

Kay Bouvet Engineering Ltd vs Overseas Infrastructure Alliance (India) Private Limited – Case Analysis

Appellant: Kay Bouvet Engineering Ltd. vs.

Respondent: Overseas Infrastructure Alliance (India) Private Limited

Case No: CIVIL APPEAL NO. 1137 OF 2019

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LEGISLATION: Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 (IBC)

FACTS:

- The respondent, an overseas company, entered into an Engineering, Procurement, and Construction (EPC) contract with Mashkour Sugar Mills in Sudan to set up a sugar plant. The project was financed by the Government of India through the EXIM Bank.
- The appellant, a heavy engineering company, was selected as a sub-contractor, and a tripartite agreement was executed between the appellant, respondent, and Mashkour.
- The respondent advanced 10% of the consideration to the appellant, but the EXIM Bank refused to release payment, leading to the termination of the agreement.
- The respondent filed a civil suit against Mashkour and

the appellant for specific performance.

- Afterwards, the appellant and Mashkour entered into a new EPC agreement, designating the appellant as the primary EPC contractor.
- The respondent demanded the return of the 10% advance, and when the appellant defaulted on payment, the respondent initiated the Corporate Insolvency Resolution Process (CIRP) against the appellant.
- The National Company Law Tribunal (NCLT) dismissed the petition, stating that the suit for specific performance and the CIRP process could not run simultaneously.
- The National Company Law Appellate Tribunal (NCLAT) set aside the NCLT's order, remanding the matter back to the NCLT to admit the petition under Section 9 of the Insolvency and Bankruptcy Code (IBC) after giving limited notice to the appellant.

ISSUES:

- Whether there existed a dispute between the appellant and the respondent, warranting the rejection of the application for CIRP under Section 9(5)(ii)(d) of the IBC.
- Whether the suit for specific performance and the CIRP process could proceed simultaneously.

ARGUMENTS BY THE APPELLANT (KAY BOUVET):

1. The appellant contended that a dispute existed between the parties regarding the payment of funds. They argued that the funds received from the respondent were on behalf of Mashkour Sugar Mills, and the termination of the agreement did not release them from liability for the balance of the funds disbursed.
2. The appellant maintained that the suit for specific

performance and the CIRP process could not run simultaneously on the same issue. They asserted that the NCLT was correct in dismissing the petition based on this ground.

ARGUMENTS BY THE RESPONDENT (OVERSEAS):

1. The respondent claimed to be an operational creditor and initiated the CIRP against the appellant, alleging non-payment of the 10% advance made after the execution of the tripartite agreement.
2. The respondent argued that there was no genuine dispute between the parties, and therefore, the CIRP should be admitted. They asserted that the appellant defaulted on the payment obligation, and the suit for specific performance did not absolve them of their liability.

RATIO DECIDENDI:

- The Supreme Court held that for an application for CIRP to be rejected under Section 9(5)(ii)(d) of the IBC, there must be a genuine dispute that is not spurious, hypothetical, or illusory.
- The court stated that if a notice has been received by the operational creditor (in this case, the respondent) or if there is a record of a dispute in the information utility, the adjudicating authority must reject the application.
- It was emphasized that the corporate debtor (in this case, the appellant) must bring to the notice of the operational creditor the existence of a dispute or the pendency of a suit or arbitration proceedings relating to the dispute.

FINAL JUDGMENT:

- The Apex Court concluded that there was a genuine dispute between the appellant and the respondent regarding the payment of funds, as evidenced by the record and documents.
- The court found that the termination of the contract with the appellant did not absolve the appellant of liability for the balance of the funds disbursed to them, other than the amount paid to the appellant.
- Therefore, the court held that the NCLT had rightly rejected the respondent's application for CIRP, as there was an existing dispute between the appellant and another party involved, which warranted the non-passing of an order under Section 9 of the IBC.