

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1317 of 2023

IN THE MATTER OF:

Venus Buildtech India Pvt. Ltd.

...Appellant

Versus

Senbo Engineering Ltd.

...Respondent

Present:

For Appellant : Mr. Arjun, Mr. Rajeev Shrivastava and Mr. Shrey Shrivastava, Advocates

For Respondent :

ORDER
(Hybrid Mode)

12.03.2025 Heard Learned Counsel for the Appellant and Learned Counsel appearing for the Respondent. This Appeal has been filed against the order dated 04.08.2023 by which order Section 9 Application filed by the Appellant has been dismissed on the ground that Appellant being a decree holder is not an Operational Creditor.

Brief facts of the case necessary to be noticed for deciding the appeal are the Respondent was awarded work by Delhi Metro Rail Corporation for completion of the said work, Respondent awarded certain work to the Appellant herein. Appellant's case is that Appellant has completed the work and written a letter for release of the amount to the Respondent of Rs. 77,10,967/- and due to non-receipt of the payment, a suit was filed before the Civil Court and which suit was decreed on 12.09.2017 by Additional District Judge, Patiala House Court, Delhi. It is further submitted that Appellant has also put the decree in the execution, however, the payments having not been received by the Appellant. Appellant filed an Application

under Section 9 on 17.02.2021 by the Impugned Order dated 04.08.2023 the Application has been dismissed, holding that the Appellant being a decree holder, he is a distinct from the Operational Creditor.

Learned Counsel for the Appellant challenging the order submit that the operational debt which was owned to the Respondent shall not be transformed merely because a decree is obtained by the Appellant from Civil Court. It is submitted that the Appellant was Operational Creditor and the Adjudicating Authority committed error in rejecting Section 9 Application.

Learned Counsel for the Respondent submits that the Appellant has put the decree an execution and has realised certain amount in the execution proceeding and even after filing Section 9 Application has received certain amount. He has placed reliance on the judgment of Tripura High Court, which has relied by Adjudicating Authority in para 15 of the order.

We have considered submissions of Learned Counsel for the parties and perused the record. The Adjudicating Authority by rejecting Section 9 Application made following observations in paragraph 15 & 16:

“....

15. The above issue has been settled by the Hon'ble Tripura High Court in Sri Subhankar Bhowmik v. Union of India and Anr., where the Hon'ble High Court has held;

"10..... At best, a decree signifies à claim that has been judicially determined and in that sense is an 'admitted claim against the corporate debtor. Therefore, the IBC rightly categorises a decree-holder, as a creditor in terms of the definition contained in Section 3(10). Execution of

such a decree, is however subject to the fetters expressly imposed by the IBC (in addition to and over and above the requirements and limitations of the execution process under the CPC), which cannot be wished away.

11. Looked at from another angle, the decree-holder gets a statutory status as a creditor under Section 3(10) of the IBC, by virtue of the decree. Since the decree cannot be executed by operation of the moratorium under Section 14, the IBC makes a provision to protect the interests of a decree holder by recognizing it as a creditor. The interest recognized is that in the decree and not in the dispute that leads to the passing of the decree. This is apparent from the fact that decree holders as a class of creditors are kept separate from "financial creditors" and "operational creditors". No divisions or classification is made by the statute within this class of decree holders. The inescapable conclusion from the aforesaid discussion is, that the IBC treats decree holders as a separate class, recognized by virtue of the decree held. The IBC does not provide for any malleability or overlap of classes of creditors to enable decree holders to be classified as financial or operational creditors."

(Emphasis Supplied)

16. In view of the above, we hold that distinction of decree holders as creditors from 'financial creditors' and 'operational creditors', as seen aforesaid is intelligible and take forward the purpose of the Code. Hence, C.P (IB) No. 60/KB/2021 is rejected. However, the Operational Creditor is at liberty to resort to other remedies that may be available under any other law."

Learned Counsel for the Appellant placed reliance on judgment of this Tribunal in ***Mukul Agarwal, Ex-Director Greatech Telecom Technologies Pvt. Ltd. Vs. Royale Resinex Pvt. Ltd. and Ors. 2022 SCC OnLine NCLAT 255*** where this Tribunal by considering the similar issue laid down following paragraphs 10, 11 and 17 which is as follows:

“....

10. When we look into the transaction of account on which debt fell due, it is clear that transaction was for supply of poly propylene by the Operational Creditor to the Corporate Debtor and due to non-payment of the amount towards the material supplied by the Operational Creditor, the amount became due. The amount due, thus, is an amount under the provisions of goods and is fully covered with the definition of Section 5(21) of the Code, which is to the following effect:

“5(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”

11. Thus, the claim of the Operational Creditor was in respect of provisions of goods, that is, supply of poly propylene. The mere fact that when the Corporate Debtor did not pay the amount, suit for recovery was filed in the year 2016 by the Operational Creditor, which was also Decreed on 08.09.2016, does not in any manner effect the transaction out of which the amount fell due. The fact that amount was adjudicated and a Decree was passed, in no manner take away the nature of ‘operational debt’. We may notice that under Part-V of Form-3, in Item No.3 following has been mentioned:

“3. PARTICULARS OF AN Judgment and Decree dated
ORDER OF A COURT, 08.09.2016 passed by Sh. Prashant
TRIBUNAL OR ARBITRAL Kumar, Ld., ADJ, Rohini Court in Civil

PANEL ADJUDICATING ON
THE DEFAULT, IF ANY
(ATTACH A COPY OF THE
ORDER)

Suit No.149 of 2015 (New No.575402
of 2016) titled M/S Royale Resinex
Private Limited Vs. Greotech Telecom
Technologies Private Limited.

*Copy of Judgment and Decree dated
08.09.2016 is annexed herewith and
marked as ANNEXURE A-5.”*

17. Another judgment relied by learned Counsel for the Appellant in *Company Appeal (AT) (Ins.) No.452 of 2020 – Sh. Sushil Ansal v. Ashok Tripathi and Ors.* where the Appellant was a home buyer and an allottee and in whose favour there was already a certificate issued by UP RERA. In the above circumstances, this Tribunal held that the Decree holder though come within the definition of ‘creditor’, does not fall within the definition of ‘financial creditor’ and cannot file an Application under Section 7 due to the above reason, the said Appeal was allowed and Application filed under Section 7 by allottee was held to be not maintainable. The above judgment does not help the Appellant in the present case. The judgment of this Tribunal in “*Digamber Bhonwen v. JM Financial Asset Reconstruction Company Limited – Company Appeal (AT) (Ins.) No.1379 of 2019*” as well as *Sushil Ansal (supra)* were also to the same effect, where the Appeal was allowed by rejecting the submission that in Section 3(10) of the Code, the definition of ‘creditor’, the ‘decree holder’ is included. In the above cases, the Application came for consideration was an Application under Section 7 and the question was as to whether the Applicant was ‘Financial Creditor’, where it was held that Applicant was not ‘Financial Creditor’. The above judgment is clearly distinguishable.”

He had also referred to the recent judgment of the Hon’ble Supreme Court in ***Vishal Chelani v. Debashis Nanda, (2023) 10 SCC 395*** where it was held that the mere facts that the Homebuyers have obtained decree from the UP RERA they shall not cease to be Financial Creditor.

We are of the view that the Adjudicating Authority committed error in rejecting Section 9 Application only on the ground that Appellant being a decree holder is not an Operational Creditor which observations of the Adjudicating Authority is unsustainable. We thus, allow the appeal, set aside the order dated 04.08.2023 and revive Section 9 Application before the Adjudicating Authority to be heard and decided in accordance with law. We make it clear that we have not expressed any opinion on the merits of the Application and it is for the Adjudicating Authority to consider and decide afresh the application.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

pks/nn