debtor, as the ingredients mentioned in the definition of the “Operational Creditor” defined under Section 5(21) of the IBC are not fulfilled by the Operational Creditor in its claim.
- 4.3 It was further submitted by the Corporate Debtor that the Company had denied existence of any debt, default or liability vide letter dated 30.11.2017 which is the reply to the Demand Notice dated 06.11.2017 issued by the Operational Creditor. Also, it was asserted that if there was a scope of any claim, it could only be initiated against the Firm and not against the Company.
- 4.4 It was submitted that as per the said Deed of Retirement, it was agreed between the Partners of the Partnership Firm to pay to the Operational Creditor a sum of Rs.75,00,000/- (Rupees seventy-five lakh only) subject to Operational Creditor will be executing necessary documents, stipulated under clause 3(ii) and Authority in favour of the continuing Partners under clause (4) of the said Partnership Firm so as to enable the continuing Partners to carry on the business of the Firm. As the Operational Creditor did not fulfil its obligation of executing the relevant documents the remaining continuing Partners were unable to carry on the business.

5. DECISION OF THE COURT:

- 5.1 The Hon’ble Tribunal observed that even though the relationship between Partners with its Partnership Firm amounts to joint and several liability, the IBC does not protect the interest or claim of the Partner against another Partner or the Firm. Since, the claim of the Operational Creditor and the cause of action arose on the transaction is between the Partners, the petition itself was not maintainable in the eyes of law.
- 5.2 The Hon’ble Tribunal further observed that the Operational Creditor being the Retired Partner has no right under the IBC to file claim against the Partner or the Firm and that the Operational Creditor may seek remedy under any other law for its claims against the Corporate Debtor but cannot do so under the IBC.
- 5.3 The Hon’ble Tribunal before rejecting the Application placed its reliance upon the NCLAT Judgement in *Gammon India Ltd. v. Neelkanth Mansions and Infrastructure Pvt. Ltd.*¹ wherein the NCLAT held that,
“even if one of the Partners or more than one Partner is the ‘Corporate Debtor’ as the amount is due from the Partnership firm, the application under section 9 of the ‘I&B Code’ against one of the Partners of such Partnership firm will not be maintainable.”
- 5.4 In pursuance of the abovementioned observations, the Hon’ble Tribunal rejected the Application filed by the Operational Creditor under Section 9 of the Code and the petition was dismissed.

6. PSL OPINION:

- 6.1 The present judgment focuses on the purview of IBC when it comes to Partnership. It focuses on the rights of the Retired Partner as an Operational Creditor under IBC. The

¹ 2018 SCC Online NCLAT 994.

Hon'ble Tribunal made a clear point by denying any such rights to the Retired Partner under the code. The need is to put light upon the other remedy that can come to the aid of such Retired Partners who are Operational Creditors to such Corporate Debtors which were earlier operating as a Partnership Firm.