

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.1
C.P. (IB)/8(AHM)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Invoice Discounters of Riva Perfumes LLP Represented by Minion**Applicant**
Ventures Private Limited
Vs**Respondent**
RIVA PERFUMES LLP

Order delivered on 10/01/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

PRESENT:

For the Applicant : Ms. Tanya Shah, Adv.
For the Respondent :

ORDER

An application under Sec 7 of IBC 2016 has been filed by M/s Invoice Discounters of Riva Perfumes LLP represented by Minion Ventures Private Limited. The applicant has a letter of authority from stated 13 financial creditors situated in various parts of the country who are stated to have discounted the invoices raised by the respondent as a part of an arrangement through online bill/invoice discounting portal called "KredX" operated by one Minions Ventures Pvt Ltd through various Agreements for Transfer of Rights.

The application further states that there is a tripartite agreement between each of the Financial Creditors (Purchaser of invoice receivables) herein, the said Minion ventures Pvt Ltd (Platform provider for routing the stated transactions) and the Corporate Debtor (Seller of Invoice Receivables). Further it is stated that there is an agreement between the Corporate Debtor and the Minion Ventures (copy of agreement not enclosed) called seller services agreement for the purpose of receiving working capital against sale of invoices and there is another agreement between Financial Creditors (who are observed to be even individuals) and Minion Ventures Pvt Ltd for the purpose of purchasing the rights and interest in Invoices raised by the Corporate Debtor (copy of the stated agreement has not been

produced). It is further stated in the application that the financial creditors who have provided a discounted value to the Corporate Debtor, realise their returns on their loans when the customer pays the full value of the said invoice(s) without any discounts and the difference between the discounted value paid by the Financial Creditor to the Corporate Debtor becomes the return on the investment made by the Financial Creditor.

Ld. Counsel for the applicant is heard on the maintainability of the application under Section 7 of the IBC. She has submitted that the process formalised by an agreement has been discounted invoices by third party on portal treating it as investment. She has relied upon order of Hon'ble NCLT, Mumbai Bench, dated 17.03.2023 passed in CP (IB) No.216/MB/IV/2022, allowing such an application. She has also brought to our notice the order of Hon'ble NCLAT had passed on 28.03.2023 in **Company Appeal (AT) (Ins.) No. 572 of 2022** in the matter of **Minions Ventures Pvt. Ltd. Vs. TDT Copper Ltd.** with **Company Appeal (AT) (Ins.) No. 780 of 2022** in the matter of **Mr. V.R. Ashok Rao & 24 Ors. Vs. TDT Copper Ltd.** The Hon'ble NCLAT observed that *"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."*

Thus, the Hon'ble NCLAT maintained the order of NCLT rejecting the application filed under Section 7 of the Code. Ld. Counsel further submitted that the said order of Hon'ble NCLAT is challenged before the Hon'ble Supreme Court. The Hon'ble

Apex Court issued notice only. Till date no further orders have been passed in it. There is no stay to any of the proceedings.

When the matter was kept back for passing orders, Ld. Counsel for the applicant filed a Purshish stating that in view of pendency of Civil Appeal Diary No.20458 of 2023, wherein same issue is agitated, this application be adjourned *sine die*. It is pertinent to note that the Appeal is not filed against the order in the same matter but is filed in a different matter on different set of facts. In such circumstances, this matter can be decided on its own merits and need not to be adjourned *sine die*.

For the above mentioned reasons and in view of the judgment of Hon'ble NCLAT (*supra*), the intention of the transaction is not for a financial debt but an investment, and it was made on a portal where the invoices are discounted by various investors, which is not maintainable under Section 7 of the IBC.

Hence, the application is dismissed.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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