NCLAT

March 3, 2020

D & I Taxcon Services Pvt. Ltd. v. Mr. Vinod Kumar Kothari, Company Appeal (AT) (Insolvency) No. 1347 of 2019.

The appellant in the instant case appealed against the decision of the AA, wherein it dismissed an application challenging the actions of the liquidator and imposed a cost of Rs. 100,000 on the appellant for levelling vague and baseless allegations against the respondent, who was the appointed liquidator for Nicco Corporation Limited. The NCLAT observed that without having a *locus standi*, the appellant interfered & thwarted the liquidation process which had a deleterious effect on the rights of the ones who were entitled to such benefit from the distribution of sale proceeds. The AT also observed that the appellant had taken varying stands, mutually exclusive and inconsistent, in saying that he is both a tenant entitled to compensation and OC, who, by using the house, was rendering a service leading to operational debt. While dismissing the appeal, AT dispensed the cost slapped by AA considering the fact that the appellant was a victim of a fire incident in which he lost a considerable amount.

March 3, 2020

Punjab National Bank v. State Bank of India, Company Appeal (AT) (Insolvency) No. 1484 of 2019.

The appellant claimed that the CD had pledged stock of rice by a document of pledge dated 29.10.2015. The respondent claimed that the CD hypothecated the stock in its favour by a deed of hypothecation dated 04.05.2013. The CoC, which comprised of both appellant and respondent with SBI having majority voting shares, decided to sell the stock as it was a perishable commodity. The appellant objected that the RP cannot utilize the sale proceeds for conducting CIRP and submitted that the pledged stock was the only security appellant had from the CD. The NCLAT held that the stock having already been sold, there is no illegality if the RP uses the money for CIRP. However, rights and benefits accruing to the appellant for possessing security by way of pledge and the value of the stock pledged are open for consideration of the CoC when the resolution plan is put forth, and/or in case of liquidation.

March 5, 2020

Digambar Bhondwe, Director Raipur Treasure Island Pvt. Ltd. v. JM Financial Asset Reconstruction Company Ltd., Company Appeal (AT) (Insolvency) No. 1379 of 2019.

In the instant case, the appellant challenged the CIRP proceedings initiated u/S. 7 of IBC as being time-barred. The respondent claimed that it was the assignee of UCO Bank, which extended a loan of Rs. 75 crores to the appellant. There was a default in the payment of the loan, and the loan was declared NPA. Following this, the bank filed an application before the DRT which issued a Recovery certificate in the nature of a decree. Before the AA, CD raised a dispute of limitation claiming that the loan was made in 2013, and the application, which was filed on the basis of the DRT order dated 22.10.2016, was time-barred. AA rejected the contention and admitted the application. Aggrieved by the order, this appeal was preferred.

The NCLAT, after considering the cases of *Vashdeo R Bhojwani* v. *Abhyudaya Co-Operative Bank Ltd.* [(2019) 9 SCC 158] and *BK Educational Services Pvt. Ltd.* v. *Parag Gupta and Associates* [(2019) 11 SCC 633] held that the application was indeed time-barred by virtue of Article 137 of the Limitation Act, 1963 and the relevant date is the date of default for the purpose of application u/Ss. 7 or 9 of the IBC. Once the time starts running, subsequent filing of the application to DRT and judgment passed by DRT does not make a difference, for the purposes of provisions of IBC.

March 5, 2020

Bimalkumar Manubhai Savalia v. Bank of India, Company Appeal (AT) (Insolvency) No. 1166 of 2019.

The appellant contested the order of AA, which admitted the application for initiating CIRP on the grounds that it was time-barred. It was contended by the respondents that under the OTS offers, payments were made by the guarantors, which had the effect of extending the period of limitation. The FC had also initiated proceedings under SARFAESI before initiating CIRP and claimed that the same would increase the period of limitation. While allowing the appeal, the NCLAT held that SARFAESI and DRT proceeding will not extend the period of limitation since those proceedings are independent and that the Code has an overriding effect u/S. 238. Furthermore, since the OTS was not accepted by the FC, it cannot be treated as an acknowledgement u/S. 18 of the Limitation Act, 1963.

March 5, 2020

Shrawan Kumar Agrawal Consortium v. Rituraj Steel Pvt. Ltd. through its Authorised Representative and Ors., Company Appeal (AT) (Insolvency) No. 1490 of 2019.

In the instant case, the AA had overturned the decision of the CoC regarding approval of the resolution plan despite being approved by 84.70% of the voting share of the CoC, on the pretext of maximisation of value of the CD and issued directions for fresh bidding within 15 days and for filing the re-approved resolution plan. NCLAT held that the provisions investing jurisdiction and authority in the NCLT & NCLAT had not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same, justiciable. It also made clear that the AA has Ltd. power of judicial scrutiny u/S. 31, which has to remain within the four corners of S. 30(2) of the Code and the same cannot, in any circumstance, trespass upon the commercial wisdom of the CoC. The directions of the AA for re-bidding, after the approval of the resolution plan by the requisite majority, was not in consonance with the law laid down by Hon'ble SC in K. *Sashidhar* v. *Indian Overseas Bank* [(2019) 12 SCC 150].

March 12, 2020

Union of India v. Infrastructure Leasing & Financial Services Ltd. & Ors., Company Appeal (AT) No. 346 of 2018 With Interlocutory Application Nos. 3616, 3851, 3860, 3962, 4103, 4249 of 2019, 182, 185 of 2020.

The Central Government approached the AA for appropriate orders against Infrastructure Leasing and Financial Services Ltd. (IL&FS) and its group companies for managing its affairs in a manner prejudicial to the public interest. The AA changed the management but refused to grant a moratorium on the ground that the provisions of the Code do not apply to IL&FS, a financial service provider, and also refused to give any interim orders. On appeal, the NCLAT imposed a moratorium, taking into account the nature of the case, the economy of the nation, and larger public interest wherein it was held that S. 242(4) of the CA, 2013 empowers the NCLT to pass just and equitable interim orders if the tribunal deems fit. Further, it observed that principles of the Code can be followed by the NCLT while dealing with a winding-up matter u/S. 241 read with S. 242 of the CA Act, 2013, particularly in a case that relates to the public interest. It also held that distribution u/S. 53 of the Code will not be followed as it would be against the public interest, as the shareholders had purchased shares by investing public money and accepted pro-rata distribution proposed by the UOI.

March 16, 2020

Gourav Kishor Shinde v. Uday Yashwant Nayak and Anr., Company Appeal (AT) (Insolvency) No. 1107 of 2019.

The instant appeal was filed against the impugned order of NCLT, Mumbai, wherein S. 9 application filed by the respondent OC was admitted without giving reasons. The order of admission was challenged by CD's employee where the appellant raised various grounds to show that there was already a pre-existing dispute and the same was brought to the notice of the AA which was not discussed in detail and an application u/S. 9 was simply admitted, jeopardizing the interest of the CD. Since the admission of an application u/Ss. 7, 9 or 10 entails serious trigger of the provisions of IBC, it was considered improper to simply admit and to pronounce detailed judgement at a later date. There was sufficient record highlighting the pre-existence of a dispute regarding handing over of the charge and the entitlements before the notice was sent. Referring to this, there were responsibilities to be discharged by the OC before he could really walk away after the resignation. While allowing the appeal, the NCLAT held that the AA committed an error, as an application u/S. 9 should not have been admitted since the disputes were "service disputes," which cannot be mere bluster. Thus, S. 9 application filed by OC before AA was dismissed.

March 18, 2020

Mr. Gajendra Parihar v. Devi Industrial Engineers and Anr., Company Appeal (AT) (Insolvency) No. 1370 of 2019.

In this case, an appeal was filed by the CD against the order passed by the AA, wherein a petition filed by the OC u/S. 9 was admitted. The NCLAT relied on the case of *Mobilox Innovation Pvt. Ltd.* v. *Kirusa Software Pvt.Ltd.* [Civil Appeal No. 9405 of 2017] where the SC had laid down the test for determination of the 'pre-existence of dispute' for admitting and rejecting the petition u/Ss. 8 & 9 of the Code, and applying the test of 'existence of a dispute' without going into the merit of the dispute. On perusal of the facts, the AT held that it was apparent that prior to filing an application u/S. 9 before AA, OC approached Construction Equipment Rental Forum (CERA). The exchange of different emails between the parties clearly established that there was a pre-existing dispute between the parties regarding services rendered and the CD had continuously, through emails, made complaints regarding the deficiency of service and loss caused to the project and bill raised by the OC. Thus, while allowing the appeal, it was held by AT that since there was a pre-existing dispute between the parties, AA committed error by admitting an application u/S. 9 of IBC.

NCLT

March 2, 2020

M/s. Manjushree Travels v. M/s. V3 Engineers Pvt. Ltd., CP (IB) No. 315/BB/2019.

In the present case, the OC filed a petition u/S. 9 of the Code to initiate CIRP against the CD on the ground that it had committed default in rendering payment for transport services provided. The CD acknowledged the debt but contended that the OC would not be able to recover anything in accordance with S. 53 of the Code. It was argued by the CD that OC cannot misuse the provisions of the Code for recovery purposes. However, the AA admitted the petition as the debt and default were not in dispute, and all the procedural requirements were satisfied.

March 3, 2020

IBM India Pvt. Ltd. v. Global Infonet Distribution Pvt. Ltd., CP (IB) No. 712/PB/2019.

In the present case, a S.7 application was filed for default in repayment of the amount that was due under the OTS/consent plan which was entered into by the FC and the CD. The CD contended that the consent terms could not be acted upon as it stipulates good faith between parties which the FC failed to observe by initiating a complaint u/S. 138 of the NI Act and suppressed the fact before the AA. The AA, rejecting the arguments of the CD, held that the CD has intentionally avoided correspondences of the FC and also failed to act in furtherance of the settlement agreement and is liable to pay the amount owed. The AA reiterated that the Code requires the AA to only ascertain and record satisfaction in summary adjudication as to the occurrence of default before admitting the application. As the requirements of S. 7 were satisfied, the application was admitted.

March 4, 2020

Mr. Yash Bhardwaj v. Saga Automotive India Pvt. Ltd., C.P. (IB) No. 177/JPR/2019.

In the present case, the OC filed an application u/S. 9 of the Code on the ground that the CD had committed default in rendering payment for the services. The CD contended that it was only an agent of Skoda Auto, authorised to undertake marketing events by Skoda India. Skoda India failed to make timely reimbursements to the CD, which led to the default in payment to the OC. It was held that irrespective of any reimbursement that the CD may have received, the services have been availed by the CD. Therefore, the AA admitted the application as the CD acknowledged the debt and default.

March 4, 2020

M/s. Handum Industries Ltd. v. National Agricultural Co-operative Marketing Federation of India Ltd. & Ors., CP (IB) No. 504/10/HDB/2018.

In the present case, the Corporate Applicant filed a petition u/S. 10 of the Code to initiate CIRP. One of the FCs objected to the petition on the ground that the petition is incomplete as it understates the debt and fails to disclose the entire debt owed to the FC. It was also alleged that the Corporate Applicant created fictitious debts which it owes to its own group companies in order to avoid paying other genuine creditors. The AA, relying on the decisions in *Unigreen Global Pvt.Ltd.* v. *Punjab National Bank and Ors.* (2017 SCC Online NCLAT 566). and *M/s Innoventive Industries* v. *ICICI Bank and Anr.* [(2018) 1 SCC 407], held that a creditor can raise a defence that there is no default or that debt is not due or payable in fact or law. However, in the present case, what has been objected to by the FC is not the debt, but only the quantum of debt. Therefore, the petition was admitted, and CIRP was initiated.

March 5, 2020

Duncans Industries Ltd. v. Sangita Fiscal Services Pvt.Ltd., CP (IB) No. 184/KB/2018, CA (IB) No. 03/KB/2019, CA (IB) No. 121/KB/2019.

In the present case, four FCs jointly filed an application u/S. 7 to initiate CIRP of the CD for default in repayment of the temporary finance availed by the CD. The CD contended that the impugned amount was an advance for the purchase of tea, and since no time value of money was involved, it was not a case of financial debt. The AA held that even if the money was given as an advance for the purchase of tea, it amounts to commercial borrowing. The AA also held that the temporary finance in the instant case is a financial debt as it carries interest and that even if money is given without interest, it has a 'time value of money' as it results in economic advantage to the borrower.

March 12, 2020

Jeco Agrovet Pvt. Ltd. v. Amrit Agrovet Pvt. Ltd. (Safidon), CP (IB) No. 312/KB/2019.

In the present case, the OC filed a petition u/S. 9 to initiate CIRP of the CD. The CD contended that the demand notice had not been delivered. However, the OC argued that the notice was sent to the two available addresses of the CD. It was contended that the delivery of the notice stood properly effected when made to a company, which was a group/associate company of the CD. The AA held that once a commonplace is being used by a number of companies belonging to the

same group, and when the addressee and the address are correct, it cannot be said that the notice u/S. 8 of the Code if received by one of the group companies on behalf of the CD is not a proper delivery. Therefore, the AA admitted the petition and CIRP was initiated.

March 13, 2020

M/s. JJ Plastalloy Pvt. Ltd. v. M/s. Prayaas Packaging Pvt. Ltd., CP (IB) No. 1193/KB/2019.

In the present case, the OC filed an application u/S. 9 claiming default on payments. The CD contended that the AA has no jurisdiction to entertain the application in light of the exclusive jurisdiction clause in the invoice, which conferred jurisdiction on the courts in Varanasi. The AA rejected the plea and held that the said clause does not bar the AA from proceeding in the present application as the nature and purpose of proceedings under the IBC is entirely different from that of a civil suit. Further, the AA can entertain the application as long as the registered office of the CD falls within its jurisdiction.

March 13, 2020

S. Dhanapal, Liquidator of M/s. Servalakshmi Paper Ltd. v. Indian Overseas Bank and Ors., CA/1266/2019.

In the instant case, the Liquidator filed an application seeking an order for approval of either of the two schemes presented during liquidation u/S. 230 of CA, 2013. The CoC favoured Scheme B, whereas the liquidator favoured Scheme A based on the yardstick allegedly of asset maximisation. The question was whether the writ of the CoC would prevail over that of the Liquidator while deciding the scheme of arrangement u/S. 230 of CA, 2013. The AA, relying on *S.C. Sekaran* v. *Amit Gupta* [Company Appeal (AT) (Insolvency) no. 495 & 496 of 2018], held that in case a viable scheme is proposed instead of dissolution of the CD, the AA is required to consider the same by wearing dual hats, one as the AA named under the IBC, in the matter of liquidation, and the other as a tribunal functioning u/S. 230, CA, 2013. In light of this, the AA devised a voting procedure that entitled the stakeholders to vote and choose the appropriate scheme. The scheme that receives the highest voting share should be placed before the AA for approval.

March 16, 2020

Megamet Steels Pvt. Ltd. v. Agarwal Mittal Concast Pvt. Ltd., CP (IB) No. 533/9/NCLT/AHM/2018.

This petition was filed for the initiation of CIRP against the CD for the unpaid operational debt due. The CD was said to be indebted to the Petitioner for a sum of Rs. 1,52,88,434.00 along with interest. The CD handed over a cheque for that amount and promised that it would be honoured. However, it was dishonoured.

The petitioner issued a legal notice u/Ss. 138 and 141 of the NI Act to pay the entire amount due within 15 days of receipt of the notice. A criminal complaint was filed, and a demand notice was sent to the CD. The CD did not satisfy the claim and hence, the petitioner filed for initiation of CIRP. The respondent submitted that the petition must be rejected on the grounds that there is a pre-existing dispute and is violative of S. 8(2)(a) of the IBC.

The Court observed that the CD had acknowledged the applicant as its creditor and that there is an existence of debt due and payable. There was also no pre-existing dispute before the application was filed. Pendency of a case u/S. 138 of the NI Act amounts to an admission of debt and not the existence of a dispute. This did not bar the initiation of the CIRP against a CD. The respondent failed to appear before the AA and the petition filed by the petitioner u/S. 9 of the IBC was found to be complete to initiate CIRP. The Court thus admitted the petition and gave orders u/Ss. 13 and 14 of the IBC with respect to the commencement of insolvency.

March 16, 2020

M/s. Nuetech Solar Systems Pvt. Ltd. v. M/s. Environ Energy Corporation India Pvt. Ltd., CP (IB) No. 1106/KB/2019.

The OC filed an application for initiation of CIRP u/S. 9 of the IBC before the NCLT, Kolkata Bench. This was on the grounds that the CD had defaulted in paying an operational debt of Rs. 78,25,990. A notice was served to the CD on non-payment of the amount. The OC filed a winding-up petition before the Karnataka HC. However, it had no territorial jurisdiction to pass a winding-up order as the registered office was in Kolkata. The OC had filed a number of criminal proceedings u/S. 138 of the NI Act. Subsequently, a settlement was arrived at between the FC and CD.

The Court held that the settlement was not towards a full and final settlement. The Court further held that the winding-up proceeding filed by the OC was not a pre-existing dispute. CD had argued

that it was a time-barred claim filed by the OC. The Court found that the OC filed the petition in the Karnataka HC, which was pending till 2015. Following this, it was filed in the Kolkata HC in 2016 and was still pending. While counting the period of limitation, the OC gets the benefit of S. 14 of the Law of Limitation on the ground that it filed the application in the wrong jurisdiction. Hence, it was not barred by limitation. The application was thus admitted.

March 16, 2020

Mr. Prasad Sengupta v. New Kolkata International Development Pvt. Ltd., CP (IB) No. 668/KB/2019.

In the instant case, the OC was the CEO of the CD. As per the employment agreement, the dues of the OC were determined, which were unpaid by the CD. The CD challenged the petition under limitation and lack of proper authority. Referring to the case of *Mobilox Innovations Pvt. Ltd.* v. *Kirusa Software Pvt. Ltd.* [Civil Appeal No. 9405 of 2017], the court held that the fact that services have already been obtained does not bar payment in the future. Feeble contentions regarding pre-existing disputes cannot be given due weightage. The court's decision was based on 'material on record,' having regard to the nature of proceedings. 'The Doctrine of Substance over Form' is to be applied in the case of an economic legislation such as the IBC, so that its objectives to promote entrepreneurship and economic growth coupled with the balancing of interest of all stakeholders are achieved. The petition for CIPR was thus admitted.

March 16, 2020

Indian Overseas Bank v. Shree Ram Sawmill Pvt. Ltd., CP (IB) No. 978/KB/2019.

In the instant case, the FC granted a loan to the CD, which subsequently became an NPA. The question before the court was whether the debt was barred by limitation. The letters by the CD acknowledging the loan amount, non-payment of the same and request for the restructuring of the debt were within the limitation period. From the date of the letter, a continuous cause of action arises, thus, the limit for filing of the application was extended. The acknowledgement of liability was made before the expiry of the limitation period for filing of the suit through the e-mail by the CD. Therefore, it was held that these letters constitute acknowledgement in terms of provisions of S. 18 of the Limitation Act. Furthermore, relying on the case of *J.C. Budhraja* v. *Chairman, Orissa Mining Corporation Ltd.* [(2008) 2 SCC 444], the court held that the contents in the letter indicated the existence of a jural relationship between the parties, i.e., debtors and creditors. Additionally, the Court held that explanation to S. 18(a) has a wide scope and no straight jacket formula can be applied. Considering the scheme of the IBC, the court held that the term 'acknowledgement' is to

be read and interpreted in a liberal manner. Further, the court held that S. 18(a) of the Limitation Act, 1963 provides flexibility and takes into consideration various factors/situations for acknowledgement of debt and this must be read along with S. 3(6) of the IBC, 2016 which includes right to payment even on the equitable ground. The Limitation Act is applicable to the extent of its consistency with the IBC.

March 17, 2020

Ashok Tripathi v. M/s. Ansal Properties and Infrastructure Ltd., CP (IB)No. 2584 (ND) 2019.

A petition was filed u/Ss. 7 and 4 of the IBC by the FCs to initiate CIRP against the CD for default of a debt of Rs. 73,35,686.43. Both the FCs had booked land units with booking advances. The CD issued allotment letters, undertook construction, and promised possession to them within two years. However, it was not done for almost five years, nor was the amount refunded. To substantiate a financial debt, the FCs annexed a recovery certificate of the UP RERA, which proved the liability of the CD. CD argued that the construction was affected due to unforeseen circumstances and claimed the *force majeure* under clause 23 of the built-up agreement as an excuse for not handing over possession. Further, they contended that the FCs being 'allottees/home buyers' were hit by an ordinance dated 28.12.2019. CD also paid a part of the dues in instalments.

The AA looked into the definitions of 'claim' and 'creditor' u/S. 3 of the IBC and held that the 'claim' of the petitioners arose from the orders and recovery certificate issued by the UP RERA, which was an 'adjudicated debt' determined by an authority. Thus, they would not be hit by the ordinance. The application was admitted, and the AA declared a moratorium for the CD u/S. 14 of the IBC for the initiation of CIRP.

March 18, 2020

ICICI Bank Ltd. v. M/s. OPTO Circuits (India) Ltd., CP (IB) No. 199/BB/2018.

In the instant case, the petition is filed by the FC u/S. 7 of the IBC on the grounds of default. A non-fund based working capital facility of a Stand-by Letter of Credit (SBLC Facility) by way of Credit Arrangement Letters (CALs) was executed between the CD and the FC. The purpose of this was to provide a financial guarantee for the obligations of Cardiac Science Corporation (CSC), a subsidiary of the CD. The CD entered into a facility agreement to avail from the FC various working capital facilities including CALs executed previously. The CD also entered into a deed of hypothecation whereby the CD hypothecated its current assets by way of first charge ranking *pari passu* in favour of certain other banks and hypothecated receivables. The US bank irrevocably

invoked the SBLC for USD 10,000,000 along with a payment fee of USD citing that the obligation of CSC is due and payable. The CD contended that CSC was taken over by another company and the CD had no control over it. Subsequently, the FC remitted a certain amount to the US bank in 2015.

The court observed that the CD had undertaken to repay the facilities availed and provided post-dated cheques to the Petitioner by declaring that the Bank presented those cheques towards the reduction of SBLC facility, and it can be presented if there is an invocation of SBLCs issued. The AA rejected the contention by the CD that there were winding-up petitions pending before the Karnataka HC, as they were withdrawn subsequently. Further, the contention that the transactions of its subsidiary CSC were with the US Bank and subsequent proceedings initiated against it were in the US and they were unaware of it, was invalid. Therefore, the court decided that the debt is due and payable.

March 19, 2020

SKE Projects Pvt. Ltd. v. Jaihind Projects Ltd., CP (IB) No. 172/NCLT/AHM/2018.

A petition was filed by the RP for CD u/S. 31 of the IBC for approval of the resolution plan of resolution applicant i.e. Parixit Irrigation Limited. This was approved by the CoC, with 72.03% of the voting. Axis Bank, the dissenting FC, filed its objection to the plan since by adopting the pro-rata basis, it was provided with a meagre sum of Rs. 2.4 crores as opposed to the fair value of Rs. 15.09 crores and liquidation value of Rs. 8.60 crores.

The AA held that in view of the recent amendment as well as on the ground of reasonability and equity, Axis Bank was entitled to liquidation value. S. 30(2)(b) of the IBC, brought in by the recent amendment, states that the dissenting FC should receive a minimum liquidation amount of the CD as per S. 53(1) of the IBC. It further directed the other FC's to contribute the remaining amount either on a pro-rata basis or in proportion to the extent of their debt, to Axis Bank. The AA also went on to reiterate that "Resolution is the rule and Liquidation is the Exception." Thus, the resolution plan was approved and came into force with immediate effect.

March 20, 2020

Mr. Mahesh Sureka v. Marathe Hospitality & Ors., & Union Bank of India, Mumbai v. Phadnis Resorts & Spa India Ltd., CP (IB) No. 3603/(MB)/2018.

The factual matrix of the case was that the CD was carrying out the business of running, and the resort had been mortgaged to Union Bank of India in 2015 for availing the loan from the Bank.

This property was given on lease without prior consent from Union Bank and was executed fraudulently. The Economic Offences Wing attached several properties of the CD which includes the registered office of CD.

The court observed that the lease agreement had a covenant for renewal, which was considered as *mala-fide* and invalid u/S. 65(A)(2)(c) of the Transfer of Property Act, 1882. To protect the interests of the Bank and the present creditors, the Bench directed the Economics Offences Wing and other Governmental Departments to release the property and assets of the CD currently attached with them for the initiation of CIRP. Relying on the case of *Solidaire India Ltd* v. *Fairgrowth Financial Services Pvt. Ltd.* [(2001) 3 SCC 71], the court held that the latest law would prevail. Considering S. 238 and its overriding effect, the attachment order of the Economics Offences Wing is a nullity and will not have a binding force. Therefore, the Court held that the RP had to take possession of the fixed assets and documents of the CD.

March 20, 2020

Pooja Engineering Co. v. Overseas Infrastructure Alliance (India) Pvt. Ltd., CP (IB) No. 3625/MB/2019.

In the instant case, a CP is filed against the CD, alleging that the CD committed default in making payment. The petitioner was involved in getting manufacturers from its vendors as per the specified technical requirement in the purchase orders. The Letter of Credit was received by the CD from the bankers in favour of the petitioner. The CD was also served demand notices.

The CD was approached by the petitioner as a business relationship for manufacturing and supply of pump-sets, by making a representation that they have requisite experience and expertise in the manufacturing of the product. The CD alleged that there was no supply of the materials by the petitioner and the petitioner did not comply with the purchase orders as the Letter of Credit was valid for a long time. The debit notes mentioned by the petitioner were not served to the CD and were only noticed when a reply to the demand notice was filed. The FC stated that the purchase orders, proforma invoices, letters of credit and email correspondence were placed on time. Subsequently, the AA held that the machines were not delivered on time to the CD and there was no debt due and payable by the CD.