

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 572 of 2022

&

I.A. No. 1530 of 2022

IN THE MATTER OF:

MINIONS VENTURES PVT. LTD.

CIN: U74900KA2015PTC080305

Registered Office At:

Wing-A, Ground Floor, Office -1, Block A,

Salarpuria Softzone,

Bellandur Village Varthur Hobli,

Bangalore, Karnataka - 560103

...Appellant

Versus

TDT COPPER LTD.

CIN: U27201DL1993PLC056070

Registered Office At:

No. 512-512A, Tolstoy House,

Tolstoy Marg, Janpath,

Cannaught Place, New Delhi

110001

...Respondent

Present:

For Appellants : Mr. Mayank Mikhail Mukherjee, Ms. Gayatri Virmani,
Mr. Abhishek Vikram, Advocates

For Respondent : Mr. Ninad Laud, Ms. Anshula Grover, Mr. Ivo D'Costa,
Ms. Rashika Narain, Mr. Avinash Mathews, Ms. Nitika
Grover, Advocates

with

Company Appeal (AT) (Ins) No. 780 of 2022

IN THE MATTER OF:

MR. V.R. ASHOK RAO & 24 Ors.

PAN: AGVPR2580H

R/o: Apsara Apartments, Old No. 9,

New No. 13/3, Ponnappa Street,

Damodaramurthy Lane, Kilpauk,

Cheennai, Tamil Nadu - 600010

...Appellants

Versus**TDT COPPER LTD.**

CIN: U27201DL1993PLC056070

Registered Office At:

No. 512-512A, Tolstoy House,

Tolstoy Marg, Janpath,

Cannaught Place, New Delhi

...Respondent**Present:****For Appellants** : Mr. Mayank Mikhail Mukherjee, Ms. Gayatri Virmani,
Mr. Abhishek Vikram, Advocates**For Respondent** : Mr. Ninad Laud, Ms. Anshula Grover, Mr. Ivo D'Costa,
Ms. Rashika Narain, Mr. Avinash Mathews, Ms. Nitika
Grover, Advocates**J U D G M E N T****Per: Justice Rakesh Kumar Jain:**

This order shall dispose of two appeals bearing Company Appeal (AT) (Ins) No. 572 of 2022 titled as 'Minions Ventures Pvt. Ltd. Vs. TDT Copper Ltd.' (hereinafter referred as 'Appeal No. 1') and Company Appeal (AT) (Ins) No. 780 of 2022 titled as 'V.R Ashok Rao & Ors. Vs. TDT Copper Ltd.' (hereinafter referred as 'Appeal No. 2') as both the appeals have been filed against the same impugned order dated 11.03.2022 passed in CP (IB) No. 1093(ND)/2020 by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench – V) by which application filed by the Appellants in appeal no. 2 as Financial Creditors under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been dismissed but liberty was granted to file an appropriate application under Section 9 of the Code in accordance with law.

2. The brief facts of this case are that TDT Copper Limited (Corporate Debtor) purchased certain copper products from M/s Ashoka Creations Pvt.

Company Appeal (AT) (Ins) No. 572 & 780 of 2022

Ltd. (hereinafter referred as 'Seller') who had raised five different invoices for a total sum of Rs. 3,42,03,903/-. The Appellant in the first appeal, namely, 'Minions Ventures Pvt. Ltd.' is a private limited company. Through its online KredX provides a platform for invoice-discounting/reverse invoice discounting to raise working capital. The Corporate Debtor and the Seller are both registered on KredX for availing its services of invoice discounting. In this regard, the Seller executed a Seller Services Agreement dated 29.12.2018 with 'Minions Venture Pvt. Ltd.' and the Corporate Debtor also executed a Seller Services Agreement dated 28.12.2018 with 'Minions Venture Pvt. Ltd.' electronically. The Appellants in the second appeal are registered on KredX as the 'Financiers' who provide finance to the concerned party. Similar agreements were also executed by the Appellants in second appeal with 'Minion Ventures Pvt. Ltd.' to avail the invoice discounting/reverse invoice discounting platform. It is alleged that the Corporate Debtor uploaded the invoices raised on it by the Seller and were listed on KredX's invoice discounting/reverse invoice discounting platform. Pursuant to which, the Appellants in the second appeal, Corporate Debtor, Seller and the Appellant in the first appeal executed a separate and independent 'Agreement for Creation of Rights (COR) for creating rights in the receivables under the invoices in favour of the Appellants in the second appeal. It is further alleged that after the execution of the COR Agreements, the Appellants in the second appeal discounted the invoices and deposited the amounts in an escrow account maintained by KredX with Yes Bank Ltd. and the said amount was transferred to the account of the Seller as a result of which, the liability of the Corporate Debtor towards Seller stood

extinguished and the Corporate Debtor owed the same liability to the Appellants in the second appeal. It is thus alleged that the Appellants in the second appeal were to get resolution of the debt amount due from the Corporate Debtor but since the amount was not serviced despite communication by the Appellant in the first appeal who called upon the Corporate Debtor to make the payment, the Appellants in the second appeal filed an application under Section 7 of the Code as a Financial Creditor but the said application was dismissed on the ground that the Appellants have stepped into shoes of the Operational Creditor (Seller), therefore, their application under Section 7 of the Code as a Financial Creditor was not maintainable and were rather held eligible to file an application under Section 9 of the Code instead. In this regard, finding has been recorded in paras 36, 37 and 38 of the impugned order by the Adjudicating Authority which are reproduced as under:-

“36. Now we consider the submissions of the applicants in terms of the decision of Hon'ble Supreme Court referred to supra, and we observe, here in the case in hand also, there is no disbursement of the amount to the respondent rather the amount was disbursed to the third person. As we observed, the applicants are claiming the discounted invoices, therefore, in view of Section 21 (5) of IBC 2016, where an Operational Creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer. Therefore, though the applicants may be the Operational creditor(s) but in terms of Section 5 (7), Part II of the IBC, 2016, the applicants cannot be treated as the financial creditor(s).

37. Hence, we are of the considered view, the present application filed under Section 7 of IBC is not maintainable and on this score alone, the application is liable to be dismissed. Since, we held that the present application is not maintainable under Section 7

IBC, therefore, it is needless to consider the other submissions raised on behalf of the respondent on the point of maintainability of the application.

38. In sequel to the above, we have no option but to reject the prayer of the applicants to initiate the CIRP against the Corporate Debtor under Section 7 of the IBC, 2016. Accordingly, the present application is hereby dismissed.

However, the applicants is at liberty to file an appropriate application under Section 9 of the IBC, 2016 in accordance with the provision of law.”

3. At the outset, the Respondent has challenged the locus of the Appellant in appeal no. 1 on the ground that it is not an aggrieved person but since the alleged financiers who had discounted the invoice of the Seller have also filed their own appeal which is also being heard with first appeal, therefore, we would rather deal with the merits of the case to find out as to whether the application filed under Section 7 of the Code by the Appellants in the second appeal has rightly been rejected or not?

4. It may be pertinent to mention that the amount involved in the five different invoices raised by the Seller was of Rs.3,42,03,903/- for the goods purchased by the Corporate Debtor and the amount disbursed by the Financiers (Appellants in appeal no. 2) was of Rs. 1,75,23,133/- under separate individual transactions of reverse invoice-discounting from 16.05.2019 to 10.09.2019.

5. The moot issue in this case is thus as to whether the Appellants in the second appeal (Financiers) are the Financial Creditors as against the Corporate Debtor or have stepped in to shoes of the Seller as an Operational Creditors and as such application filed by the Appellants in the second

appeal under Section 7 of the Code has rightly been held to be not maintainable and were rightly relegated to avail their remedy of filing the application under Section 9 of the Code.

6. Counsel for the Appellant has submitted that the Appellants are the Financial Creditors of the Corporate Debtor in view of Section 5(7) of the Code and the amount disbursed by them constitutes financial debt under Section 5(8)(e) of the Code.

7. Before proceeding further, it would be relevant to refer to Section 5(7) and 5(8)(e) of the Code. Section 5(7) '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. Section 5(8)(e) 'Financial Debt' means a debt alongwith interest if any which is disbursed against the consideration for the time value of money and includes (e) receivables sold or discounted other than any receivables sold on non-recourse basis.

8. It is argued that Section 5(8)(e) is exclusionary and excludes any receivables sold or discounted on a non-recourse basis from the ambit of a financial debt and on the other hand any receivables which are discounted on a recourse or limited recourse basis would constitute a financial debt within the meaning of Section 5(8)(e) of the Code. It is further submitted that recourse referred to in Section 5(8)(e) of the Code means that in case of a default by the assignor (Corporate Debtor), the financiers have a legal right to demand payment from the person who has assigned the debt.

9. According to the Appellants, they had reversed discounted receivables (invoices) on recourse basis for the benefit of the Corporate Debtor and thus they are the Financial Creditors vis a vis the Corporate Debtor. Therefore,

the debt owed by the Corporate Debtor to the Appellant fulfils the essential condition of a financial debt, namely, a debt which has been disbursed against the consideration for the time value of money squarely falls within the definition of Financial Creditors.

10. On the other hand, Counsel for Respondent has submitted that the financial debt defined in the IBC contemplates disbursement against the time value of money whereas no such disbursement has been made to the Corporate Debtor by the Appellants/Financiers. It is submitted that the case is not covered by Section 5(8)(e) but Section 5(20) and 21(5) of the Code.

Section 5(20) and 21(5) of the Code are reproduced as under:-

“5(20).“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;

21(5). Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.”

11. According to the Respondent the amount was never disbursed to the Corporate Debtor. In this regard, he has relied upon a decision of the Hon’ble Supreme Court in the case of **Jaypee Infratech Ltd. Interim Resolution Professional Vs. Axis Bank Ltd., (2020) 8 SCC 401**, to contend that disbursal against the consideration for the time value of money is a pre-requisite for declaring transaction as a financial debt. He has also relied upon a decision of this Tribunal in the case of **Cooperative Rabobank W.A. Singapore Branch Vs. Shalindra Ajmera, 2019 SCC Online NCLAT 812**, in which similar controversy was decided and it has

been held that it would be termed as an Operational debt. It is further argued that it has been averred by the Appellant that upon the execution of COR agreements, discounted the invoice and deposited the amount into escrow/nodal account maintained by KredX agent, namely, Yes Bank Limited who had disbursed the said amount into the bank account of the Seller in accordance with clause 5.2 of the COR agreements and upon receiving such amount, the Seller transferred its right to receive the amount under the invoice in favour of the Financiers/Appellants. It is submitted that at no point of time the amount in question was disbursed to the Corporate Debtor as a loan to pay of the debts of the Seller rather Financiers took the invoices of the Seller at a discounted price and had stepped into shoes of the Seller who is a Operational Creditor. It is also submitted that in Clause 4(c) of the Creation of Rights Agreement it is mentioned that 'pursuant to the mutual agreement between the parties, the Seller has agreed for discounting of invoices of the Customer for the creation of the right and interest in the invoice receivables in favour of the Financier. He has further referred to Clause 2.1 wherein it has been mentioned that the Seller has consented to the creation of the right and interest in the invoice receivables in favour of the Financier for the consideration.

12. We have heard Counsel for the parties and perused the record.

13. The Agreement (COR) was entered into between the Seller, Financier and the Corporate Debtor (As customer). As per the agreement, the Seller had agreed for discounting of invoice of the customer (CD) for the creation of the right and interest in the invoice receivables in favour of the Financier (Appellant). Upon execution of agreement of COR, the Appellant as a

Financier discounted the invoice and deposited the amounts into an escrow/nodal account maintained by KredX with an escrow/nodal agent, namely, Yes Bank Limited who further transferred the said amount to the account of the Seller and on receiving, the Seller transferred its right to receive the money under the invoices in favour of the Financiers/Appellants. In this transaction, the money was never disbursed much less for the time value as a financial debt to the Corporate Debtor and by virtue of discounting the invoice of the Seller of an amount of Rs.3,42,03,903/- for amount of Rs.1,75,23,133/- the Financiers/Appellants entered into shoes of the Seller and had become Operational Creditors in terms of Section 5(20) as well as 21(5) and Section 5(7) and 5(8)(e) of the Code is not at all applicable.

14. Thus, in view thereof, there is no error in the order of the Adjudicating Authority who has though rejected the application filed under Section 7 of the Code but relegated the Appellants (Financiers) to avail their remedy under Section 9 of the Code in accordance with law. Hence, the appeal is hereby dismissed. However, with no order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi

28th March, 2023.

Sheetal