



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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**"Do not allow people to dim your shine because they are blinded.**

**Tell them to put some sunglasses on"**

## ➤ **Operational Creditor Cannot Change The 'Date Of Default' By Confining The Invoices To A Later Period: NCLT Mumbai Reiterates**

The National Company Law Tribunal ("NCLT"), Mumbai Bench, comprising of Shri H.V. Subba Rao (Judicial Member) and Ms. Anuradha Sanjay Bhatia (Technical Member), while adjudicating a petition filed in M/s Shri Sadguru Traders v M/s Gajalee Coastal Foods Pvt. Ltd., has reiterated that the Operational Creditor cannot change the 'date of default' by confining the invoices to a later period. Specially when the Demand Notice under Section 8 of IBC includes all the invoices from the date of default and the 'debt amount' is crystallized based on the invoices.

### Background Facts

M/s Shri Sadguru Traders ("Operational Creditor") is involved in the wholesale business of supply of food grains and M/s Gajalee Coastal Foods Pvt. Ltd. ("Corporate Debtor") runs popular restaurant in Mumbai. The Corporate Debtor had placed purchase orders with the Operational Creditor for supply of food grains and grocery items. Operational Creditor had supplied the goods, however, only part payment of Rs. 1,70,000/- was received till 24.12.2018.

On 15.05.2019 the Operational Creditor issued demand notice to the Corporate Debtor, demanding balance principle amount of Rs. 49,57,924/-. The Corporate Debtor replied to the said Demand Notice on 28.05.2019.

When the payments were still not received, the Operational Creditor filed a petition under Section 9 of Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

The Operational Creditor in Part 4 of the Petition had mentioned that debt fell due on 24.12.2018 i.e. the date on which part payment of Rs. 1,70,000/- was made. Thus, the Operational Creditor computed the period of limitation from 24.12.2018 for invoices from 2015 till 24.02.2018.

The Corporate Debtor raised the objection that the default included certain invoices that were raised in 2015-2016, hence, petition was time barred.

The Operational Creditor argued that even though certain invoices preceding 3 years are barred by limitation, the Petition can still be admitted in respect of the unpaid invoices that are within the limitation. Decision Of NCLAT Reliance was placed on the NCLAT judgment in Next Education India Private Limited vs. K12 Techno Services Pvt. Ltd., Company Appeal No. 98/2019, where it was held as under:

"Para- 13. Whether the 'Operational Creditor' can change the 'date of default' by confining the invoices to a later period, when the Demand Notice under section 8 includes all the invoices from the date of default and the 'debt amount' is crystallized based on the invoices. Para- 21. As can be seen from Section 8, reproduced above, the moment there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a Demand Notice to the 'Operational Creditor'.

Form III gives the details of the invoices. In the instant case, the 'Operational Creditor' has given the details of invoices from (pages 399 to 406 of Volume II) and has also crystalized the amount at Rs. 2,39,85,521.35/-, which is unpaid from 2011.

Therefore, the argument of the Learned Counsel for the 'Operational Creditor' that the period should be confined only from 2015 to 2017 cannot be sustained. The Tribunal cannot confine to one or other invoice if the Applicant has relied on all the invoices to arrive at the amount of Rs. 2,39,85,521.35/- in the Demand Notice under Section 8. We are of the view that the Tribunal does not have jurisdiction in these Insolvency Proceedings to cut-short the invoices which would cause recurring dates of cause of action as it is not a suit for recovery."

The Bench reiterated that as per the law laid down by the NCLAT in Next Education case, the Operational Creditor cannot change the 'date of default' by confining the invoices to a later period.

Specially when the Demand Notice under Section 8 of IBC includes all the invoices from the date of default and the 'debt amount' is crystallized based on the invoices. The petition was dismissed.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/nclt-mumbai-operational-creditor-date-of-default-debt-amount-corporate-insolvency-resolution-process-cirp-212001?code=NkgHBR0c5v0WA7FmZS7DzvvLaKV7OW>

## ➤ **RP's face interim financing issues on settlement delays; loss-making companies worst-hit**

Resolution professionals managing companies undergoing insolvency proceedings are facing funding challenges as settlement is taking longer than anticipated. The Insolvency and Bankruptcy Code (IBC) allows for interim financing to existing creditors of an insolvent company for routine functioning, but most lenders are wary

of any additional exposure. "Delays in resolution is a major roadblock for any interim finance or last mile finance to keep the company as a going concern," said Veena Sivaramakrishnan, partner, Shardul Amarchand Mangaldas.

"While priority is accorded to such interim financing, the fact that there are significant delays in the resolution itself is indeed a huge cause for concern for lenders." companies where the resolution professional is looking to sell the entity as a going concern that needs funds to sustain till it is sold.

Lenders are concerned about interim finance eating into their ultimate share on account of high-interest rate and no certainty on time of completion of the IBC process," said Ajay Shaw, partner, DSK Legal.

They are wary about throwing good money after bad money, he added. This is not an issue in cases where resolution is through liquidation. According to the IBC, any corporate resolution should be concluded within 180 days.

If there are any challenges, creditors may extend the total IBC process up to 330 days. The actual time taken is longer because of a pile-up of cases at the National Company Law Tribunal (NCLT), the adjudicating authority for IBC.

Experts say creditors cannot be mandated by law to provide additional funding. "Any statutory obligation on the creditor regarding interim funding will meet with a lot of criticism as the creditors, in any case, get much less to what is due and payable to them as part of the original debt," said Ruby Singh Ahuja, senior partner, Karanjawala & Co.

"In absence of interim financing, the option left for RPs is to rely on third-party funding." As per Insolvency and Bankruptcy Board of India data, as on June 30, there were about 2,000 insolvency resolution cases pending and over 61% of them were more than 270 days old.

Raj Bhalla, partner at MV Kini & Co, feels it makes sense for existing creditors to provide interim finance.

"The existing creditors waiting for their previous outstanding dues from the corporate debtor should not refrain from extending interim finance as it would result in a lesser haircut than the haircut they would face in case interim finance is raised from another agency at a much higher rate of interest."

**Source: The Economic Times**

**Read Full news at:** <https://economictimes.indiatimes.com/news/company/corporate-trends/rps-face-interim-financing-issues-on-settlement-delays-loss-making-companies-worst-hit/articleshow/94951022.cms>

