

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

11th November, 2022

Subject: Judgment¹ dated 10th November, 2022, Chipsan Aviation Private Limited Vs. Punj Llyod Aviation Limited [Company Appeal (AT) (Insolvency) No. 261 of 2022].

The appellant was engaged in business with the CD for charter services of aeroplanes and helicopter, hired on long term basis from non-scheduled operators/owners from the CD. On the assurance received from the CD, the appellant on 28.03.2016 advanced an amount of Rs.60 lakhs to the CD for aviation related services, which services were not provided by the CD, nor the advance paid by the appellant was refunded. The amount of Rs.60 lakhs was continuously shown in the books of the CD as advance received from the customers during 2015-16, 2016-17 and 2017-18. On 26.03.2019, the appellant filed a complaint against the CD with the Registrar of Companies.

2. On 19.09.2019, a Demand Notice was issued, which was delivered on 21.09.2019, and then a section 9 Application was filed by the appellant demanding an amount of Rs.97,40,055/-, out of which Rs.60 lakhs as principal amount and rest interest.

3. The Adjudicating Authority (AA) rejected the application holding that advance payment made by Operational Creditor (OC) to the CD does not fall within the four corners of the operational debt.

4. In the appeal, NCLAT noted that although, an amount of Rs.60 lakhs was advanced for providing goods and services to the CD, neither goods and services could be provided, nor any Agreement could be entered between the Appellant and the CD. Relying on the SC decision in the matter of *Construction Consortium Limited Vs. Hitro Energy Solutions Private Limited*, NCLAT observed that the expression ‘in respect of’ in section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the CD, which ultimately lead to an operational debt.

5. The NCLAT set aside the order of AA and held that the advance payment of Rs.60 lakhs was an operational debt. The section 9 was revived before the AA to be heard and decided afresh after hearing both the parties.

Analysis:

The Code, under section 5(21), defines ‘operational debt’ as a claim *in respect of* the provision of ‘goods and services’. The advance of Rs.60 lakhs was given by the OC to the CD for availing the aviation services and with regard to which, however, no contract could be entered into between the OC and the CD. But the repeated correspondence as encapsulated in the complaint before RoC, indicate that an amount of Rs.60 lakhs was advanced for providing goods and services to the Corporate Debtor. Even though the goods and services were to be provided by the CD, the lender becomes OC for the advance given to the CD in respect of goods and services.

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