



# 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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**DHL Supply Chain India Private Ltd. Vs. Eicher Motors Ltd.**  
**Company Petition No. (IB)-272(ND)2022**  
**Date of NCLT Judgement: May 29, 2023**

### Facts of the Case: -

The present petition was filed by the DHL Supply Chain India Pvt. Ltd. in the capacity of operational creditor (hereinafter referred as 'Petitioner') against Eicher Motors Ltd. (hereinafter referred as 'Respondent') for initiating CIRP u/s 9 of IBC over some unpaid dues.

The parties entered into 'Service Agreement for Warehouse', dated 29.08.2019 for taking the services of the Petitioner for logistics and warehousing. The term of the agreement was for three years effective from 01.10.2019 to 30.09.2022 and the entire term constituted a lock-in period for both the parties.

In November 2020, the Respondent proposed to use the warehouse for storing Bikes and spare parts instead of storing genuine motorcycle accessories and apparel, but it didn't work out. The Respondent decided not to use the warehouse and sought to prematurely terminate the agreement. The Petitioner rejected the proposal for premature termination of the agreement vide its letter dated 21.04.2021 and as no response of said letter/notice was received, the Petitioner informed the Respondent to remove the assets lying in the warehouse. The Respondent via its reply dated 31.05.2021 stated that dismantling and shifting was to be done by the Petitioner.

The Petitioner provided services to the Respondent and raised various invoices including interest charged on the overdue invoice amount and claimed operational debt of approx. ₹8.3 crore. The demand notice dated 07.12.2021 u/s 8 of IBC was sent by the Petitioner via e-mail but the same was denied by the Respondent on the ground that the demand notice was not served at the Respondent's registered office or to the Whole Time Director or Designated Partner or Key Managerial Personnel.

In the light of above dispute, the Petitioner filled the CIRP application before AA.



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## NCLT Observations:

The AA while placing its reliance on the judgment pronounced by Hon'ble Supreme Court in ***“Kirshna Texport and Capital Markets Ltd. vs Ila A. Agarwal and Ors”***, held that there was no illegality or deficiency in the service of demand notice, which was duly served through the E-mail address of the Respondent with attention to its MD who was a Key Managerial Personnel of the Respondent company as defined u/s 2(51) of Companies Act 2013.

The AA, while examining the application on its merits and placing their reliance on the judgments given by the Hon'ble Supreme court in ***“India vs Raman iron Foundry”*** and ***“Moblix Innovations Pvt. Ltd. vs Kirusa Software Pvt. Ltd.”*** stated that there is sufficient material in the form of e-mail communications between the parties that there were pre-existing disputes before the issuance of demand notice. Further, on perusal of email dated 05.01.2021 it is clear that the Petitioner was well aware that the Respondent was vacating their warehouse as a part of their normal business transaction and therefore, the submission made by the Petitioner that it had no knowledge of the Respondent vacating the premises is misplaced.

**Order/Judgement:** The correspondence on record prodigiously establishes severe disputes between the parties inter-se, with each party having claims/counter-claims against the other. The Respondent too has raised plausible contentions, which require further investigation. There being pre-existing disputes between the parties, the Application is liable to be dismissed.

**Case Review:** Application is dismissed.