



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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*"Life has all the ups and downs, so enjoy and learn every day"*

## ➤ **Advance Paid Towards Service Is Operational Debt: NCLAT Delhi**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Chipsan Aviation Private Limited v Punj Llyod Aviation Limited, has held that an advance paid towards a service falls within definition of operational debt, even if there was no privity of contract between the Parties.

### Background Facts

Chipsan Aviation Pvt. Ltd. ("Appellant/Operational Creditor") was engaged in business with Punj Llyod Aviation Limited ("Respondent/Corporate Debtor"), for charter services of aeroplanes and helicopter, hired on long term basis from non-scheduled operators/owners. On 28.03.2016 the Operational Creditor had advanced an amount of Rs.60 lakhs to the Corporate Debtor for aviation related services. However, the services were not provided by the Corporate Debtor nor the advance amount was refunded. The advance payment made by the Operational Creditor to the Corporate Debtor reflected in the Balance Sheets of the Corporate Debtor as on 31.03.2016 under the head current liabilities. The amount of Rs.60 lakhs was continuously shown as advance received from the customers during financial years 2015-16, 2016-17 and 2017-18.

On 19.09.2019, the Operational Creditor issued a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("IBC") to the Corporate Debtor demanding refund of the advance amount. When no refund was received, the Operational Creditor filed a petition under Section 9 of IBC, seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor over a default of Rs.97,40,055/-, inclusive of interest.

The Corporate Debtor in its Reply to Section 9 petition contended that there was no privity of contract between the Parties and no Operational Debt exists under Section 5(21) of IBC. The contract of the Operational Creditor dated 01.04.2016 was with M/s Buildarch Aviation. Further the petition was barred by limitation as the advance

payment was made on 28.03.2016 and the petition was filed after expiry of the three years. The Adjudicating Authority vide an order dated 06.01.2022 rejected the Section 9 petition while holding that advance payment made by Operational Creditor to the Corporate Debtor does not fall within definition of Operational Debt. The Operational Creditor filed an appeal before the NCLAT against the order dated 06.01.2022.

Relevant Law Section 5(21) of IBC

5(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

Decision Of The NCLAT

The Bench placed reliance on the Supreme Court judgment in Construction Consortium Limited v Hitro Energy Solutions Pvt. Ltd., (2022) SCC OnLine SC 142, wherein it was held that the expression 'in respect of' in Section 5(21) has to be interpreted in a broad and purposive manner and advance payment for goods and services is an Operational Debt. Though there was no privity of contract between the Parties, the Bench yet opined that the advance payment of Rs. 60 lakhs was clearly an Operational Debt. The Adjudicating Authority had committed error in rejecting Section 9 petition and thus Order dated 06.01.2022 was set aside. The Section 9 petition was revived.

*Source: Live Law*

*Read Full news at: <https://www.livelaw.in/news-updates/nclat-delhi-advance-paid-towards-service-operational-debt-operational-creditor-section-8-of-the-insolvency-and-bankruptcy-code-214301>*

## ➤ **Videocon Insolvency: Wisdom of creditors can't fluctuate, Twinstar tells SC**

The Supreme Court on Wednesday heard the appeal of Vedanta group's Twinstar Technologies against the order of the National Company Law Appellate Tribunal (NCLAT).

Appearing for Twinstar, Senior Advocate Abhishek Manu Singhvi said their bid for Videocon Industries Limited was approved by the Committee of Creditors (CoC) during the insolvency process of the group and it was later approved by the National Company Law Tribunal (NCLT).

However, after the decision of NCLT, the CoC, particularly some dissenting lenders led by the Bank of Maharashtra, backtracked on its approval of the bid, he said. Also, the NCLAT then ruled in favour of this and against the order of the NCLT.

He had, in an earlier hearing, told the court that the CoC had invited bids in Videocon after the NCLAT order. The NCLAT had set aside the approvals given for the company's takeover of the Videocon group under the resolution process.

He recalled the court's earlier judgment which said the NCLT/NCLAT cannot interfere with the CoC's commercial wisdom. "In this case, the CoC not only reviewed its commercial wisdom but reversed its own plan. The wisdom of the CoC cannot be fluctuating," he told the bench of Justices Dinesh Maheshwari and Sudhanshu Dhulia.

He also argued that the law gives little to no room for the CoC to go back on its resolution plan after it has been approved by the NCLT.

The apex court on February 14 this year issued notice to the parties on Twinstar's appeal and said that it expects that there would be no fresh bids for Videocon until the matter was resolved.

The value of the approved resolution plan was very close to the liquidation value of Videocon's assets which led to the lenders challenging the bid. The haircut was more than 90 per cent, in this case, Singhvi told the court.

He told the court that 13 companies under the Dhoots ran up 64,000 crore of debt and eleven offers had come for the resolution plan. Out of those, the bid for 3,000 crore was approved, he added.

The former promoter of the Videocon group, Venugopal Dhoot, had also challenged Twin Star's resolution plan for being a very low bid. Dhoot wanted the NCLAT to consider his offer for reviving Videocon Group.

The court will hear the other side's arguments at the next hearing on November 28.

**Source: Business Standard**

**Read Full news at:** [https://www.business-standard.com/article/companies/videocon-insolvency-wisdom-of-creditors-can-t-fluctuate-twinstar-tells-sc-122111601281\\_1.html](https://www.business-standard.com/article/companies/videocon-insolvency-wisdom-of-creditors-can-t-fluctuate-twinstar-tells-sc-122111601281_1.html)

