

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins) No.1056 of 2023
& I.A. No. 3646 of 2023**

In the matter of:

Supreme Transport Organization Pvt. Ltd.

....Appellant

Vs.

Maharashtra Airport Development Company Ltd.

...Respondent

For Appellant: Mr. Sonam Sharma, Ms. Riddhi Jain, Advocates.

For Respondent:

ORDER

23.08.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 17.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I, by which order Section 9 Application filed by the Appellant has been rejected holding that there is no operational debt. The Appellant has applied for a tender which was issued by 'Maharashtra Airport Development Company Limited'. Along with tender the Appellant has also given earnest money deposit of Rs.5 Lakhs and Rs.2 Lakhs. Both the tenders of the Appellant were rejected on 29.08.2018 and 30.08.2018. The claim of the Appellant was that his EMD is not refunded, hence, he filed Section 9 Application. The Adjudicating Authority came to the conclusion that the deposit of EMD in pursuance of the tender notice is not an operational debt.

3. Learned Counsel for the Appellant challenging the order contends that the Appellant has applied in pursuance of the tender and deposit of EMD in event the tender was accepted the Appellant would have been providing services to the Respondent. It is submitted that the said amount can be treated as advance payment and it is covered by operational debt. Learned Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in **“Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited- (2022) 7 SCC 164”**.

4. We have considered the submissions of the Counsel for the Appellant and perused the record.

5. ‘Operational debt’ is defined in Section 5(21) in following manner:-

“5. Definitions. –.....(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”

6. The operational debt which is contemplated under the statute is a claim in respect of the provision of goods or services. The judgment of the Hon'ble Supreme Court relied by the Counsel for the Appellant clearly indicate that even an advance with respect to goods and services is covered by operational

debt. Learned Counsel for the Appellant has relied on paragraph 50.1 of the judgment which is to the following effect:-

“50.1.First, Section 5(21) defines “operational debt” as a “claim in respect of the provision of goods or services”. The operative requirement is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be the supplier or receiver. Such an interpretation is also supported by the observations in the BLRC Report, which specifies that operational debt is in relation to operational requirements of an entity.”

7. In view of the judgment of the Hon’ble Supreme Court, the operative requirement is that the claim must bear some nexus with a provision of goods or services.

8. Present is a case where the Appellant was only a tenderer who has submitted EMD along with the tender which tender was admittedly rejected. The EMD payment by the Appellant was not towards any goods or services and the submission that in event the tender was accepted the Appellant would have provided services is far-fetched to accept the claim relating to goods and services. The judgment which has been relied by the Counsel for the Appellant was in entirely different facts where amount of Rs.50 lakhs was paid towards the project which was directed to be paid and on account of non-payment of the said amount the proceedings were initiated. The facts of the present case are clearly distinguishable and the above judgment does not help the

Appellant. We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application. Appeal is dismissed, accordingly.

9. It is, however, open to the Appellant to take such steps as permissible in law.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Anjali/nn