

INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-767

May 24 2022

Operational Debt cannot be converted into Financial Debt on basis of an MoU executed between the parties.

CASE TITLE	Jambudwip Exports And Imports Limited Vs U P Bone Mills Private Limited ¹
CASE CITATION	C.P. (IB) - 447/2021
DATE OF ORDER	23.052022
COURT/ TRIBUNAL	National Company Law Tribunal, New Delhi Bench (Court-II)
SECTION/ REGULATION REFERRED	Section 7 of IBC, 2016 and Section 179, 186 of the Companies Act, 2013
CASE LAWS REFERRED	M/s UKG Steel Pvt. Ltd. Vs M/s Erotic Buildcon Pvt. Ltd.

Brief of the case:

This petition was filed under section 7 of IBC, 2016 by Jambudwip Exports and Imports Ltd. through its representative with a prayer to initiate the CIRP against UP Bone Mills Pvt Ltd (Corporate Debtor/CD)

An amount of Rs.18,96,57,538/- was given as an advance by the Applicant to the Corporate Debtor for purchase of MS Ingots (goods) and subsequently, the said advance was converted into an Inter-Corporate loan by executing a Memorandum of Understanding (MOU) dated 10.05.2019 by the parties. Since the aforesaid transaction has been projected as an Inter-Corporate Loan, NCLT New Delhi Bench decided on the issue of whether the conversion of the advance given towards purchase of goods into the inter-corporate loan is in accordance with the law?

Decision:

NCLT, New Delhi dismissed the application and held that,

“Applicant Company can give loan to any person or body corporate upto Rs.8,85,71,343.75/- in terms of Section 186(2) of Companies Act, 2013, whereas from the records we find that an amount of Rs.18,96,57,538 given originally as an “advance to purchase goods” has been converted into an “Inter-corporate Loan” by virtue of an MOU dated 10.05.2019 entered by and between the parties, which is in breach of the limit specified under Section 186(2) of the Companies Act 2013.

..we conclude that the amount advanced by the Applicant Company to the Corporate Debtor for purchase of certain goods was neither disbursed as loan per se nor the conversion of the said advance into an Inter Corporate Loan through the instrument of an MoU is in accordance with the law. Further, it is observed that by executing the MOU dated 10.05.2019, the parties have cleverly attempted to convert an Operational Debt into a Financial Debt.”

QR CODE FOR FULL ORDER/JUDGEMENT:



¹ https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102064382021/04/Order-Challenge/04_order-Challenge_004_1653303329340234711628b682145824.pdf