Learning Curve-1041

May 09, 2024

For determining the minimum threshold of Rs. 1cr u/s 4, date of application for initiating CIRP is relevant, not the date of demand notice served u/s 8.

CASE TITLE	Ralco Extrusion Private Limited Vs. Centech Engineers Private Limited
CASE CITATION	CP (IB) No.1219/MB/2022
DATE OF ORDER	April 17, 2024
COURT/ TRIBUNAL	NCLT, Mumbai Bench VI

BRIEF FACTS:

The OC issued demand notice dated 05.02.2020 to the CD u/s 8 of the Code. Due to non payment by the CD, application was filed by the OC on 05.03.2022 u/s 9 of the Code for initiating CIRP in respect of the CD. The CD in its submissions challenged the maintainability of the application. CD submitted that application does not fulfil the threshold limit of 1cr.

DECISION:

The Hon'ble NCLT, Mumbai Bench, held that,

*"It is now settled that the threshold limit of Rs.1 crore will be applicable for applications filed under Sections 7, 9 and 10 on or after 24.03.2020, even if the debt in default is on a date earlier than 24.03.2020. From the said date of amendment, Part II of the Code can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 crore. Moreover, the threshold of Rs.1 crore has to be fulfilled by an applicant under Section 7 or Section 9 on the date of filing of the application. The fact that default was committed prior to 24.03.2020 and the statutory notice under Section 8 was issued and served prior to 24.03.2020 are not determinative or material, although these are conditions precedent for filing an application under Section 9 of the Code. **What is relevant for determining the minimum threshold is not the date of giving notice under Section 8 but the date when the application is filed....***

The amount in default in instant case being less than Rs.1 Crore, we are satisfied that the present Application fails to fulfil the monetary threshold limit laid down under Section 4 of the Code and is accordingly not maintainable under Section 9 of the Code. Hence, it is liable to be dismissed on this ground alone."