

LEGAL UPDATES

NCLT: CIRP CAN NOT BE INITIATED BASIS OF A FOREIGN ARBITRAL AWARD PRESUMING DEBT

NCLT dismisses Sec.9 application under IBC filed by a company incorporated under the laws of Singapore (“applicant/operational creditor”) seeking to initiate CIRP against corporate debtor/respondent by a foreign arbitral award. Respondent contended that arbitral award cannot form the foundation of CIRP and NCLT is not empowered to execute the foreign arbitral award. The Respondent further claimed that NCLT is neither a court for the execution of deemed decrees nor a civil court. Lastly, the respondent also submitted that there was an existing conflict between the parties and hence sec.9 application was not maintainable as the said claim cannot be regarded as operational debt. Thus, the question before NCLT was whether the foreign arbitral award can form the foundation for initiating the CIRP process against the respondent. The tribunal held that only HC has sole authority to handle international awards and implement them. NCLT further observed that NCLT cannot assume that debt under a foreign award is undisputed as such presumption shall be tantamount to overriding provisions of the Arbitration and Conciliation Act. The tribunal noted that the respondent availed services of the applicant, and only subsequent to conflict for payment between the parties, the arbitral award was passed; finally a Singaporean Arbitral Tribunal passed a partial foreign award. The Tribunal relied on the [Vedanta case](#), where the apex court held that foreign award becomes a decree only after compliance with Sec 47 to 49 of the Arbitration Act and hence CIRP proceedings cannot be started merely on the passing of the award. The Tribunal further observed that the mere pronouncement of a foreign award shall not have any impact on CIRP. Lastly, NCLT noted that only HC has the sole authority to implement and question international awards and to enforce awards under sec.47(1) of the Arbitration Act. Thus, NCLT rejected the sec. 9 application.