

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,**  
**NEW DELHI**

**Company Appeal (AT) (Ins.) No. 60 of 2023 & I.A. No. 224, 225, 476,**  
**3871 of 2023 & 5221 of 2024**

**IN THE MATTER OF:**

**Dhruv Harjai**

**...Appellant**

**Versus**

**PPG Asian Paints Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant :** Mr. Adhitya Srinivisan, Mr. Rishabh Kanojiya, Mr. Srajan Tyagi, Mr. Ankur Das, Advocates.

**For Respondents :** Mr. Yashvardhan, Mr. Piyush Singh, Mr. Shubham Raj, Mr. Ayush Kumar, Advocates for R-1.  
 Mr. Shailendra Singh, Mr. Abhyuday Dhasmana, Advocates for HDFC Bank.

**J U D G M E N T**

**Per: Justice Rakesh Kumar Jain:**

This appeal is against the order dated 08.12.2022 by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by PPG Asian Paints Pvt. Ltd. (Financial Creditor) against Sidhi Vinayak Vehicles Pvt. Ltd. (Corporate Debtor) for the resolution of an amount of Rs. 42,35,000/- has been admitted and Rajan Sharma was appointed as the IRP.

2. The Suspended Director of the CD has challenged the impugned order by the present appeal in which at the time of issuance of notice on 18.01.2023 it was directed that no further steps shall be taken in pursuance of the impugned order and the said order was clarified in I.A No. 476 of 2023 by the

order dated 06.02.2023 to the effect that the order dated 08.12.2022 has not been stayed but stay was qua the further steps to be taken. It was also made clear that there was no stay in regard to moratorium which ensued by order dated 08.12.2022.

3. The Appellant has alleged that the CD was engaged in the business of automotive sales, servicing and repair works and as a part of its business activities, it was utilizing substantial quantities of automotive paints and refinish coating products.

4. The CD entered into a Bodyshop Agreement dated 21.03.2018 (in short 'Agreement') with the Financial Creditor in terms of which the FC contributed a sum of Rs. 35,00,000/- as an upfront contribution for the purchase of paint equipment and promotional activities. The CD agreed to procure the material worth Rs. 1 Cr. during the four-year tenure of the agreement from the deals of the appellant and also executed a promissory note of Rs. 35 lakh alongwith 12% interest p.a. as collateral security. As per the article 3 of the agreement, the CD was under obligation to procure material of Rs. 20 Lakh within a period of one year i.e on or before 31.03.2019 but since it failed to procure the material as stipulated, it caused breach of the agreement which amounted to default.

5. The Financial Creditor filed an application under Section 7 of the Code on Form 1 and claimed a sum of Rs. 42,35,000/- as the amount in default in part IV and mentioned the date of default as 01.04.2019.

6. The agreement between the parties dated 21.03.2018 which is the basis of their relationship and promissory note dated 21.03.2018 executed by the

CD in favour of the Financial Creditor for return of Rs. 35 Lakh alongwith interest @ 12% p.a were attached.

7. The Tribunal issued notice in the petition to the CD on 04.03.2020 which was duly served but nobody appeared on behalf of the CD nor any reply was filed. Consequently, the CD was proceeded against ex-parte on 17.03.2022.

8. The Tribunal heard the case of the Financial Creditor ex-parte and decided the issue of limitation in its favour and in so far as the issue of debt and default is concerned, it was held that the Financial Creditor sent the legal notice to the CD and in reply to the notice, the CD had undertaken to clear all the legitimate dues but still dues were not clear and thus it was found that there was a debt of Rs. 42,32,000 and the default. Thus, the Tribunal admitted the application filed by the Financial Creditor and appointed Rajan Sharma as the IRP.

9. Counsel for the Appellant has submitted that the application under Section 7 was not maintainable because the debt in question was in respect of the provision of goods or services which clearly falls within the definition of operational debt and has referred to some clauses of the agreement.

10. According to the Appellant, the amount of Rs. 35 Lakh was even without any interest for the purpose of purchasing the material. In this regard, reliance has been placed by the Appellant in the case of Consolidated Construction Consortium Limited Vs. Hitro Energy Solutions Pvt. Ltd., (2022) 7 SCC 164 in which it has been held that if the debt arises from the provision of goods or services then it would be an operational debt.

11. On the other hand, Counsel for the Respondent has submitted that the amount of Rs. 35 Lakh was not given to the CD towards the purchase of goods or obtaining its services but enabling the CD to support the purchase commitment of refinish products. It is further submitted that the CD had issued a promissory note dated 21.03.2018 by which it had agreed to pay Rs. 35 lakh alongwith interest @ 12% p.a. in case of default which is sufficient to establish that the amount of Rs. 35 Lakh was a financial debt and not an operational debt. It is further submitted that in terms of the agreement, the CD had agreed to procure material of Rs. 1 Cr. during the four year tenure of the agreement and upon failure of the CD in non-compliance of the agreement, particularly clauses 4 and 5, the Financial Creditor issued a legal notice in terms of clause 7(d)(i) calling upon the CD to pay Rs. 35 Lakh @ 12% interest p.a as agreed upon. It is further submitted that CD, in response to the legal notice, gave and undertaken regarding purchasing the goods as acknowledged by it under the agreement but the amount of Rs. 35 Lakh advanced by the Financial Creditor was not for purchasing the goods from the CD.

12. Counsel for the Respondent has referred to a decision of the Hon'ble Supreme Court in the case of Global Credit Capital Limited & Anr. Vs. Sach Marketting Pvt. Ltd., (2024) SCC OnLine SC 649 in which it has been observed that it is necessary to determine the real nature of the transaction on a plain reading of the agreement. It is further submitted that in the said case, it has been held that clause (f) of Section 5(8) of the Code covers all other transactions which are not covered under clause (a) to (e) of Section 5(8) which

means any other transaction covered under any other transaction and in the present case, the agreement was executed for transfer of funds to the CD to fulfil its purchase commitments to refinish the products. It is further contended that the transactions between the parties emanating from the agreement also had a commercial effect of borrowing.

13. In this case, an application was also filed by HDFC as a financial creditor of the CD for its impleadment and vacation of the order of stay alleging that it had filed form C to the IRP for a claim of Rs. 50,59,56,161/- against the CD as on 08.12.2022.

14. We have heard Counsel for the parties and perused the record with their able assistance.

15. The issue involved in this case is as to whether the amount advanced by Respondent No. 1 is a financial debt or an operational debt?

16. It is pertinent to mention that the CD, despite service of notice of the application filed under Section 7, did not choose to appear before the Tribunal nor filed the reply to the said petition. However, the relationship between the CD and the Financial Creditor is based upon the agreement.

17. The agreement was executed between the parties in which it was clearly mentioned that “the body shop proposes to substantially expand its business and being completely satisfied with the quality of refinish products supplied by PPGAP, the body shop is desirous of entering into an agreement with PPGAP to secure timely delivery of the PPGAP refinish products at the body shop services canters. 4. The body shop has approaching PPGAP for financial

contribution for the purpose of sales promotions and procurement of specialized painting equipment's for the development and upgradation of automotive painting facilities".

18. It is pertinent mention that the body shop is engaged in the business of automotive sales, servicing and repair work and in the course of its business utilizes substantial quantities of automotive parts and refinish coating products whereas PPGAP is a major supplier of automotive refinish coating products, deltron global refinish system and 2k refinish system, amongst others, which are extensively used by bodyshop's for painting cars and other vehicles.

19. Since, the body shop/CD required financial assistance for specialized painting equipment for the development and upgradation of automotive painting facilities for the purpose of its sales promotions, Respondent made an upfront contribution of Rs. 35 Lakh and secured it by a demand promissory note on the same date, a continuing security throughout the agreement, imposing liability upon the CD to repay the said amount with interest @ 12% p.a. in case of breach of contractual obligation to procure material worth Rs. 1 Cr. during the four year tenure of the agreement.

20. This understanding between the parties is a commercial effect of borrowing which is covered by Section 5(8)(f) of the Code.

21. It is not the case of the CD that the Respondent had advanced the amount in question for purchase of goods or for availing the services of the CD. The contention of the Appellant that the subject matter of the debt has some connection with the subject matter of the goods in the transaction which

would attract the provision of Section 5(21) cannot be accepted because it has been held in the case of Global Credit Capital Ltd. (Supra) by the Hon'ble Supreme Court while deciding the financial debt or operational debt it is necessary to determine the real nature of the transaction reflected in the writing.

22. Therefore, In view of the aforesaid discussion, we find no reason to interfere with the impugned order and the same is hereby dismissed, however, without any order as to costs.

I.As, if any, are hereby closed.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**[Mr. Indavar Pandey]**  
**Member (Technical)**

**New Delhi**  
**15<sup>th</sup> July, 2025**  
*Sheetal*