

INSOLVENCY INSIGHT

No person can maintain application for recusal of the Member to choose a Bench. It is for the judge to decide to recuse.

Commencement of arbitration proceeding prior to or after the filing of Section 7 of IBC petition under IBC will not negate the proceedings under Section 7.



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The Hon'ble NCLT Mumbai in the case of Perfect Infraengineers Ltd. v. Technology Development Board has held that if the judges decide to recuse themselves on the basis of frivolous and baseless allegations it will be a convenient ploy to litigant to choose their own Benches by stage managing such kind of litigations.

This is a case where M/s. Perfect Infraengineers Ltd. the Applicant had moved an application u/s 60(5) of IBC to seek the recusal of the Member from hearing the above case on the ground that the applicant was never afforded any opportunity of being heard in the matter; and There was demand of bribe in the sum of Rs. 75 Lakhs from one Ms. Mahi Bhatt, who allegedly represented this Bench.

The Hon'ble NCLT held that if this was allowed to happen, it would open the flood gates of forum shopping. Quintessentially the plea tantamounts to Bench hunting. The provision of Recusal as provided in the rules is a provision which can be utilized by Members and President to recuse themselves from hearing a proceeding if conditions or factors as mentioned in sub-clause (a), (b) and (c) of Rule 62 of NCLT Rules, 2016 are fulfilled. The litigant has no right to ask the member to recuse himself.

Commencement of arbitration proceeding prior to or after the filing of Section 7 of IBC petition under IBC will not negate the proceedings under Section 7 of IBC.

The Hon'ble NCLT, Kolkata Bench in the case of Century Aluminium Company Ltd. v. Religare Finvest Ltd. has held that it does not matter whether the arbitration proceedings commenced

before or after filing of petition under Section 7 of IBC before this Adjudicating Authority. This is a case where the Religare Finvest Ltd., under a loan agreement unilaterally appointed an Arbitrator without consulting the Applicant. The sole Arbitrator, recognizing this violation, recused himself, putting the arbitration proceedings on hold and necessitating the formation of a new tribunal. Following this, the Respondent initiated insolvency proceedings. The Applicant in response filed an application seeking to have the disputes referred back to arbitration and to dismiss the insolvency petition.

The Hon'ble NCLT observed that commencement of arbitration proceedings does not matter because, "default" per se is not arbitrable. Things like quantum of debt, rate of interest, various charges, period of debt, restructuring proposal, service levels of the respondent, penal interest levied etc. are arbitrable not the default per se or insolvency of the Applicant which can be adjudicated by this Tribunal.



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