

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1231 of 2022

(Arising out of Order dated 06.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court-2 in I.A. No. 487 of 2022 in C.P. (IB) 204 of 2020)

IN THE MATTER OF:

CFM Asset Reconstruction Pvt. Ltd.
(acting in its capacity as trustee of
CFMARC Trust-88)

Having its corporate office at:
1st Floor, Wakefield House, Spratt Road,
Ballard East,
Mumbia – 400038, Maharashtra
Email: delhidr@jcllex.com

...Appellant

Versus

1. Saudi Basic Industries Corporation Ltd.
P.O. Box 5101 Riyadh
11422 – Saudi Arabia.

2. JBF Industries Ltd.
Having its registered office at
Survey No.273, Village Athola, Silvassa,
Dadra Nagar Haveli DN 396230, India.

...Respondents

Present:

For Appellant: **Mr. Ramji Srinivasan, Sr. Advocate with Ms. Sharmistha Ghosh, Ms. Palak Nenwani, Ms. Aditi Sinha, Ms. Megha Dugar, Ms. Shruti Pandey, Advocates.**

For Respondents: **Mr. Krishnendu Dutta, Sr. Advocate with Mr. Anandh Venkatramana, Mr. Rajat Sinha, Mr. Anubhav Dutta, Mr. Zashank Mehta and Mr. Girish Ahuja, Advocates.**

With

Company Appeal (AT) (Insolvency) No. 1232 of 2022

(Arising out of Order dated 06.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court-2 in I.A. No. 486 of 2022 in C.P. (IB)/55 (AHM) 2021)

IN THE MATTER OF:

**CFM Asset Reconstruction Pvt. Ltd.
(acting in its capacity as trustee of
CFMARC Trust-88)**

Having its corporate office at:
1st Floor, Wakefield House, Spratt Road,
Ballard East,
Mumbai – 400038, Maharashtra
Email: delhidr@jcllex.com

...Appellant

Versus

1. SABIC Asia Pacific Pvt. Ltd.

One Temasek Avenue,
#06-01 Millenia Tower,
Singapore - 039192.
Email: spia@spia.org.sg

2. JBF Industries Ltd.

Having its registered office at
Survey No.273, Village Athola, Silvassa,
Dadra Nagar Haveli DN 396230, India.

...Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Sharmistha Ghosh, Ms. Palak Nenwani, Ms. Aditi Sinha, Ms. Megha Dugar, Ms. Shruti Pandey, Advocates.

For Respondents: Mr. Krishnendu Dutta, Sr. Advocate with Mr. Anandh Venkatramana, Mr. Rajat Sinha, Mr. Anubhav Dutta, Mr. Zashank Mehta and Mr. Girish Ahuja, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeals have been filed against the order dated 06.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court No.2. Company Appeal (AT) (Ins.) No. 1232 of 2022 has been filed against the order rejecting I.A. No. 486 of 2022 filed by the Appellant seeking intervention in C.P. (IB) No. 55 (AHM) 2021, whereas Company Appeal (AT) (Ins.) No. 1231 of 2022 has been filed against order dated 06.09.2022 rejecting the I.A. No. 487 of 2022 filed by the Appellant in C.P. (IB) No. 204 (AHM) 2022. Both the Appeals raises similar questions, hence, have been heard together and are being decided by this common judgment. It shall be sufficient to notice the facts in Company Appeal (AT) (Ins.) No. 1232 of 2022 for deciding both the Appeals.

2. C.P. (IB) No. 55 (AHM) 2021 was filed by 'SABIC Asia Pacific Pte. Ltd.', Operational Creditor against the 'JBF Industries Ltd.', the Corporate Debtor. The Corporate Debtor has received various financial assistance from different Banks and Financial Institutions. All the Financial Creditors of the Corporate Debtor assigned their rights and interest in relation to their aforesaid debt owed to them by the Corporate Debtor to the Appellant on 13.08.2021. There being default on part of the Corporate Debtor, the Appellant initiated proceedings under SARFAESI

Act, 2002 against the Corporate Debtor on 04.12.2021. The Appellant after coming to know about the initiation of insolvency proceedings under Section 9 initiated by an Operational Creditor against the Corporate Debtor, filed an I.A. No. 486 of 2022 on 19.04.2022 in C.P. (IB) No. 55 (AHM) 2021. In I.A. No. 486 of 2022 following prayers have been made by the Appellant:

“a) That this Hon’ble Tribunal be pleased to permit the Applicant herein to intervene in the present Company Petition and further direct the Operational Creditor to supply to copies of the pleadings to the Applicant herein;

In alternative to (b)

b) That this Hon’ble Tribunal be pleased to permit the Applicant to make appropriate submissions through its Advocate at the time of final hearing of present Company Petition.

c) That this Hon’ble Tribunal be pleased to pass such other and further directions and reliefs as this Hon’ble Tribunal may deem fit and proper to meet the ends of justice.”

3. I.A. No. 486 of 2022 filed by the Appellant was opposed by the Operational Creditor and the Operational Creditor filed an affidavit in reply dated 07.06.2022. The Appellant’s case in the application was that the Appellant has 99.19% exposure in the debt of the Corporate Debtor and any order of admission will have impact on the Applicant/Appellant.

The Applicant/Appellant claimed that it entitled to have knowledge of the affairs of the Corporate Debtor, including the proceedings initiated by and/or against the Corporate Debtor. Appellant/Applicant submitted that claim of the Operational Creditor in the proceeding is in excess of Rs.100 Crores whereas amount outstanding from the Corporate Debtor to the Appellant is in excess of Rs.3600 Crores.

4. In the reply affidavit filed by the Operational Creditor to the application of the Appellant, it was submitted that the Appellant/Applicant cannot be allowed to intervene in the present proceeding as there is no legal basis for seeking intervention in the insolvency proceeding initiated by the Operational Creditor. Even if Applicant holds debt of 99.1% of the Corporate Debtor, it is appropriate for the Applicant to file its claim before the Resolution Professional. The NCLT cannot exercise its residuary inherent powers in the facts of the present case.

5. The Corporate Debtor had also filed an I.A. No. 643 of 2022 in C.P. (IB) No. 204 of 2020 raising apprehension that the Operational Creditor may not disclose about the insurance taken with respect to the goods supplied, any claim lodged for the amount before the Insurance Company, any disbursement made by the Insurance Company of any amount, which is the subject matter of the application. The Adjudicating Authority disposed of the application and observed that the Operational Creditor will bring on record details about any insurance claim filed before the Insurance Company, any money received from the Insurance

Company with respect to the claim for which Section 9 application has been filed. The Adjudicating Authority proceeded to consider the I.A. No. 486 of 2022 on 06.09.2022 and rejected the application observing that the Applicant has independent right to proceed against the Corporate Debtor under the laws available and there is no merit in the application. By order of the same date, making similar observations, I.A. No. 487 of 2022 has also been rejected. Aggrieved by the orders dated 06.09.2022 passed by the Adjudicating Authority these Appeals have been filed.

6. Shri Ramji Srinivasan, learned senior counsel for the Appellants submit that Appellants having exposure to the extent of 99.19% debt of the Corporate Debtor, it has right to intervene in the proceedings which has been initiated against the Corporate Debtor by the Operational Creditor. It is submitted that in the application filed by the Applicant it is stated that the Section 9 Application filed by the Operational Creditor may substantially affect the rights and entitlement of the Applicant and Applicant is also desirous of ascertaining true and correct facts in relation to transaction under present petition. It is further stated that Applicant has exposure to the excess of Rs.3600 Crores whereas Operational Creditor has claim of Rs.100 Crores only. Applicant has already proceeded under SARFAESI Act and all the assets of the Corporate Debtor are in possession of the Applicant, hence, the Adjudicating Authority ought to have permitted the Applicant to intervene in the matter. It is submitted that the Appellant subsequently came to know that the Operational Creditor has already received the claim of goods from the

Insurance Company and also has already given discharge to the Insurance Company and it is the Insurance Company who is entitled to initiate proceeding in their own name and discharge was given on 04.12.2017, hence, in view of this fact Appellant ought to have been permitted to intervene to know the relevant facts and further to bring facts in the notice of the Adjudicating Authority for proper adjudication of the Section 9 application. It is submitted that in view of the discharge given by the Operational Creditor after receiving the claim amount regarding goods in question, there is no entitlement of the Operational Creditor to prosecute Section 9 application.

7. Shri Krishnendu Dutta, learned senior counsel appearing for the Operational Creditor vehemently opposed the submission advanced on behalf of the Appellant. It is submitted by Shri Dutta that in Section 9 application filed by the Operational Creditor, the Financial Creditor of the Corporate Debtor has no right to intervene before admission of Section 9 application. It is submitted that permitting intervention by the Financial Creditor in Section 9 application will be contrary to the Scheme of the I&B Code which does not contemplate intervention by Financial Creditor prior to admission of application. The Adjudicating Authority has rightly rejected the prayer of intervention. With regard to claim received from the Insurance Company of the goods, Shri Dutta does not dispute the factum of receiving insurance amount. It is submitted that the Corporate Debtor has already filed an application seeking direction to the Operational Creditor to bring into notice of the Adjudicating Authority the amount of

insurance claim and its disbursement, if any, which order has already been passed by the Adjudicating Authority on 27.07.2022 in C.P. (IB) No. 204 of 2020 and the Corporate Debtor is prosecuting the aforesaid issue before the Adjudicating Authority, which does not give any right to the Appellant to intervene in the matter. It is also submitted that even if the amount of claim has been received by the Operational Creditor from the Insurance Company, the Operational Creditor can proceed with Section 9 application. Learned counsel for the Respondent has further submitted that present is not a case where in the application for intervention filed by the Appellant any ground based on Section 65 of I&B Code has been taken. There was no allegation of any collusion with the Operational Creditor and the Corporate Debtor. The application has rightly been rejected. The Operational Creditor is only pursuing its claim and present is the second round of proceedings under Section 9. Earlier application was withdrawn due to settlement with the Corporate Debtor. Learned counsel for the Respondent placed reliance on the judgment of Hon'ble Supreme Court in "**Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. & Anr., 2020 SCC OnLine SC 1233**" and judgment of this Tribunal in "**L&T Infrastructure Finance Company Ltd. vs. Gwalior Bypass project Ltd. & Anr., 2019 SCC OnLine NCLAT 1033**". It is submitted that judgment of this Tribunal in the aforesaid case of "**L&T Infrastructure Finance Company Ltd.**" has also been confirmed by the Hon'ble Supreme Court by dismissing the Appeal on 03.02.2020.

8. We have considered submissions of learned counsel for the parties and perused the record. From the facts which have been brought on the record, it is clear that Appellant before us are Financial Creditor who had exposure to extent of 99.19% debt owed by the Corporate Debtor. Learned counsel for the Respondent is right in his submission that in Section 9 proceedings Financial Creditor has right to intervene only after Section 9 application is admitted, then they can file claim and be part of the CoC. The judgment of this Appellate Tribunal cited by learned counsel for the Respondent in **“L&T Infrastructure Finance Company Ltd.”** do support the above submission of learned counsel for the Respondent. This Tribunal in the aforesaid judgment was considering the case where application of a Financial Creditor who has sought intervention and impleadment in the Section 7 application filed by ICICI Bank was rejected. The appeal filed by L&T Infrastructure Finance Company Ltd., who sought intervention was rejected by this Tribunal. It is relevant to notice facts of the case, which are in Para 1, 2 and 3 of the judgment:

“ICICI Bank Limited filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) for ‘Corporate Insolvency Resolution Process’ against ‘Gwalior Bypass Project Limited’- (‘Corporate Debtor’). After hearing the Applicant-ICICI Bank Limited and ‘Corporate Debtor’, when the matter was reserved for orders, the Appellant – L&T Infrastructure Finance Company Ltd. filed a

petition for intervention for impleadment as a party-Respondent.

2. The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order dated 29th May, 2019 rejected the petition for intervention not being a necessary party.

3. The Adjudicating Authority by another order dated 29th May, 2019 admitted the application under Section 7 preferred by the ICICI Bank Limited and initiated 'Corporate Insolvency Resolution Process' against 'Gwalior Bypass Project Limited'-('Corporate Debtor')."

9. In Para 14, 16 and 17 following has been laid down by this Tribunal:

"14. From the aforesaid decision of the Hon'ble Supreme Court, it will be evident that the Adjudicating Authority is required to notice as to whether the application is complete or not and if there is debt and the 'Corporate Debtor' defaulted in payment and the amount is more than Rs.1 lakh, it is bound to admit an application under Section 7. Though, it is open to the 'Corporate Debtor' to object admission of application under Section 7 on the ground that the 'debt is not payable in law or in fact', but the application under Section 7 can be triggered even if the debt is disputed by the 'Corporate Debtor' and the amount of default is more than Rs.1 lakh.

16. In view of the aforesaid position of law, we hold that the Appellant being not a Member/ Shareholder of the 'Corporate Debtor', and has claimed to be a 'Financial Creditor' of the 'Corporate Debtor' has no right to intervene to oppose admission of the application under Section 7 preferred by the ICICI Bank against the 'Corporate Debtor'.

17. After admission of the application under Section 7, if the Appellant claims that it is one of the 'Financial Creditor', it can file claim before the 'Resolution Professional', but it cannot challenge the order of admission in absence of any challenge by the 'Corporate Debtor', on the ground that it has first charge on the asset of the 'Corporate Debtor' or has superior claim over the claim of the other 'Financial Creditors'."

10. There are two distinguishing features of the present case from the case of **"L&T Infrastructure Finance Company Ltd."**. Firstly, in the above case Intervention Application was filed by the L&T after order was reserved on the application filed under Section 7 and secondly, L&T has challenged both order rejecting his Intervention Application and order admitting the Section 7 application of the same date. In the present case, application under Section 9 is yet to be heard and admitted. We also notice that the above judgment of this Tribunal has been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 590-591/2020 by judgment dated 03.02.2020.

11. Another judgment which has been relied by learned counsel for the Respondent is judgment of the Hon'ble Supreme Court in "**Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. & Anr., 2020 SCC OnLine SC 1233**", also needs to be noticed. In the above case, Section 9 application filed by the Operational Creditor was admitted. Facts of the case have been noticed in Para 3 and 4:

"3. The facts, in short, are that Debenture Trust Deed (for short 'DTD') was entered into between Respondent No.1 (Corporate Debtor)/Earthcon Infracon Private Limited and the appellant/Beacon Trusteeship Limited, the Respondent No.1 issued 3000 senior, secured, transferable, unlisted, unrated, redeemable, non-convertible debentures of face value of Rs.1,00,000/- on a private placement basis against the deposit of Rs.30 Crores. On 20.12.2017 and 24.12.2018, DTD was amended twice to raise additional funds of Rs.20 Crores and Rs.2,50,00,000/- on similar basis. The appellant filed petition (CP No.1348/2019) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, 'the IBC') against Respondent No.1/Earthcon Universal Infratech Private Limited, one of the Corporate Guarantors of Respondent No.1. On 11.06.2019, Demand Notice under Section 8 of the IBC was issued by the Operational Creditor/Respondent No.2 against Respondent No.1. On 03.07.2019, Demand Notice was issued by the appellant calling upon Respondent No.1 to redeem all the debentures

and make a payment of Rs.63,39,68,719/- along with all applicable charges/interest etc. Ultimately, the appellant, on 26.07.2019, filed an application under Section 7 of the IBC against Earthcon Construction Pvt. Ltd., being one of the Corporate Guarantors of Respondent No.1 in the DTD. However, on the basis of notice issued on 11.06.2019 under Section 8 of the IBC, Respondent No.2 (Operational Creditor)/Emperos Infrastructure Private Limited filed proceedings including under Section 9 of the Arbitration and Conciliation Act, 1996.

4. An application was admitted on the basis of the admission made by Respondent No.1, as apparent from the order dated 23.08.2019 passed by the NCLT. Aggrieved thereby the appeal was preferred before the NCLAT. The NCLAT by the impugned order has dismissed the appeal. Hence the present appeal.”

12. The Appeal was allowed by the Hon’ble Supreme Court at the instance of Financial Creditor and the Appellant was relegated before the Adjudicating Authority to seek remedy. There allegations were made of collusion. In Para 7, 8 and 9 following has been laid down:

“7. Considering the provision of Section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in

accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority.

8. In case, a proper application is filed, aspect whether the proceedings have been initiated in collusive manner will be looked into, in accordance with law and the appropriate orders have to be passed, considering the facts and circumstances of the case. We have made it clear that we have not commented on the merit of the case. We set aside the impugned order passed by the NCLAT and dispose of the appeal in accordance with the aforesaid direction.

9. The interim protection granted by this Court vide order dated 30.09.2019 shall continue to operate for a period of four weeks from today. In the meantime, it is open to the appellant to file appropriate application for interim protection, if any, before the Adjudicating Authority.”

13. The above judgment of the Hon'ble Supreme Court recognizes an exception where a Financial Creditor has been permitted to intervene in an application filed under Section 9. Thus, law can be held to be settled that ordinarily a Financial Creditor cannot be allowed to intervene in the proceedings under Section 9, however, if there are reasons and allegations which require consideration by the Adjudicating Authority intervention can be allowed.

14. In the present case, we may notice the averments made in the application filed by the Appellant for intervention. In Para 10, 11, 12, 13, 14 and 15 following averments have been made by the Applicant:

“10. Pursuant to the assignment of debt, the Applicant being entitled to, initiated action under the provisions of the SARFAESI Act, 2002 by issuing notice under Section 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor to pay an amount of Rs.3614.83 Crores (Three Thousand Six Hundred and Fourteen Crore approximately) on 03rd September 2021. In furtherance to the said notice, the Applicant also took steps under the provisions of SARFAESI Act, 2002 under Section 13(4) and took possession of the Secured Assets and intimated the same to the borrower/Corporate Debtor, guarantor(s) and mortgagor(s) on 4th December, 2021. The Applicant craves leave to refer and rely upon the papers and proceedings in this regard.

11. The Applicant herein submits that the Applicant recently came to know about the pendency of the present proceedings and connected matter to the present proceedings filed by the Respondent No.1 herein. The Applicant is given to understand that the amount claimed, collectively in these two proceedings is in excess of Rs.100 Crores (Rupees One Hundred Crores only) and the

same arise out of some operational transaction.

- 12. The Applicant is given to understand that these proceedings are in relation to some contract executed in 2014 and for invoices raised in 2017. These transactions seem to be transactions executed with JBF Industries Ltd. (RAK Ltd.), which is a separate corporate entity altogether.*
- 13. The Applicant submits that the Applicant is the largest financial creditor of the Corporate Debtor having more than 99.19 per cent exposure in the debt of the Corporate Debtor. Any order of admission will have impact on the Applicant and the legal process initiated by the Applicant herein. The Applicant further submits that as an assignee of the bankers/original lenders, the Applicant is entitled to have knowledge of the affairs of the Corporate Debtor, including proceedings initiated by and/or against the Corporate Debtor and business transactions entered into by the Corporate Debtor.*
- 14. Further, the Applicant has a large amount outstanding from the Corporate Debtor which is in excess of Rs.3600 Crores (Rupees Three Thousand Six Hundred Crores only), which the Applicant is entitled to recover. In these circumstances, the Applicant is required to be heard before*

passing of any orders as such orders may affect the Applicant's ongoing effort of recovery of its outstanding dues. The Applicant further submits that the Applicant is entitled to peruse the case papers and ascertain true and correct nature of transaction.

15. The Applicant submits that in view of the above facts and circumstances, the present Application is filed so as to seek direction upon the Respondent No.1 herein to provide copies of papers and proceedings as well as allow the Applicant herein to make its submission at the time of hearing of the present Company Petition.”

15. After stating the facts, especially the fact that Appellant has exposure of 99.19% to the debt of the Corporate Debtor and further it initiated proceedings under SARFAESI Act, 2002 and has taken possession of the assets of the Corporate Debtor, in the application it is stated that it is entitled to have knowledge of the affairs of the Corporate Debtor including proceedings initiated by or against the Corporate Debtor. In the above circumstances it has prayed for intervention and in alternative has prayed for Applicant's counsel be permitted to advance its submissions at the time of final hearing.

16. There is one more fact which has been brought in the Appeal. Appellant has brought a document dated 04.12.2017 which is titled as “Form of Acceptance Claim Discharge & Subrogation Form”. It is relevant

to extract the entire document, which is at page 421-422 of the Appeal, to the following effect:

**“FORM OF ACCEPTANCE
CLAIM DISCHARGE & SUBROGATION FORM”**

Loss Description: Payment Default claim from buyer JBF RAK (L.L.C.) failed to make payment for 6 months after the original due date of payment, Atradius claim ref 9810135

Place of Loss : Ras Al-Khaimah (UAE)

Policy No. : 497753

Date of Loss : 16/09/2017

Claim No. : 497753-1

INSURED : SAUDI BASIC INDUSTRIES CORPORATION (SABIC)

INSURER : THE COMPANY FOR COOPERATIVE INSURANCE (TAWUNIYA)”

Subject to the approval of THE COMPANY FOR COOPERATIVE INSURANCE (TAWUNIYA), SABIC (also referred to as “We”) hereby agrees to accept the sum of USD 19,910,455.30 only (Nineteen Million Nine Hundred Ten Thousand Four Hundred Fifty Five Dollars and Thirty Cents) in interim settlement of its claim as mentioned above (the “Interim Liability”). The Interim Liability is calculated based on the claim supporting documentation made available to us and we reserve our right to re-assess liability under your policy should the final contractual amount, which is legally due and owing by JBF RAK (LLC) be different from the amount, which we have used to calculate our Interim Liability.

Upon receipt of the sum of USD 19,910,455.30 only (Nineteen Million Nine Hundred Ten Thousand Four Hundred Fifty Five Dollars and Thirty Cents), We hereby fully and finally discharge TAWUNIYA of liability and liquidate all claims arising under the above mentioned policy out of the said occurrence, up to the amount of the Interim Liability (as may be adjusted in accordance with the paragraph above), and We agree that We are indemnified for all claims up to such amount. For the avoidance of doubt this discharge and liquidation of claims shall not apply to the extent the Interim Liability is re-assessed by TAWUNIYA.

Further, We hereby assign, set over transfer, subrogate and substitute to TAWUNIYA any and all rights, claims, actions, interests, suits and proceedings in respect of this loss/damage which We have or ought to have against (the third party) and/or their Insurers or any other third party who are liable or hereafter adjudged to be liable for this loss/damage, whether under general law or under contract, to the extent of amount mentioned above plus all expenses incurred in relation to this loss/damage (to the extent included in the aforesaid amount paid to us). We hereby reserve our rights to claim any uninsured losses/deductibles if any such sums are recovered by TAWUNIYA.

We hereby agree to grant a Power of Attorney to TAWUNIYA favouring any person/firm

authorized by TAWUNIYA to proceed against the parties liable as mentioned above on the understanding that all costs, expenses and liabilities whatsoever incurred by SABIC and arising from the exercise of such Power of Attorney are hereby indemnified by TAWUNIYA.

Without prejudice to the generality of the foregoing, We agree to take all practicable measures directed by TAWUNIYA including the commencement of proceedings in our own name if TAWUNIYA is legally unable to commence proceedings in its own name, on the understanding that all costs, expenses and liabilities whatsoever incurred by SABIC and arising from such co-operation are hereby indemnified by TAWUNIYA.

We hereby expressly authorize and empower TAWUNIYA to use, compromise or settle in our name or otherwise to accept the proceeds and/or monies to the extent of the aforesaid amount paid to us and all the relevant expenses incurred by us (to the extent included in the aforesaid amount paid to us) or TAWUNIYA in respect of damage to our property/interests.

We also hereby confirm that the subject matter of this claim is not covered by any other insurance policy.”

17. The above document indicate that the Operational Creditor has received the insurance claim from the Insurance Company – ‘The

Company for Cooperative Insurance (TAWUNIYA)'. Where the TAWUNIYA was also authorized to initiate all suits and proceedings and power of attorney was given to the TAWUNIYA by the Operational Creditor. When the Operational Creditor with regard to supply of goods has received the claim for insurance and it has fully and finally discharged the Insurance Company of liability and liquidate all claims under the policy and further it records that the Operational Creditor is indemnified for all claims. The said document is relevant material to be examined by the Adjudicating Authority as to whether on the basis of the claim raised by the Operational Creditor, insolvency proceeding be initiated against the Corporate Debtor or not. In event, the entire claim of supply of goods for which application under Section 9 was filed by the Operational Creditor stood satisfied by the Insurance Company and Subrogation Form has been signed by the Operational Creditor, whether the Operational Creditor can still prosecute Section 9 application? We, however, make it clear that we are not expressing any opinion on the question whether Section 9 application filed by the Operational Creditor need to be admitted or not admitted and said issue be examined and decided by the Adjudicating Authority itself.

18. The fact that the Corporate Debtor had filed an application seeking direction to the Operational Creditor to bring materials on record regarding insurance claim and its disbursement itself indicate that in the Section 9 application filed by the Operational Creditor no details regarding claim lodged before the Insurance Company and disbursement

have been brought on record. The Adjudicating Authority on 27.07.2022 passed following order in I.A. No. 643 of 2022:

“IA 643 of 2022

Application is filed by the corporate debtor raising the issue that there is an apprehension about applicant not disclosing about the insurance taken with respect to the goods supplied/ any claim lodged for the amount before the Insurance company/ any disbursement by the Insurance Company of any amount, which is the subject matter in the main application, CP (IB) 204 of 2020 filed by the operational creditor.

This issue can be agitated at time of hearing of the main IB application by the corporate debtor for proper adjudication. The operational creditor to bring on record details about any claim filed before the insurance company, any money received from the insurance company, with respect to the claim for which IB application under section 9 is filed with the reply, with copy in advance to the other side.

All contentions are kept open for both the sides, while arguing the main CP (IB) application.

Application is disposed of.”

19. From the facts of the present case, as noticed above, especially the document brought on record by the Appellant i.e. ‘Claim Discharge and Subrogation Form’ dated 04.12.2017, we are of the considered opinion

that the Appellants be permitted to intervene in the proceedings initiated under Section 9 by the Operational Creditor. We make it clear that our direction to permit the Appellants to intervene in Section 9 Application has been passed on account of exceptional facts and circumstances, as noticed above and is not to be treated as any declaration of law that a Financial Creditor as a matter of right is entitled to intervene in proceedings initiated by Operational Creditor under Section 9. This order passed by us is in the facts and circumstances, as noticed above.

20. In result, we allow both the Appeals, set aside order dated 06.09.2022 passed in I.A. No. 486 of 2022 in C.P. (IB) No. 55 (AHM) 2021 and as well as set aside order dated 06.09.2022 passed in I.A. No. 487 of 2022 in C.P. (IB) No. 204 (AHM) 2022. The Appellants are permitted to intervene in the C.P. (IB) No. 55 (AHM) 2021 and C.P. (IB) No. 204 (AHM) 2022 respectively. Appeals are allowed to the above extent.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

14th November, 2022

Archana