



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

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Kinetix Engineering Solution Limited Vs. Walchandnagar Industries Limited

C.P. No. 903/IBC/MB/2021

Date of NCLT Judgements: April 12, 2023

Facts of the Case: -

Kinetix Engineering Solution Ltd. (hereinafter referred as 'Petitioner') has filed petition u/s 9 of IBC for initiating CIRP against Walchandnagar Industries Ltd. (hereinafter referred as 'Respondent').

The Petitioner in the capacity of Operational Creditor contended that, the Respondent had issued three purchase orders for delivery of Road Mobile Launchers (RML) and the same was duly delivered to the Respondent. The Sub Systems of RML under the scope of supply were commissioned by the Petitioner and have also been subjected to Site Acceptance Trials (SATS). No observation/defects in the purview of scope of work of the Petitioner were made either by the Respondent or by the designated Inspection Agency ('SSQAG') and the End Customer (i.e., 'R&DE(E)').

The Respondent failed to process the payment in favor of the Petitioner as mandated in the Letter of Credits. Despite of emails correspondence the Respondent failed to pay the dues from the date of completion of the last SATS dated 28.02.2021.

The Petitioner issued the demand notice dated 20.05.2021, u/s 8 of IBC. As the respondent failed to repay the outstanding dues despite demand notice the present petition is preferred by the Petitioner.

The Respondent controverting the allegations stated that the present petition is barred by Section 10A of IBC. Further, it was contended that there exist several pre-existing disputes between the parties as the good and services rendered by the Petitioner was substandard and defective.

NCLT's Observations:

After considering the submission of both the parties, the AA held that it was clear from the purchase order that the supply would be treated as completed only on completion of SATS and same was not completed in respect to other two purchase orders therefore, it cannot be said that the RMLs have been accepted by the Respondent.



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The AA held that it cannot be said by any stretch of imagination that there is no pre-existing dispute between the parties. It is well settled that the date of default has to be considered from the time when it became due and was not paid after having become due. As per the pleadings made, it is unequivocal case of the Petitioner that the default took place either on 28.02.2021 or on 12.03.2021. The AA held that both the dates fall within section 10A period, and whatever has been subsequently stated in the rejoinder by the petitioner cannot come to the rescue of the petitioner. The petition is not only barred under section 10A of the code but there is a pre-existing dispute as well.

Order/Judgement: The Petition under Section 9 of the Code cannot be admitted and deserves 'Dismissal'.

Case Review: CIRP Petition Dismissed.