

IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



NEERAJ JAIN DIRECTOR OF M/S FLIPKART INDIA PRIVATE LIMITED VS. CLOUDWALKER STREAMING TECHNOLOGIES PRIVATE LIMITED COMPANY

APPEAL (AT) (INSOLVENCY) NO. 1354 OF 2019

Brief Facts

Operational Creditor, Cloudwalker Streaming Technologies Private Limited ("OC") filed an insolvency application u/s 9 of the Code against Flipkart India Private Limited ("Corporate Debtor") which got admitted by NCLT, Bengaluru Bench. OC entered into a Supply Agreement with Corporate Debtor for the purpose of supplying LED TVs to the Corporate Debtor.

The Corporate Debtor received delivery of the first few batches of LED TVs and made prompt delivery. After that, the Corporate Debtor avoided taking delivery of the LED TVs on the ground of lack of warehouse space and accordingly OC warehoused the said LED TVs for a temporary period on behalf of the Corporate Debtor. In order to gain more profit, the Corporate Debtor urged OC to offer the already imported and warehoused LED TVs, at a discounted price. OC started facing huge losses and a liquidity crunch and hence agreed to offer the said discount, on the condition that the Corporate Debtor forthwith will take the delivery of the remaining LED TVs, purchased by it and will make payment for the same.

Accordingly OC demanded the payment of the LED TVs procured and imported for the Corporate Debtor based on the import and the purchase order issued by the Corporate Debtor. On account of non-receipt of the payment, OC issued a demand notice to the Corporate Debtor under Form 3 dated



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8th June 2019 u/s 8 of the Code which was received by the Corporate Debtor on 13th June 2019. However, there has been no reply to the same. The Corporate Debtor has not raised any dispute about the amount outstanding to the Operational Creditor at any point of time and therefore insolvency application got admitted against the Corporate Debtor on ground of no pre-existing or post existing dispute.

Aggrieved by the admission order, Corporate Debtor preferred an appeal before NCLAT on the grounds that the admission order has been passed without taking into consideration that no documentary evidence, including but not limited to purchase order, acceptance letters, invoices and proof of any intimation of sale to the end customers or any post delivery services with specific references to the amount sought to be claimed by OC was furnished. Also that a claim for damages cannot be considered as an operational debt.

Decision

NCLAT held that the choice of issuance of demand notice u/s 8(1) of the Code, either in Form 3 or Form 4 as provided under IBBI (Application to Adjudicating Authority) Rules 2016 depends on the nature of the operational debt. Section 8(1) of the Code does not provide the operational creditor with the choice to send the demand notice either in Form 3 or Form 4 as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not. NCLAT also provided that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the IBBI (Application to Adjudicating Authority) Rules, 2016 provided the documents to prove the existence of operational debt and the amount in default are duly attached with the application.

Link to the Order

<https://ibbi.gov.in/uploads/order/5a91ac556e474826ed2c61666394cf08.pdf>



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