

Learning Curve-771

May 27 2022

No CIRP petition can be filed for a default of less than Rs. 1 Crore, on or after 24.03.2020, even if the default had occurred or demand notice was sent prior to 24.03.2020.

CASE TITLE	Mr. Daxesh D. Desai v Shopzo Brand Pvt. Ltd. ¹
CASE CITATION	IB 533/(ND)/2021
DATE OF ORDER	23.05.2022
COURT/ TRIBUNAL	NCLT, New Delhi
SECTION/ REGULATION REFERRED	Section 4, 7, 9 of IBC read with
CASE LAW REFERRED	Jumbo Paper Products V. Hansraj Agrofresh Pvt. Ltd. Prafulla Purshottamrao Gadge v. Narayan Mangal and Anr.

Brief of the case:

The Respondent failed to make payments against the invoices raised by the Applicant and admitted default vide an email dated 03.02.2021. The Applicant issued a demand notice to the Respondent on 19.07.2021 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. After no payments were received, the Applicant filed an application under Section 9 of the IBC on 09.09.2021, seeking initiation of CIRP against Shopzo Brand Pvt. Ltd. for a default amounting to Rs. 82,13,604/-, inclusive of interest. The question for consideration was whether the petition is maintainable in terms of Section 4 of the IBC, 2016.

Decision:

Hon'ble NCLT, New Delhi observed that the petition being filed on 09.09.2021 for a default of Rs. 82,13,604/-, the threshold limit of Rs. 1 Crore of debt was applicable and hence dismissed the petition and held that,

"In fact, the date of the filing has to be seen and not the date of the default or the date of the demand notice, which is immaterial. The intent of legislation to fix the threshold limit was to save the Companies from being rotted to NCLT for initiation of CIRP proceedings, due to COIVD-19 effect.

The said notification was always prospective in nature but having retrospective repercussion also."

QR CODE FOR FULL ORDER/JUDGEMENT:



¹ https://www.livelaw.in/pdf_upload/shopzo-judgement-1-419222.pdf