

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT III**

**I.A. 2154/2022**

**In**

**C.P. No. (IB) 3542/MB/C-III/2019**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Filed by

**M/s. Shah Scrap Corporation** )  
A partnership firm through its partner )  
Mr. Niyaz Ahmed Shah )

**M/s. U. S. Enterprises** )  
A proprietary firm through its proprietor )  
Mr. Siraj Ahmed Shah )

**M/s. Shah Enterprises** )  
A proprietary firm through its proprietor )  
Mr. Ubaid Siraj Shah )

**... Applicants**

IN THE MATTER OF

**Amit Kumar Mehta**

*... Petitioner/Financial Creditor*

Vs

**M/s. New Steel Trading Pvt. Ltd.**

*... Respondent/Corporate Debtor*

**Order pronounced on: 11<sup>th</sup> January 2024**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

*For the Applicants:* None

*For the RP:* Adv. Akshay Petkar a/w Adv. Aniket Malu and Adv. Pranav Shah

**Per: Shri. Charanjeet Singh Gulati, Member (Technical)**

**ORDER**

1. The above I.A. is filed by the **Applicants**, who are the operational creditors of the Corporate Debtor under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**), seeking following reliefs:
  - a. *Direct the Resolution Professional of the Company to consider the debt of the applicants as financial debt u/s 5(8)(f) of the Code;*
  - b. *Direct the Resolution Professional for the forensic audit of the corporate debtor along with its promoter/ directors closely held firms having preferential transactions;*
  - c. *Provide direction in the case of extortionate credit transactions, transaction defrauding creditors and avoidable transactions of the corporate debtor u/s 43,45,49,50;*
  - d. *Pass suitable order u/s 65 and 66 of the code on establishing malicious intention of proceedings and wrongful trading;*
  - e. *Pass such other order(s) and/or direction(s) in the interest of justice which this Tribunal deems fit.*

**Submissions of the Applicants**

2. It is submitted that M/s Shah Scrap Corporation, M/s. U S Enterprises, and M/s Shah Enterprises (together referred to as **“Applicants”**), supplied to New Steel Trading Private Limited (**“Corporate Debtor”**), scrap materials worth Rs. 39,06,27,368/-, Rs. 35,10,65,060/-, and Rs. 42,89,01,749/- respectively. The Corporate Debtor defaulted in paying amount of Rs. 9,67,13,409/-, Rs. 2,38,00,425/-, and Rs.1,93,11,341/- respectively to the Applicants.
3. When the Corporate Debtor was admitted into CIRP, the Applicants filed their claims, in the capacity of operational creditors, in the prescribed form, to the Resolution Professional. The claims of all the three Applicants aggregating to Rs. 13,98,25,175/- was admitted by the Resolution Professional as operational debts.

4. Lately, the Applicants cognized the fact that the credit facility provided to the Corporate Debtor was through the purchases of the Corporate Debtor having a commercial effect of borrowing which has the effect of falling under section 5(8)(f) of the Code, and therefore, the same should be classified as a financial debt. Hence, the present IA has been filed by the Applicants.
5. The Applicants further contend that the insolvency proceeding against the Corporate Debtor was initiated by the Financial Creditor in conspiracy with the Corporate Debtor himself. To support their argument, the Applicant made out the following grounds:
  - a) The debt of the Financial Creditor was Rs. 25,00,000 as against the average turnover of Rs. 110,00,00,000 of the Corporate Debtor.
  - b) The Financial Creditor is a shareholder of the Corporate Debtor having share value of Rs. 1,23,07,300 with share percentage of 22.10% of the total shareholding value.
  - c) The corporate debtor has trade receivables of Rs. 25,58,38,520 as on 31.03.2020 and inventory worth of Rs. 56,18,00,000 but despite the same, has obtained financial debt from the financial creditor.

**Submissions of the Resolution Professional**

6. The Resolution Professional (**RP**) was not made Respondent in the matter, however, pursuant to a direction given by this Tribunal to file written submissions, the RP filed his brief submissions.
7. The Respondent submits that the Applicants have themselves admitted in the present Application that they were in contract to supply scrap materials to the Corporate Debtor, and the invoices to show that they have supplied scrap material is also annexed to the present application.

8. This evidently shows that the transaction between the Applicants and the Corporate Debtor was for supply of good i.e. scrap material which is used as raw material for manufacturing steel and iron rolling.

**FINDINGS/OBSERVATIONS**

9. When the matter was called, none appeared for the Applicants. The Application could have been dismissed for non-prosecution. However, the Resolution Professional was present and made submissions. Hence, we are disposing the present Application on merits.
10. Heard the Counsel for the Resolution Professional and perused the records.
11. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) by the Applicants seeking to convert their debt from operational debt to financial debt u/s 5(8)(f) of the Code.
12. The Corporate Debtor, New Steel Trading Private Limited, was admitted into Corporate Insolvency Resolution Process (CIRP) vide order dated 16.12.2021 passed in CP(IB)/3542/MB/2019.
13. The Applicants herein had submitted their claims to the Resolution Professional on 22.02.2022 for the outstanding due aggregating to Rs. 13,98,25,175/- for supply of goods to the Corporate Debtor, and the same has been admitted by the Resolution Professional (RP) as operational debt.
14. Now, at this stage, the Applicants are pursuing to convert their debt into financial debt for the reason that the purchases of the Corporate Debtor have a commercial effect of borrowing.

15. On perusing the Ledger Accounts of the Corporate Debtor annexed by the Applicants in the present Application, it is unambiguous that the said 'debt' is in the nature of operational debt as the Ledger Accounts lucidly state that the transactions between the Applicants and the Corporate Debtor are sale transactions.

16. At this juncture, we would like to refer to the definition of financial debt and operational debt as given in the I&B Code:

**“Section 5(8):**

*“financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–*

*(a) money borrowed against the payment of interest;*

*(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;*

*(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

*(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

*(e) receivables sold or discounted other than any receivables sold on non-recourse basis;*

*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

*[Explanation. -For the purposes of this sub-clause, -*

*(i) any amount raised from an allottee under a real estate project shall*

*be deemed to be an amount having the commercial effect of a borrowing; and*

*(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*

*(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

*(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

**“Section 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 2 [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.”

17. It is clear from the bare reading of the above-quoted definitions that the transaction clearly falls under section 5(21) of the I&B Code as operational debt, and not under section 5(8) of the Code, since the claim is in respect of supply of goods to the Corporate Debtor.
18. In such circumstances, we find no reason to categorize the debts of the Applicants as ‘financial debt’ and accordingly, prayer ‘a’ stands **rejected**.
19. As regards prayers ‘b’, ‘c’, and ‘d’, the Applicants have not made out any grounds to support the prayers except the submission that the initiation of CIRP is itself a conspiracy between Corporate Debtor and Financial Creditor. In this regard, we also find that there is no cause of action arising under sections 43, 45, 49, 50, and 66 in respect of the Applicants especially when their claims were admitted by the Resolution Professional.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH COURT III  
I.A. 2154/2022 In C.P. No. (IB) 3542/MB/C-III/2019

20. Further, the present application is primarily filed seeking conversion of operational debt into financial debt and in no way the same can be conceived as an application under the aforesaid sections of the Code. Moreover, we also note that the I&B Code clearly states that only the Resolution Professional or Liquidator, as the case may be, shall initiate proceedings under sections 43, 45, 50, and 66 thereunder. We see no explicit provisions in the afore-mentioned sections or in the I&B Code which authorizes a party other than the RP/Liquidator to file an application under these sections.
21. The Applicants have also prayed for suitable action under section 65 of the I&B Code for fraudulent or malicious intention of proceedings. However, we note that there is no substantial evidence based on facts submitted by the Applicants to support their contention other than the allegation that the entire CIRP is a conspiracy between the Corporate Debtor and Financial Creditor. We cannot hold this cogent in the absence of any reliable material/proof.
22. In view of the above, we hold that the Applicants neither have the *locus standi* nor the authority to initiate proceedings under the aforesaid sections. Consequently, prayers 'b', 'c', and 'd' are also **rejected**.
23. The said Application is accordingly **dismissed**.

**Sd/-**

**Charanjeet Singh Gulati**  
**Member (Technical)**

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**

Uma, LRA