



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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DB Power Ltd. Vs. Kreate Energy (I) Pvt. Ltd.
COMPANY PETITION NO.(IB)-521/ND/2022
Date of NCLAT Judgement: October 31, 2023

Facts of the Case: -

The Present CIRP application filed by M/s. DB Power Ltd (hereinafter referred as 'Applicant') in the capacity of an Operational Creditor against the Corporate Debtor, M/s Kreate Energy (I) Pvt. Ltd (hereinafter referred as 'Respondent') for defaulting the payment of ₹9.62 Crore.

The Applicant is operating a 1200 (2x600) MW coal-based thermal power plant in District Janjgir Champa, Chhattisgarh. The Respondent offered to purchase 105 MW of RTC power for the period 01.09.2020 to 30.09.2020 @ Rs 2.75/KWh at Regional Periphery and the same offer was accepted by the Applicant.

The Applicant supplied 105 MW of RTC powers for which invoice of ₹20.87 Crores was raised and the same became due on 01.12.2020. The Respondent defaulted in payment and therefore the Applicant served a Demand notice on 21.10.2021 u/s 8 of IBC for payment of the operational debt.

The Applicant submitted that the Respondent via various emails acknowledged its liability to pay the operational debt and through its mail dated 09.03.2021, the Respondent agreed to pay the debt during the period 25.03.2021 - 31.03.2021 i.e., after the expiry of the period mentioned under Section 10A. Therefore, giving a fresh cause of action which is beyond the Section 10A of IBC. The Applicant further stated that the Respondent issued a cheque for ₹10.87 Crores on 09.07.2021. However, the cheque was dishonored and returned on 05.10.2021, giving rise to a fresh cause of action again.

The Respondent submitted that the date of default mentioned in the filed application is 01.12.2020 which is covered under the Section 10A of IBC. Section 10A restricts the filing of any application under Sections 7, 9, and 10 of IBC if the default occurred on or after 25.03.2020, for duration of six months. Later this period was extended till 24.03.2021.



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NCLAT Observations:-

The AA while placing its reliance on the judgement pronounced in ***Ramesh Kymal vs. Siemens Gamesa Renewable power Pvt. Ltd., 2021*** observed that the legislative intent behind section 10A was not to extinguish the right of the creditor but to safeguard the CD from the rigorous of corporate Insolvency.

The AA further observed that as per Sec 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the periods from 25/03/2020 till 24/03/2021 and therefore the application could not be allowed.

The AA also noted that the criteria for deciding the limitation period for a debt and the criteria for determining the date of default for that debt are two distinct questions of law and fact and cannot be evaluated on the same scale. The submission of the Applicant in reference to the fresh cause of action can only be sustained for the purposes of Limitation Act.

Order/Judgement: The AA dismissed the application of CIRP filled u/s 9 by Applicant as the fact of the present case clearly attracts the provisions of section 10A of IBC.

Case Review: CIRP application dismissed. No order as to the costs.