



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

No. 222

(May 05, 2025)

VISA Coke Ltd. vs. M/S Mesco Kalinga Steel Ltd.

Civil Appeal No. 357 of 2025

Date of Supreme Court Judgement: April 29, 2025

Facts of the Case

The present appeal was filed by VISA Coke Ltd. (hereinafter referred as Appellant/Operational Creditor) challenging the final order dated 03.10.24 passed by the Appellate Tribunal. The Appellate Tribunal had dismissed the Appellant's appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the order dated 24.01.23 of the Adjudicating Authority, which had rejected the Appellant's Section 9 application seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s MESCO Kalinga Steel Limited (hereinafter referred as Respondent/Corporate Debtor).

The Appellant a manufacturer and seller of Low Ash Metallurgical Coke (LAM Coke), had entered into a supply contract with the Respondent on 11.10.19. Despite amendments extending delivery timelines, a part of the supply (1700 MT) was delivered on credit based on the Respondent's assurance of opening a Letter of Credit, which never materialized. The respondent acknowledged the debt through email on 25.11.2019. Since no payment was made, the appellant issued a demand notice dated 31.03.2021 in Form 3 under Section 8 of the IBC to the respondent's Key Managerial Personnel (KMP) at the registered office address, demanding payment of ₹4,19,77,245.17 (principal plus penal interest at 15%).

The respondent neither replied nor paid the dues. Consequently, the appellant filed a Section 9 petition before the AA, which was dismissed on the ground that the statutory demand notice had not been addressed directly to the Corporate Debtor but only to its KMP, rendering the notice invalid. The NCLAT upheld this reasoning. Aggrieved by this order the appellant approached the Supreme Court.

The main issue raised before the Apex Court is: (i) Whether the notice dated 31.03.21, served on the KMPs of the CD at its registered office, satisfied the requirements under Section 8 of the IBC and Rule 5(2) of the AA Rules, 2016.



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Supreme Court's observations:

The Apex Court emphasized that the IBC mandates service of a demand notice on the CD, but this may be done via its KMPs at the registered office. The Apex court found that the subject and contents of the notice issued by the Appellant clearly identified the CD as the entity being addressed, and the KMPs were merely the addressees in their official capacity. The demand notice complied with the form and purpose prescribed under the IBC. Relying on precedents including *Rajneesh Aggarwal v. Amit J. Bhalla*, *K.B. Polychem (India) Ltd. v. Kaygee Shoetech Pvt. Ltd.*, and *Shubham Jain v. Gagan Ferrotech Ltd.*, the Apex Court held that service on the KMP at the registered address amounts to valid service on the CD.

Furthermore, The Apex court criticized the AA and Appellate Tribunal for adopting a hyper-technical view, which defeated substantive justice. The Apex Court observed that the procedural irregularity alleged did not prejudice the CD, who was fully aware of the demand and even attempted settlement during the pendency of proceedings.

Regarding the issue of default, the Apex Court noted that the AA and Appellate Tribunal had not delved into the question of whether the contract was novated or whether a default had occurred. The Apex Court clarified that this issue, being a mixed question of law and fact, required detailed consideration and should be decided by the AA upon remand.

Order/Judgement: The Supreme Court set aside the orders of the AA and the Appellate Tribunal and remanded the matter to the AA for fresh consideration of the Section 9 petition on merits. The AA was directed to decide the petition after giving reasonable opportunity to both parties, without being influenced by its earlier observations. No order as to costs was made.

Case Review: Appeal is allowed.