

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV**

**Company Petition No. (IB)-766(ND)/2021**

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

**In the matter of:**

**Mr. Shubh Gautam**

.... Financial Creditor

**Vs.**

**Anjani Technoplast Limited**

.... Corporate Debtor

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (T)**

**Order Delivered on: 20.06.2022**

**ORDER**

**PER: MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)**

1. The instant application is filed by Mr. Shubh Gautam (hereinafter referred as 'Applicant') residing at Villa No. V1/1, Block G, Jaypee Greens, Greater Noida, Uttar Pradesh - 201306 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency

Resolution Process in respect of M/s. Anjani Technoplast Limited (respondent Company), referred to as the corporate debtor.

2. The Respondent Company Anjani Technoplast Ltd., (CIN No. U01401DL1988PLC030784) was incorporated on 29.02.1988 under the provisions of the provisions of the erstwhile Companies Act, 1956 having its registered office situated at Flat No. B 63, 6<sup>th</sup> Floor, AV Kunj Apartments, Plot No 87, IP Extension, Patparganj, East Delhi – 110092.
3. The details of transactions leading to the filing of this petition as averred by the applicant is as follows: -
  - a) Corporate Debtor borrowed a sum of Rs. 2,50,00,000 /- from the applicant for a period of 2 months vide loan agreement dated 24.02.2010 and borrowed another sum of Rs. 2,00,00,000 /- for a period of 15 days vide loan agreement executed on 31.03.2010. The applicant initiated proceedings against the corporate debtor under Negotiable Instruments Act, 1881 upon dishonor of cheques issued by the corporate debtor in relation to the repayment of the loan agreement.
  - b) A compromise deed dated 31.08.2013 was executed between the parties wherein the corporate debtor pledged to pay the applicant an amount of Rs. 3,22,02,660 /- along with pendente lite and future interest @ 24% per annum till date of full realization of the entire amount

and handed over a cheque of the said to the applicant which was also dishonored upon presentation.

- c) Consequently, applicant preferred a summary suit being Civil Suit (Original Side) 66 of 2016 under Order XXXVII of the Code of Civil Procedure 1908 before the Hon'ble High Court of Delhi at New Delhi on the 01.02.2016 for recovery of Rs. 4,38,00,617 /- along with admitted interest @ 24% from 01.02.2016 onwards. Another compromise deed dated 23.12.2016 was executed between the parties wherein the corporate debtor undertook to pay Rs. 2,38,61,907 /- by way of two post-dated cheques which were also dishonored upon presentation. However, the corporate debtor made payment of piecemeal amount Rs. 25,00,000/- on 06.01.2018 out of the total outstanding amount of Rs.4,38,00,617/- and interest which is outstanding.
- d) CS(OS) 66 of 2016 preferred by the applicant is decreed in his favor vide judgement dated 11.01.2018 for a sum of Rs. 4,38,00,617 /- along with interest @ 24% per annum from 01.02.2016 along with pendente lite and future interest till date of actual payment of the full amount after deducting the payment of Rs. 25,00,000 paid by the corporate debtor on 06.01.2018. Exemplary Cost of INR 5,00,000 /- was imposed in the said order

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which was supposed to be paid to the applicant by the corporate debtor.

- e) As per part IV of the application, it is claimed that a sum of Rs. 9,96,21,480 /- which includes principal amount, interest and the cost imposed on the corporate debtor by the judgment dated 11.01.2018 passed by the Hon'ble High Court of Delhi.
4. The Corporate Debtor has filed its reply and has raised objection against the petition stating averments, which are listed here: -
- a) It is submitted that the applicant was a director of the corporate debtor from 18.01.2010 till 29.12.2012 and still owns 1500 equity shares of the corporate debtor.
- b) It is stated that the applicant has failed to prove as to how the alleged debt falls under the definition of financial debt as given under Section 5(8) of the Code and the financial debt as claimed under the present application does not arise of loan agreements but rather arises out of civil suit decree. It is further stated that how the applicant being a "decree holder" can be considered as Financial Creditor under section 5(7) of the Code as decretal amount is an "adjudicated amount" and not a financial debt disbursed against the consideration for the time value of money and does not

fall within the ambit of any of the clauses enumerated under section 5(8) of the Code.

- c) It is further stated that the present application is barred by limitation as the alleged debt in the present application arises out of decree of the Hon'ble High Court of Delhi in Civil Suit (Original Side) 66 of 2016 dated 11.01.2018 and the present application is filed on 13.12.2021.
- d) Further, the corporate debtor placed reliance on the NCLAT judgement of Appellate Tribunal in the matter of **Sh. Sushil Ansal V. Ashok Tripathi** (Company Appeal (AT) (Insolvency) No. 452 of 2020 dated 14.08.2020 where in it was observed that no decree holder who is covered within the definitions of a creditor given under Section 3(10) of the Insolvency and Bankruptcy Code (IBC) can come within the ambit of a class of financial creditor.
- e) The corporate debtor submit that the applicant has never approach any judicial forum for the purpose of execution of the decree passed in its favor in the year 2018 and the applicant only with the mala fide intention to make the IBC proceedings a recovery proceedings and to achieve his personal ulterior motive has filed the section 7 petition on 13.12.2021. .

5. The applicant submitted a rejoinder wherein averments made by the corporate debtor in the reply were denied and it was stated that -

- a. The present application falls within the jurisdiction of this Hon'ble Tribunal and the same is evident from contents of the petition.
- b. Corporate debtor has fraudulently shown the applicant as a shareholder and FIR No. 1049/2021 before P.S. Beta 2 Greater Noida has been filed in relation to the aforesaid.
- c. Corporate debtor has never disputed the due amount and hence the present case is fit for initiation of CIRP. The claim of applicant has fructified unto the final decree dated 11.01.2018 and a fresh right has accrued to the Financial Creditor to recover the amount of the Final Decree. Reliance was placed by the applicant on the judgment passed by the Hon'ble Supreme Court in the case of **Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy**, Civil Appeal No. 1650 of 2020 dated 04.08.2021 wherein it was held that -

*" 143... Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the **Financial Creditor**, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within*

*three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”*

- d. It is stated that the present petition has been filed within limitation period in view of the judgement passed by Hon'ble Supreme Court in the case of **In Re: Cognizance for extension of Limitation, Suo Moto Writ Petition (c) No. 3 of 2020**

6. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply, rejoinder and written submission filed by the parties. Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal having territorial jurisdiction over the Union Territory of Delhi, therefore is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

7. At the very first stage, we have to consider whether the alleged amount advanced by the applicant vide loan agreements dated 24.02.2010 and 31.03.2010 on the footing of which the Hon'ble High Court of Delhi in its judgment dated 11.01.2018 in the matter of CS (OS)66/2016 decreed the suit against the corporate debtor for a sum of Rs. 4,38,00,617/- along with interest @ 24 % from

01.02.20216 onwards falls under the definition of financial debt i.e., was disbursed against consideration for the time value of money.

8. At this juncture, it is relevant to refer the Hon'ble Supreme Court ruling in *Jaypee Infratech* case, where the Supreme Court held **that there needs to be a disbursal against consideration for time value of money even in respect of transactions covered in clauses (a) to (i) of section 5(8):**

*"46. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become "financial debt" for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. [...] The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. [...] In other words, any of the transactions stated in the said clauses (a) to (i) of Section 5(8) would be falling within the ambit of "financial debt" only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause."*

*(Emphasis Supplied)*

9. With reference to the Applicant's reliance on the judgment passed by the Hon'ble Supreme Court in the case of **Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy**, Civil Appeal No. 1650 of 2020

dated 04.08.2021, we are of the view that in the Dena Bank case (supra), the facts of the case were that -

- i. the **financial creditor** had relied on the recovery certificate issued by the Debts Recovery Tribunal to **establish the claim of a financial debt** and;
- ii. to contend that the application under Section 7 was filed within the period of limitation and does not concern with the issue as to whether the debt falls due under the purview of the financial debt or not.

In the judgment of Dena Bank **no dispute** was raised on the **status** of the applicant bank as the Financial Creditor.

10. However, as per the facts of the case before us the Applicant has relied on the decree of the Hon'ble High Court in case CS(OS)66/2016 which is decreed against the corporate debtor for a sum of Rs. 4,38,00,617 /- along with interest @ 24 %. We observe that the component of interest comes into existence only on adjudication of the claim amount by the high court and the initial alleged claim amount of Rs. 2,50,00,000 /- for a period of 2 months vide loan agreement dated 24.02.2010 and another sum of Rs. 2,00,00,000 /- for a period of 15 days vide loan agreement executed on 31.03.2010 does not have interest component.
11. Further, we find that the alleged loan advances for a sum of Rs. 2,50,00,000 /- from the applicant for a period of 2 months vide loan agreement dated 24.02.2010 and another sum of Rs.

2,00,00,000 /- for a period of 15 days vide loan agreement executed on 31.03.2010 lacks the element of commercial effect of borrowing and time value of money as the alleged loan advances were for a very short period of time and no supporting evidence/ document was presented by the applicant to establish the or time value of money.

12. It is essential to prove that the claim of a financial creditor must be based on the transaction between the debtor and creditor and not on the decree issued by a court or tribunal in any other case between the debtor and creditor. From the submissions made and documents perused, we find that *the amount claimed under the decree is an adjudicated amount and not a debt disbursed against the consideration for the time value of money and does not fall within the ambit of any of the clauses enumerated under Section 5(8) of the 'I&B Code' as the "amount claimed under the decree is an adjudicated amount and not a debt disbursed against the consideration for the time value of money."*
13. The Applicant have failed to provide any supporting document/ evidence to establish that the alleged amount advanced by the applicant vide loan agreements dated 24.02.2010 and 31.03.2010 involves time value of money or have commercial effect of borrowing to bring the alleged loan advances within the ambit of definition of Financial Debt therefore, doesn't qualify to be a financial debt as per the definition of financial debt in Section 5(8)

of the IBC. The applicant failed to provide the financial statements, original loan agreements or any other document evidencing the disbursement of debt. The only document on which the appellant relies his case is the copy of the order dated 11.01.2018 in CS(OS) 66 OF 2016.

14. We are of the view that as per sub-section (7) of Section 5 of the Code, only such creditor could be the 'financial creditor' of the corporate debtor to whom a 'financial debt' is owed by the corporate debtor; and, as per sub-section (8) of Section 5 of the Code, the key requirement of a financial debt is 'disbursal against the consideration for the time value of money', which includes the events or modes of disbursement as enumerated in sub-clauses (a) to (i) of Section 5(8) of the code. In the case before us, the appellant has not disbursed any debt against the consideration for the time value of money to the corporate debtor, consequently the corporate debtor does not owe any 'financial debt' to the applicant; and the transactions in question do not fall within the brackets of 'financial debt' only for the reason that the Hon'ble High Court of Delhi in CS(OS) 66 of 2016 preferred by the applicant vide judgment dated 11.01.2018 decreed in favor of the applicant a sum of Rs. 4,38,00,617 /- along with interest @ 24% per annum from the corporate debtor.
15. We further find that, what is relevant at this juncture, is to ascertain the true nature of the original advance of Rs.

2,50,00,000/- from the applicant for a period of 2 months and another advance of Rs. 2,00,00,000/- for a period of 15 days by the applicant to the corporate debtor as the genesis of the present case arises from the alleged loan advances and not from the decree in CS(OS) 66 of 2016.

16. The corporate debtor has explained the nature of the transaction and the financial creditor failed to produce the adequate evidence/ documents in the form of financial statements or otherwise to prove that it owns financial debt against the corporate debtor. In this summary enquiry, we cannot enter into the correctness of assertion of the applicant to establish the alleged loan amount as financial debt. We hold that evidence as produced by the applicant are not satisfactory to prove the nature of claim as financial debt and cannot be safely relied on. From the evidence on record, we hold that the applicant have only a claim on the corporate debtor which was further crystallized by the decree of the Hon'ble High Court Delhi in CS(OS) 66 of 2016, therefore, cannot come under the purview of the financial debt by any means whatsoever,
17. we would like to quote the following definitions of Section 3(10) and the same is quoted below:

**Section 3(10)**

**Creditor** "means any person to whom a debt is owed and includes a financial creditor, an 'Operational Creditor', a 'Secured Creditor, an 'Unsecured Creditor' and a 'Decree Holder'.

18. From the perusal of the aforesaid definition, we find that of course definition of creditor includes a 'Financial Creditor', an 'Operational Creditor', 'Secured Creditor', 'Unsecured Creditor' and a 'Decree Holder' but this definition does not shows that the 'Decree Holder' means a 'Financial Creditor' or an 'Operational Creditor'. The words financial creditor is defined under section 5(7) of IBC Code and the same is quoted below:

*"Financial Creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; "Operational Creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.*

Section 5(8) of IBC, 2016

"Financial Debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) money borrowed against the payment of interest*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

19. If we shall read all the definitions together then we find that the Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.
20. Since the present application has been filed under Section 7 of the IBC, therefore, we can say that the applicant claimed that a decree is a financial debt irrespective of its genesis i.e., the substratum on which the decree is adjudicated and became due but when we shall read the definition of claim, debt, financial debt and financial creditor then we find that the decree is not included as an financial Debt unless the claim on which decree is adjudicated is a financial debt, of course definition of Creditor include decree holder but definition of financial debt does not include any decree holder without ascertaining the true nature of the claim basis on which decree is adjudicated.
21. At this juncture, we would like to refer the judgment relied by the corporate debtor of the **Honourable High Court of Tripura in Sri Subhankar Bhowmik v. Union of India, WP (C)(PIL) No. 04/2022** wherein the Hon'ble High Court after analyzing various provisions of the Code, come to the conclusion that decree holders are a class of creditors separate from the "financial creditors" and "operational creditors". The Honourable High Court further held that the code treats decree holders as a separate class, recognized by the virtue of the decree held by them. Further, this view of the Honourable High Court was further upheld by the Honourable Supreme Court while dismissing the Special Leave to Appeal (C) No. 6104/ 2022 by order dated 11.04.2022.
22. And when we shall consider the case in hand in the light of aforesaid decision then we are of the considered view that a

decree-holder does not come within the definition of Operational Creditor, therefore, the present application is not maintainable

23. We have clearly noted that this Authority is not a forum for recovery of amount and we are clearly of the view that the applicant is utilizing the process of IBC to facilitate recovery whereas the primary focus of IBC is to ensure revival and continuation of the corporate debtor, and to protect it from corporate death.

24. Needless to say, that an application under Section 7 of the Code is maintainable if the financial debt is proved to be due and there is default. In the light of detailed qualitative and quantitative discussions and also this Tribunal keeping in mind the entire conspectus of the attendant facts and circumstances of the instant case in a holistic fashion comes to a resultant conclusion that the decree in CS(OS) 66 of 2016 vide judgment dated 11.01.2018 passed by the Hon'ble High Court of Delhi cannot come in the purview of the definition of the financial debt. In view of the above, ***this application is dismissed.***

- sd -

**(SUMITA PURKAYASTHA)**  
**MEMBER (T)**

- Sd -

**(DHARMINDER SINGH)**  
**MEMBER (J)**

Pronounced today under Rule 151 of the NCLT Rules, 2016 as the Hon'ble Member (Technical) Ms. Sumita Purkayastha is not holding the court today.

*Vishal Rana*  
20-06-2022  
**Court Officer**