

The claims arising out of default of instalment of Settlement Agreement does not come within the definition of 'operational debt'.

CASE TITLE	Trafigura India Pvt. Ltd. V. TDT Copper Ltd. ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 742 of 2020
SECTIONS/ REGULATION	Section 8 Arbitration, Section 7,9,10 IBC
DATE OF ORDER	15.09.2022
COURT/ TRIBUNAL	NCLAT, New Delhi
CASE LAW REFERRED	<ul style="list-style-type: none">• Kesoram Industries & Cotton Mills Vs. Commissioner of Wealth Tax• Innoventive Industries Ltd. vs. ICICI Bank and Anr.

Brief of the case:

The parties entered into the Master Sale Agreement (for short MSA) dated 27.01.2016 under which the Respondent agreed to buy and the Appellant agreed to sell on the terms and conditions set out in the MSA. The Agreement was for the supply of copper cathodes and was clearly a contract for the provisions of goods and services. The Respondent failed to make payment to the Appellant in accordance with the terms of the MSA. A settlement Agreement was signed between parties wherein the Respondent failed to make payment of the instalment. Appellant filed the Application under Section 9 of the IBC against the Respondent seeking the initiation of the CIRP. After hearing the parties, the AA dismissed the Application filed by the Appellant under Section 9 of the IBC.

Decision:

Hon'ble NCLAT dismissed the appeal and held that,

"The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of 'operational debt' as it does not fall within the definition of additional debt as per Section 5(21) of the IBC and further prayer made by the Corporate Debtor that the matter be referred to the Arbitration under Section 8 of the Arbitration and Conciliation Act, the Adjudicating Authority has also rightly held that the role of National Company Law Tribunal is very limited while exercising its power under Section 7, 9 and 10 of the IBC, 2016, it is beyond the scope of Section 9 of the IBC."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDktMTUvY291cnRzLzZGFpbHkvMTY2MzlyNzQ5NjU4OTkzNDlyMzYzMjJkNjY4YW12ZjAucGRm