



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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Dashabahu Multitrade Private Limited. Vs. Tanishi Tradewell Private Limited
CP (IB) No. 304/MB-IV/2021
Date of NCLT Judgement: June 28, 2023

Facts of the Case: -

The present Petition is filed by M/s Dashabahu Multitrade Pvt. Ltd. in the capacity of Operational Creditor (hereinafter referred as 'Petitioner') u/s 9 of IBC for initiating CIRP against M/s Tanishi Tradewell Pvt. Ltd. (hereinafter referred as 'Respondent/CD').

The CD was in the business of Textile and the Petitioner made supplies of linen fabrics to the CD. Total sales of ₹112.82 Crore during the period from 01.04.2019 till 14.03.2020 were made by the Petitioner to the CD, out of which payment of ₹2.5 crore was received and ₹105.85 crore was adjusted through Tri-Partite Agreement dated 31.03.2020 between the Petitioner, CD and the Vendors. The total amount claimed by the Petitioner was ₹5.16 crore (including interest) pursuant to 6 invoices issued to CD.

The last payment received by the petitioner was on 18.03.2020 for ₹4.27 lacs only. The CD stopped making further payments despite of repeated reminders, resulting in an outstanding principal amount of ₹4.43 crore. The petitioner issued the Demand Notice to the CD on several dates as per the companies address mentioned on MCA website, but each time the notice returned with the remark "No such person in the address". Since the notice was served to the registered office address listed on the MCA website, the service was deemed to be complete, as per section 12 of Companies Act.

In his reply, the CD denied having received the demand notice for the said claim amount, the CD also stated that most of the materials supplied by the Petitioner were defective which was evident from the Tri-partite agreement between the Petitioner, CD, and vendors (M/s Krishna Company and M/s Greenshield Enterprises Pvt. Ltd.) regarding the return of materials. The agreed amount for the return of the material from the CD to the Operational Creditor was ₹105.85 crore.

The CD further claimed that due to his inability to make the payments, he proposed settling the dues by returning unsold materials (60% of the outstanding amount) and repaying the 40% within 5 months from the reply but didn't receive the Petitioner's approval.



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NCLT Observations:-

The AA on the perusal of the documents on record held that there is no dispute as regards to the existence of the debt. The debt against the goods supplied by the Operational Creditor falls within the definition of Operational Debt under IBC and therefore there is no reason to deny the CIRP petition against the CD.

The AA further held that an Operational Debt amounting to more than ₹1 crore was due and payable by the CD and there is default by the CD in payment of the debt. The CIRP application is complete and fit for admission under section 9(5)(i) of IBC.

Order/Judgement: This CIRP filed u/s 9 was admitted and Resolution professional is appointed to carry out the functions as mentioned under IBC, 2016.

Case Review: Petition Admitted.