



CIVIL

The Operational Creditor's Battle for Justice and the Significance of Valid Service in Insolvency Proceedings

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PUBLISHED 30 April 2025

The Supreme Court of India recently dealt with a significant issue concerning the Insolvency and Bankruptcy Code, 2016 (IBC) in the case of VISA Coke Limited versus M/S MESCO Kalinga Steel Limited (Civil Appeal No. 357 of 2025). The case highlights the nuances of serving a demand notice under Section 8 of the IBC and its implications for initiating the Corporate Insolvency Resolution Process (CIRP). This decision provides clarity on whether a demand notice served on the key managerial personnel (KMP) of a corporate debtor at its registered office can be considered valid for the purposes of the IBC.

VISA Coke Limited, engaged in the manufacture and sale of Low Ash Metallurgical Coke (LAM Coke), entered into a contract with M/S MESCO Kalinga Steel Limited on October 11, 2019. The contract involved the sale and purchase of 12,000 MT +/- 10% of LAM Coke, with specific terms regarding price, delivery period, and payment method. However, MESCO Kalinga Steel Limited failed to make payments for 1700 MT of LAM Coke supplied on credit, amounting to INR 3,34,16,661.60, despite repeated assurances. VISA Coke Limited issued a legal notice on November 23, 2020, and subsequently a demand notice on March 31, 2021, under Section 8 of the IBC, addressed to MESCO's KMP at its registered office. The demand notice sought payment of the outstanding amount, including penal interest. When MESCO failed to respond, VISA initiated CIRP proceedings under Section 9 of the IBC before the National Company Law Tribunal (NCLT).

The NCLT dismissed the application on January 24, 2023, stating that the demand notice was not validly served on the corporate debtor itself but rather on its KMP. The National Company Law Appellate Tribunal (NCLAT) affirmed this decision on October 3, 2024, reasoning that the notice had not been addressed to the corporate debtor through its managing director or other appropriate officers, and thus could not be considered a valid notice under Section 8 of the IBC.

VISA Coke Limited then approached the Supreme Court, contending that the demand notice, served on MESCO's KMP at its registered office, complied with the requirements of Section 8 of the IBC and Rule 5(2)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. VISA argued that the object of the IBC is to ensure that operational creditors can initiate insolvency proceedings when there is a default in payment, and that the demand notice should not be construed in a narrow and technical manner. MESCO, on the other hand, maintained that the demand notice was invalid as it was not addressed to the corporate debtor and that there were other financial disputes that required reconciliation before any insolvency proceedings could be initiated.

The Supreme Court, after a thorough analysis, held that the demand notice served on MESCO's KMP at the registered office could be construed as valid service under Section 8 of the IBC. The Court emphasized that the purpose of the demand notice is to provide the corporate debtor with an opportunity to either repay the debt or dispute it. The Court cited previous judgments, including *Rajneesh Aggarwal v. Amit J. Bhalla*, which supported the principle that a notice served on a company's director or managerial personnel is sufficient to constitute notice to the company. The Court also noted that MESCO had not raised any substantial prejudice caused by the procedural irregularity and had even approached VISA for settlement during the pendency of the CIRP petition.

The Court further observed that the issue of default and any alleged novation of the contract were mixed questions of law and fact, which should be decided by the NCLT upon the final disposal of the Section 9 petition. The Supreme Court concluded that the approach of the NCLT and NCLAT in dismissing the petition on technical grounds was incorrect and unsustainable in law.

In its final decision, the Supreme Court allowed the appeal, set aside the orders of the NCLT and NCLAT, and remanded the matter to the NCLT for a fresh decision on the merits. The Court directed the NCLT to provide a reasonable opportunity for both parties to present oral and documentary evidence and to ensure that its decision is not influenced by any observations made in its earlier order.

This landmark judgment brings back into focus the importance of substance over form in insolvency proceedings and provides guidance on the valid service of demand notices under the IBC. It reinforces the principle that procedural laws are meant to facilitate justice rather than act as a barrier to it.

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