

INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-489

February 04, 2021

Amount received as an advance payment for the supply of goods during the CIRP to keep the CD as a going concern would have to be treated as CIRP costs.

CASE TITLE	Tuf Metallurgical Private Limited v. Impex Metal& Ferro Alloys Limited ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 190 of 2020
DATE OF ORDER	03.02.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>M V Projects V DivyaJyoti v. Sponges Iron Pvt Ltd.</i> <i>MSTC Limited V AdhunikMetaliks Ltd</i>
SECTION/REGULATION REFERRED	Section 5(13) of the Code

Brief of the case:

In this matter, Corporate Debtor failed to supply the goods to the appellants during the CIRP period and liquidator refused to treat the advance paid for such goods as CIRP cost. Two appeals emanated from a common order of NCLT, Kolkata, whereby NCLT had summarily disposed of the application under Section 60(5) by issuing an order that “Liquidator to consider its claims as per Rules.” Aggrieved by the said order, appellants filed the instant appeal.

Decision:

Hon’ble NCLAT directed the RP to respond to the claims made in appeals and supply all the necessary details and information relating to transactions before the Liquidator within 15 days of the passing of this Judgment and held that,

“In such a process of managing the business operations of the Corporate Debtor, if an advance payment for supply of goods is received, it cannot be treated as raising an interim finance. It is an advance for payment of goods which the Corporate Debtor as a going concern may be of manufacturing. The goods are either to be supplied, or the amount should be returned. If the goods are not supplied, the purchaser cannot be made to run for his money. If this approach as in the present matter is not changed, it will become difficult to keep the Corporate Debtors as a going concern. Such amount received as an advance payment for the supply of goods during the CIRP would have to be treated as CIRP costs....”



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://nclat.nic.in/Useradmin/upload/1683988625601a5a88ab8db.pdf>