

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK

TP No. 18/CTB/2019  
Connected with  
CP (IB) No. 1374/KB/2018

*In the matter of*

INSOLVENCY AND BANKRUPTCY CODE, 2016;

-And-

*In the matter of*

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016;

-And-

*In the matter of*

**Jaldhi Overseas Pte. Ltd.** 1, Coleman Street, #09-11, the Adelphi, Singapore 17980 through its Constituted Attorney and Authorized Representative, Mr. Ajit Kumar Patni, residing at 51-B, Kali Temple Road, Kolkata- 700026;

... Applicant/Operational Creditor

-Versus-

**Steer Overseas Private Limited**, having its Regd. Office at 103, Sahid Nagar, 2<sup>nd</sup> Floor, Bhubaneswar- 751007.

... Corporate Debtor

**Coram:**

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

*Appearances (through video conferencing):*

For Petitioner :

Order reserved on: 12.11.2021

Order pronounced on: 17.11.2021

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*In res: Jaldhi Overseas Pte. Ltd. V. Steer Overseas Private Limited*

**ORDER**

*Per: Satya Ranjan Prasad, Member (Technical)*  
*P. Mohan Raj, Member (Judicial)*

1. The Applicant/Operational Creditor **Jaldhi Overseas Pvt Ltd**, has been incorporated and organized under the appropriate laws of Singapore. The address of the Operational Creditor is 1, Coleman Street, #09-11, the Adelphi, Singapore 179803. The operational creditor had been represented by Mr. Ajit Kumar Patni, residing at 51-B, Kali Temple Road, Kolkata-700026. This application has been filed under section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) in the case of the respondent, Steer Overseas Private Limited.
2. The respondent/Corporate debtor is **Steer Overseas Private Limited**, incorporated on 16<sup>th</sup> April, 2004, registered under the relevant provisions of the companies Act bearing **CIN: U51420OR2004PTC007568**. The registered office of the corporate debtor is 103, Sahid Nagar, 2<sup>nd</sup> Floor, Bhubaneswar, Odisha-751 007.
3. The registered office of the respondent company is situated in Sahid Nagar, Bhubaneswar, Odisha and therefore the Adjudicating Authority has jurisdiction to entertain this application.
4. The facts of the case are as such,
  - a. The corporate debtor/ respondents availed services rendered by the operational creditor through its vessel which was taken on hire by the corporate debtor for carrying its cargo of iron-ore fines from Haldia and Vizag port to a port in China. This is reflected in the email date 24.12.2009 in which the operational creditor offered to carry the corporate debtor's cargo.

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- b. In the course of transportation of goods from the said vessel which was taken on hire by the corporate debtor from the operational creditor, detention and demurrage charges became payable at Vizag port and at a port in China respectively. Thereafter the amount of charges payable became disputed between both the parties. Subsequently, the matter was referred to arbitration by the operational creditor which was duly contested by the corporate debtor and on completion of hearing and pleadings, the partial foreign award was passed by the Ld. Arbitrator on 20<sup>th</sup> January 2017.
5. The applicant submits that the claim of the operational creditor is based on a foreign award. The award was passed by arbitral tribunal based in Singapore on 20<sup>th</sup> January, 2017 in favor of the operational creditor. The operational creditor thereafter applied before the High Court of the Republic of Singapore for leave of the court to enforce the award which was duly accepted and allowed by the High court of Singapore, by judgment dated December 1, 2017 after rejecting objections raised by the corporate debtor.
6. The operational creditor submits that since the corporate debtor failed to repay the debt, the operational creditor on 25<sup>th</sup> July, 2017 had raised a demand notice demanding payment in respect of the award given by the arbitral Tribunal of Singapore. The corporate debtor replied to the said notice on 31.07.2017.
7. The corporate debtor has raised the following objections in his submissions. Firstly, enforcement of foreign award through NCLT is impermissible. Secondly, CIRP cannot be initiated on the basis of a foreign award. Thirdly, NCLT is not a civil court, nor an executing court. Fourthly, there is a pre-existing dispute between both the parties. Fifthly, the petition is not maintainable because the claim is not an "operational debt".

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8. We have heard the arguments of both the sides and have perused the documents filed by both applicant/operational creditor and respondent/Corporate Debtor.
9. The question involved in this case is whether a foreign award is sufficient to initiate insolvency proceedings against the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016. The foreign award is quite different from domestic award. Unlike a domestic award, a foreign award has to undergo certain test to become enforceable award/deemed decree.
10. The position of foreign award is settled by Apex Court in Government of India vs. Vedanta Limited 2020 SCC online SC 749 follows: -

*... a foreign award does not become a "foreign decree" at any stage of the proceedings. The foreign award is enforced as a deemed decree of the Indian Court which has adjudicated upon the petition filed under Section 47, and the objections raised under Section 48 by the party which is resisting enforcement of the award. A foreign award is not a decree by itself, which is executable as such under Section 49 of the Act. The enforcement of the foreign award takes place only after the court is satisfied that the foreign award is enforceable under Chapter 1 in Part II of the 1996 Act. After the stages of Sections 47 and 48 are completed, the award becomes enforceable as a deemed decree, as provided by Section 49. The phrase "that court" refers to the Indian court which has adjudicated on the petition filed under Section 47, and the application under Section 48*

11. The foreign award is not a decree in itself. A foreign award cannot directly constitute debt to initiate proceedings against Corporate Debtor under IBC.

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The mere production of foreign award is not enough to give an effect. Part II Chapter I of Arbitration and Conciliation Act 1996 deals with enforcement of foreign awards in India. As per explanation to Section 47, 'the court' mentioned therein denotes only High Courts.

12. It is clear from the above provisions High Courts alone has exclusive jurisdiction to deal with foreign awards to enforce foreign awards. To enforce foreign award in India the party in who's favor award stands shall file the documents referred in Section 47 (1) and (2) of Arbitration and Conciliation Act 1996. The enforcement of foreign award in India is subjective satisfaction of concern High Court to the conditions set out in Section 48 of the Act. After the satisfaction of High Court only the foreign award become enforceable, then only the award shall be deemed to be a decree as per Section 49 of the Arbitration and Conciliation Act, 1996.
13. The above provision of law made it clear that High Court only has exclusive jurisdiction to deal with foreign award and give effect to the same. In the given situation this Tribunal cannot act upon the foreign award under the presumption that there is undisputed debt amount is due, such <sup>an</sup> as exercise will amounts to give an effect to foreign award by passing/violating the procedures laid down in Part II Chapter I of Arbitration and Conciliation Act, 1996.
14. In similar situation in Usha Holdings LCC & Anr Vs. Francorp Advisors Pvt. Ltd. (Company Appeal No. 44 of 2018 dated 30<sup>th</sup> November 2018 NCLAT, New Delhi held as follows

*In view of the aforesaid decision in "Binani Industries Limited", we hold that the Adjudicating authority not being a Court or "Tribunal" and 'Insolvency Resolution Process' not being a litigation, it has no*

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*jurisdiction to decide whether a foreign decree is legal or illegal. Whatever findings the Adjudicating Authority has given with regard to legality and propriety of foreign decree in question being without jurisdiction is nullity in the eye of law.*

15. In view of the above, this application ought to be rejected and accordingly Dismissed. No order to cost.
16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
17. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
18. File be consigned to the record.



**Satya Ranjan Prasad**  
**Member (Technical)**



**P. Mohan Raj**  
**Member (Judicial)**

Signed this 17<sup>th</sup> day of November, 2021.

Ravijeet\_P.S.