

## Learning Curve-1045

May 20, 2024

**If GST Refund/ITC claim was not included in the sec 8 demand notice or sec 9 application, it cannot become a ground of default on which CIRP can be initiated.**

CASE TITLE	R.B. Singh Vs. Rashmi Cement Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1187 of 2023
DATE OF ORDER	May 10, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

### BRIEF FACTS:

Rashmi Cement Ltd. (RCL) claims to have paid in advance for supply of three rakes of cement clinker to Bhilai Jaypee Cements Ltd (BJCL)/CD. However, BJCL failed to supply the third rake and also did not refund the advance payment received by them. RCL therefore, issued demand notice u/s 8 of the IBC and proceeded ahead by filing sec 9 application. The AA by an order admitted the CD into CIRP. The Appellant being a shareholder of the CD aggrieved by the impugned order, preferred an appeal.

### DECISION:

The Hon'ble NCLAT, New Delhi, held that,

*“we need not go into the reasons adduced by RCL as to why they failed to demand payment of unpaid return on GST in the Section 9 application. It only suffices to note that no such GST refund and ITC claim was included in the Section 8 Demand Notice or the Section 9 application by the RCL and hence it cannot become a ground of default on which CIRP can be initiated....*

*when the dues in terms of Form 3 and Form 5 have been cleared by BJCL, endeavours on the part of RCL to seek initiation of CIRP by raising claims which do not find place in Form 3 and Form 5 filed by them, clearly manifests the intention of the RCL to invoke the provision of IBC to enforce recovery of debts against the Corporate Debtor. Allowing such claims which never formed part of the claim of operational debt before the Adjudicating Authority to be considered at the appeal stage is not tenable. This cannot be commended as it militates against the spirit and essence of IBC...*

*Having regard to the facts and circumstances of the case on hand, this Appeal is allowed and the Impugned Order of the Adjudicating Authority is set aside.”*