

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 430 of 2023

&

I.A. No. 1429, 1430, 1431 of 2023 & 2005 of 2024

IN THE MATTER OF:

Varun Gupta

...Appellant

Versus

ISINOX Pvt. Ltd.

Through the IRP Mr. Manishkumar R. Patel & Ors. ...Respondents

Present:

For Appellant : **Mr. Shaunak Kashyad, Mr. Ahmar Shad, Ms. Ragini Singh & Ms. Priya Rai, Advocates.**

For Respondent : **Mr. Rishi Kumar Singh Gautam, for R-1/IRP.**
Mr. Gautam Singhal, Mr. Rajat Chaudhary & Ms. Kanika Balhara, for R-2 to 46.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by the suspended director of ISINOX Pvt. Ltd. (Corporate Debtor) against the order dated 17.03.2023 passed by the National Company Law Tribunal, Mumbai by which CP (IB) No. 216 of 2022 filed by Somesh A Naik & Ors. (Financial Creditors) under Section 7 of the Code has been admitted and Manish Kumar R. Patel, a registered insolvency resolution professional was appointed as Interim Resolution Professional (IRP).

2. In brief, the petition under Section 7 of the Code was filed by Somesh A Naik & 44 others claiming an amount of Rs. 4,37,14,449/- out of which Rs.

2,34,17,965/- is the principal amount whereas rest of the amount is the interest.

3. The petition filed under Section 7 of the Code was filed on printed Performa on 30.12.2021 in which in part IV the date of default has been mentioned as 31.10.2021.

4. Case of the Financial Creditors is that the Corporate Debtor used to purchase goods (i.e. raw material) from Manohar Manak Alloys Pvt. Ltd. (Manohar Alloys). Manohar Alloys sold its unpaid invoices, which were to be paid at a future date, to KredX/Minion Ventures Pvt. Ltd. for facilitating quick recovery of funds. KredX is an online platform managed by Minion Ventures Pvt. Ltd. which provides invoice discounting facilities. KredX provides a market/platform for business owners to sell and investors to purchase invoice. It facilitates invoice discounting and reverse invoice discounting. The parties agreed to list the invoices on the platform. Manohar Alloys i.e. the seller discounted the invoices of CD after the execution of the CoR agreement and deposited the amount in an escrow account maintained by KredX with Yes Bank.

5. The Financial Creditors were lending money through Cred against the bills to various parties. The bills so assigned to the Financial Creditors and the amounts against such bills was disbursed. In the process of transactions, the Applicants stated to have paid a sum of Rs. 2,34,17,965/- on various dates i.e. 13.08.2019, 23.08.2019, 03.09.2019 and 04.09.2019. The CD was to repay the amount within 60 days from the date of disbursement.

6. The Financial Creditors entered into an agreement for creation of rights (COR) dated 13.08.2019 amongst Manhar Alloys Pvt. Ltd. (the seller), the Financial Creditors, the Corporate Debtor (buyer) and Million Ventures Pvt. Ltd. (Platform provider).

7. The Financial Creditors claimed the said amounts as financial debt whereas the CD has alleged that it was an operational debt, therefore, the application was not maintainable.

8. The Tribunal has observed that there is no dispute that the CD had availed the facility of bill purchase of the invoices raised for supply of goods by it to the CD through Cred/Million Ventures, a fintech company and while interpreting Section 5(8)(e) of the Code held that transaction is in the nature of receivables sold or discounted as contemplated in clause (e) of Section 5(8) of the Code and as such the application filed under Section 7 was maintainable and since the application could have been maintained by all the financial creditors together in view of Section 7(1) of the Code and that the amount involved is more than 1 Cr., beyond the threshold provided under Section 4 of the Code, admitted the application and appointed the IRP besides imposing moratorium.

9. At the time of preliminary hearing in this appeal on 11.04.2023, this Court had passed the following order:-

“Learned counsel for the Appellant submits that Section 7 application on behalf of Respondent No. 2 to 46 has been admitted who had purchased the invoices from the platform which invoices were provided by the seller who was not party to the proceedings. It is submitted that there was no financial debt on which Section 7 application could have admitted. Learned counsel placed reliance

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on judgment of this Appellate Tribunal in “Company Appeal (AT) (Ins.) No. 572 of 2022, Minions Ventures Pvt. Ltd. vs. TDT Copper Ltd.”. Issue notice. Requisites alongwith process fee be filed within three days. Respondents may file reply within three weeks. List this Appeal on 23.05.2023. In the meantime, order dated 17.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench shall remain stayed. Rejoinder before the date fixed.”

10. The appellant has relied upon a decision of this Court rendered in the case of Minions Ventures Pvt. Ltd. Vs. TDT Copper Ltd., CA (AT) (Ins) No. 572 of 2022 to contend that in the said case also the controversy between the parties were exactly the same and this Court has held that the financiers would enter into shoes of the seller in terms of Section 5(20) and 21(5) and Section 5(7) and 5(8)(e) of the Code would not apply. It was thus held that the application having been filed under Section 7 was not maintainable but the financiers were relegated to avail their remedy under Section 9 of the Code.

11. Counsel for Respondent has argued vehemently that the transaction between the parties is in the nature of a financial debt, therefore, there is no error in the impugned order but no judgment in support was referred to.

12. We have heard Counsel for the parties and perused the record.

13. The facts enumerated hereinabove are not in dispute and the only issue which requires to be adjudicated upon is as to whether in the given facts and circumstances the financiers / alleged financial creditors can maintain the application under Section 7 of the Code or it is a transaction of an operational debt for which an application under Section 9 is maintainable. In this regard, it would suffice to note that a similar controversy has been decided by this Court earlier in the case of Minions Ventures Pvt. Ltd. (Supra) in which exactly

the same issue was raised and this Court categorically held that the case would not be covered by Section 5(8)(e) rather it shall be covered by Section 5(20) and 21(5) of the Code and hence the application filed under Section 7 is not maintainable. However, at the same time, the financiers were not left remediless as they are relegated to avail their remedy to file an appropriate application in accordance with law under Section 9 of the Code.

14. Thus, in view of the law laid down in the case of Minions Ventures Pvt. Ltd. (Supra) we find merit in the present appeal and hence, the same is hereby allowed and the impugned order is set aside but at the same the Respondents / alleged financiers are relegated to their remedy to file an application under Section 9 of the Code, if so advised, in accordance with law. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

New Delhi
16th December, 2024
Sheetal