



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 06 | Number 09

(February 27, 2023)

Giesecke & Devrient MS India Private Limited Vs. ZTE Telecom India Private Limited
CP (IB) No. 296/Chd/Hry/2019
Date of NCLT Judgements: February 20, 2023

All statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of Operational Debt

Facts of the Case: -

Giesecke & Devrient MS India Pvt. Ltd. (hereinafter referred as 'Petitioner') filed a petition u/s 9 of IBC for initiating CIRP against ZTE Telecom India Private Limited (hereinafter referred as 'Respondent').

The Respondent originally obtained a contract to install, supply, render services, etc. for fixed or mobile digital telecommunication network. The Respondent further executed a sub-contract with the Petitioner wherein the Petitioner was required to perform the obligations of the Respondent and the Respondent was required to make payments of all applicable taxes on the invoice amount, including but not limited to the Service Tax for services provided.

The fact of the case is that the Respondent was under an obligation to pay the service tax and GST dues to the tune of Rs. 40,37,816/- under the terms of the contract, But the Petitioner made the payments to the GST department on behalf of the Respondent in order to avoid the imposition of heavy penalties which would have further strained the resources of the Petitioner.

The Respondent stated that the service tax paid by petitioner against the unaccounted invoices was not a cost to the petitioner and same can be carried forward in GST regime within six months from the implementation date of GST. Since, there was a technical issue with the ST invoices, due to which the ST invoices were cancelled. Therefore, there is no amount left due and payable.

NCLT Observations:

The AA placing reliance on judgement given by Hon'ble Appellate Tribunal in the case of "**Pr. Director General of Income Tax (Admn. & TPS) v. M/s. Synergies Dooray Automotive Ltd. & Ors. in Company Appeal (AT)**" held that the statutory dues arising out of the existing laws in a case of the operational company have a direct nexus with the operation of the company and come within the meaning of operational debt.



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The AA further stated that Petitioner was forced to make the payments to the GST department on behalf of the Respondent in order to avoid the imposition of heavy penalties. The Respondent has failed to pay back the aforesaid amount due as mentioned in the statutory notice till date and therefore the conditions under Section 9 of the IBC stand satisfied.

Order/Judgement: The AA admitted the petition for initiation of the CIRP of the Respondent and also directed moratorium to take effect and appointed Interim Resolution Professional.

Case Review: CIRP Petition Admitted.