IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-562(MB)/2022

Under Section 7 of the IBC, 2016

In the matter of
Pandit Associates
…Financial Creditor
v/s.

Sanvijay Alloys & Power Limited
…Corporate Debtor

Order Pronounced on: **24.03.2023**

Coram:

Mr. Prabhat Kumar	Mr. Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. B. Gopalakrishnan, Advocate.

For the Respondent : Mr. Sumit Khanna a/w Ms. Dakshata Sawant, Advocates.

O R D E R

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Pandit Associates** (hereinafter called "the Financial Creditor") on 15.04.2022 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Sanvijay Alloys & Power Limited** (erstwhile Grace Industries Ltd.) (hereinafter called "Corporate Debtor") on

the ground that as on 31.07.2019, the Corporate Debtor is liable to pay ₹1,35,98,287/- (plus interest @12% w.e.f. 01.08.2019 and ₹3,82,122/-) to the Financial Creditor as the Corporate Debtor defaulted in making payment of a sum of ₹1,35,98,287/- as per the decree passed by the District Court at Bellari. The date of default is 31.07.2019 (i.e. the date of decree).

1.1. The Corporate Debtor is a Company incorporated on 21.08.2003 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number is [CIN: U27100MH2003PLC141810]. Its registered office is at Gupta Bhavan, Seth Mahadeo Prasad Gupta Marg, Temple Bazaar Road, Sitabuldi, Nagpur - 431 005, Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.

2. The Applicant/Financial Creditor submits that it is in the business of dealing and transporting of Iron ore allied products in an around Ballari District in the State of Karnataka. The Corporate Debtor viz. **Sanvijay Alloys & Power Limited** purchased 6212.260 MT of calibrated iron ore materials worth ₹1,79,10,248.44 from the Financial Creditor during the year 2008, which was transported to Tadali Village incurring transportation cost of ₹37,32,182/-. The Financial Creditor further states that the Corporate Debtor made a part payment and did not pay the remaining due amount and therefore, the Financial Creditor filed a Suit before the Hon'ble District Court at Bellari for recovery of the due amount from the Corporate Debtor. A decree was passed on 31.07.2019 in favour of the Financial Creditor. Even after decree, the Corporate Debtor did not pay the amount, hence, the Financial Creditor filed this Petition u/s 7 of the Code to initiate CIRP of the Corporate Debtor stating

that a decree holder will fall under the ambit of Financial Creditor. To substantiate this, the Applicant submitted order of the Hon'ble Supreme Court in the case of "***Kotak Mahindra Bank Ltd. v. A. Balakrishnan and Another***" [*Civil Appeal No. 689 of 2021, decided on May 30, 2022*].

3. The Corporate Debtor has filed its reply challenging the maintainability of the Petition filed under Section 7 of the Code. The Corporate Debtor submits that the Financial Creditor herein had earlier filed a Petition under Section 9, which was withdrawn and no liberty was granted in that order. The Corporate Debtor further relied upon the order passed by the Hon'ble Tripura High Court in the case of "***Sri Subhankar Bhowmik v. Union of India and Anr***." [*WP(C)(PIL) No. 4 of 2022. D/d. 14.03.2022*].

4. We heard both Counsel and perused the mateiral available on records.

4.1. We feel that the decision in case of ***Shubhankar Bhowmik v. Union of India & Anr. (2022 SCC OnLine Tri 208),*** is no longer a good law in view of decision in case of "***Dena Bank Vs. C. Shivakumar Reddy and Anr.*** **(2021)"** [ibclaw.in 69 SC] wherein it was held that default in payment of decree gives fresh cause of action. We are of the view that the decision in the case of ***Kotak Mahindra Bank Limited*** (Supra) also does not support the case of the applicant. The relevant text at para 51 reads as under -

> *"51. Applying these principles to clause 8 of Section 5 of the IBC, it could clearly be seen that the words "means a debt along with interest if any, which is disbursed against the consideration for the time value of money" are followed by the words "and includes". Thereafter various categories (a) to (i) have been mentioned. It is clear that by employing the words*

"and includes, the Legislature has only given instances, which could be included in the term "financial debt". However, the list is not exhaustive but inclusive. The Legislative intent could not have been to exclude a liability in respect of a "claim" arising out of Recovery Certificate from the definition of the term "financial debt", when such a liability in respect of a "claim" simpliciter would be included in the definition of the term "financial debt'."

4.2 We note that the Hon'ble Madras High Court in the case of ***Cholamandalam Investment and Finance Company Ltd. V. Navrang Roadlines Private Limited (O.S.A (CAD) no. 115 of 2022, following the decision of Hon'ble Supreme Court in case of Kotak Mahindra Bank (Supra)*** held at para 12 that – **"** *A mere perusal of the above observations of the Hon'ble Supreme Court in the decisions cited supra, shows that the liability in respect of a claim arising out of a recovery certificate issued by the DRT would be considered as "financial debt" within the ambit of Section 59(8) of Insolvency and Bankruptcy Code, 2016. It has also held that the underlying claim of the Bank/Claimant under the lending documents would have to be categorised as a "financial debt" under Insolvency and Bankruptcy Code, 2016. Therefore, a recovery certificate issued in respect of the same claim, which is essentially a crystallization of the claim through the process of adjudication, had also be classified as a "financial debt" under Insolvency and Bankruptcy Code, 2016. Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings.*

4.3 From the perusal of the decisions, as discussed in aforesaid para(s), we find that the nature of the debt due under decree would depend on the nature of transaction from which the decretal debt has arisen. Accordingly, before proceeding any further, we consider it imperative to first examine the nature of underlying debt.

4.4 It is undisputed fact that decretal debt arises from failure of a corporate Debtor to pay against the supply of goods to the applicant. Section 5 (21) of the Code defines operational debt to mean a claim in respect of the provision of goods or services. Accordingly, the underlying debt which is a claim arising from supply of goods to the corporate Debtor is an operational debt and not a financial debt as defined under Section 5(8) of the Code. Accordingly, the decretal debt is also an operational debt and the applicant is an operational creditor and cannot file an application under section 7 of the Code under which only financial creditors is entitled to file.

4.5 In view of foregoing, the present application filed by the applicant, who is an operational creditor, is not maintainable under section 7 of the Code and **dismissed** accordingly.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)