

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT – V**

**IA No.1621 OF 2021**

**IN**

**CP No. 233/MB/2021**

Under section 60(5)(b) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 11  
of the National Company Law Tribunal  
Rules, 2016.

ASREC India Ltd.

.... Applicant

Versus

M/S Cane Agro Energy (India) Limited

...Respondent

**IN THE MATTER OF**

Anil Goel Liquidator of  
Rotomac Global Private  
Limited

... Applicant

Versus

Ritesh R. Mahajan Interim Resolution  
Professional of M/S Cane Agro Energy  
(India) Limited

...Respondents

**Order Dated: 22.12.2023**

**Coram:**

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member (Technical)

**Appearance: Physical**

For the Petitioner: Adv. Amit Tungare

For Respondent: Advocate for Respondent

**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

1. The above application I.A. No. 1621 of 2021 is filed by Anil Goel the liquidator of Rotomac Global Private Limited (hereinafter referred to as the “**Applicant**”) seeking directions against Ritesh R. Mahajan Interim Resolution Professional of Cane Agro Energy (India) Limited (hereinafter referred to as the “**Respondent**”) under section 60(5)(b) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “**the Code**”) praying for the following relief: -

- To direct the Respondent to admit the claim of the Applicant as Financial Creditor and to place the Applicant in the Committee of Creditors.

**Brief facts and finding**

2. The present application is filed by the Liquidator of Rotamac Global Private Limited for admitting the claim of the Applicant as a Financial Creditor and place the Applicant in the COC. The Applicant has submitted that the CIRP of the Corporate Debtor was commenced vide order dated 30.04.2021 and the Respondent was appointed as IRP. The IRP made publication on 07.05.2021 to invite the claims from the creditors. The Applicant who is Liquidator of Rotomac Global Private Limited (in liquidation) appointed vide order dated 23.03.2018 filed its claim as a Financial Creditor to the Respondent on account of advanced given by Rotomac Global Private Limited to the Corporate Debtor amounting to Rs.28,13,97,644/-. Despite having followed up with the Respondent on various occasions, the Applicant failed to elicit any response. To the utter dismay of the Applicant, the Applicant has now come to know that his claim has been rejected by the Respondent as a Financial Creditor. The respondent Resolution Professional has asked the Applicant, to file his claim as “other creditor”. The Applicant submitted that the amount of Rs.6 Crore was given in tranches to the Corporate Debtor and the last installment was paid on third week of June 2013. Rotomac Global Private Limited (applicant) and the Corporate Debtor had entered into an MOU

dated 11.06.2013. As per the MOU, the said advance was in consideration for purchase of sugar. It is further stated that as per the MOU, the Corporate Debtor had issued three post-dated cheques in favour of Rotomac Global Private Limited as security, in addition to providing performance guarantee of Rs.74.80 Lakh against the interest amount. It is further submitted that Corporate Debtor had defaulted in supply of sugar and the performance guarantee was forfeited. The post-dated cheques deposited in the bank, were also dishonored. Rotomac Global Private Limited had filed criminal complaints against the Corporate Debtor and had also initiated CIRP by filing CP 1279 of 2017. Parties had reached a settlement agreement vide consent terms dated 12.09.2017. Thus, Rotamac Global Private Limited, in view of the settlement having been arrived at between the parties withdrew the application on 13.09.2017. In terms of the settlement agreement the Corporate Debtor again issued post-dated cheques but the same were once again dishonored. It is pertinent to mention that since the liquidation of Rotomac Global Private Limited commenced vide order dated 23.03.2018, the Applicant/Liquidator due to non-cooperation from the management of Rotomac Global Private Limited failed to check the financial transactions entered into between the Rotomac Global Private Limited and Corporate Debtor and thus on the basis of limited information, the initial petition

under section 9 of the Insolvency and Bankruptcy Code, 2016 was filed for initiation of CIRP, instead of filing under section 7 of the Insolvency and Bankruptcy Code, 2016. It is further contended by the Applicant that MOU dated 11.06.2023 was executed for the supply of sugar and for the same, an amount of Rs.6 Crore was advanced. The case of the Applicant is that without due application of mind the Respondent/RP has rejected the claim of the Applicant as Financial Creditor. Hence the present petition.

3. On the other hand, the case of the IRP is that the Applicant could not be recognized as Financial Creditor as he did not disburse any debt against the time value of money to the Corporate Debtor. The case of the Applicant himself is that the amount of Rs. 6 crores were advanced for procurement of sugar. Thus, it is evident that the said amount was not the debt or loan but the advanced payment for supply of sugar. Thus the Corporate Debtor does not owe any financial debt to the Applicant. The Respondent also vehemently contended that the nature of the amount advanced was to the knowledge of Applicant. The applicant knowing it fully well that the amount advanced was not paid in the form of financial debt. That is precisely the reason why the initial petition for CIRP of the Corporate Debtor was preferred by the Applicant under section 9 of the Insolvency

and Bankruptcy Code, 2016 and not under section 7 the Insolvency and Bankruptcy Code, 2016.

4. The Counsel for IRP relied upon the judgment of **The Hon'ble Supreme Court in the case of M/s Consolidated Construction V/s M/s Hitro Energy Solutions in Civil Appeal No 2839/2020** wherein it was held as follows:-

*“this leaves no doubt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt.” Accordingly, advance paid by the Petitioner for supply of goods shall qualify as an Operational Debt. We find that existence of stipulation of payment of interest can not make a debt as Financial Debt, as there is stipulation of payment of interest even in case of contract for supply of goods in case of default. What is important is the essence of the contract, and its principal object which is supply of goods in the present case. The payment of Rs. 10.00 Crores to be adjustable against such supply is an advance payment against the agreed supply only. Accordingly, we hold that the said debt is in nature of Operational Debt.*

5. After having appreciated the above stated circumstances and facts, we are of the considered opinion, that the case of the Applicant is not different from the law laid down by the Hon'ble Apex court. The case of the applicant is that the amount of Rs. 6 Crore even though advanced

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was for the supply of sugar, has clauses of interest incorporated which made the said amount as Financial Debt. We are unable to appreciate and agree with the contentions of the applicant. Thus the IA deserves to be dismissed.

6. Hence on the strength of the above judgement, the present IA No.1621 of 2021 in CP No. 233/MB/2021 is **dismissed**.

SD/-

**Madhu Sinha**

**Member (Technical)**

/Aakansha/

SD/-

**Reeta Kohli**

**Member (Judicial)**