

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

**Company Appeal (AT) (Insolvency) No. 508 of 2018**

(Arising out of Order dated 31<sup>st</sup> July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai in CP/145(IB)/2018)

**IN THE MATTER OF:**

**Centrum Capital Limited**

**...Appellant**

**Vs**

**Orient Green Power Company Limited**

**...Respondent**

**WITH**

**Company Appeal (AT) (Insolvency) No. 632 of 2018**

(Arising out of Order dated 31<sup>st</sup> August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai in CP/141(IB)/2018)

**IN THE MATTER OF:**

**Centrum Capital Limited**

**...Appellant**

**Vs**

**Shriram EPC Limited**

**...Respondent**

**Present:**

**For Appellants:** Mr. Atul Sharma, Ms. Ashly Cherian, Mr. Saahil Menon, Ms. Shreya Jad, Mr. Abhishek Sharma and Mr. Kshitiz Khara, Advocates.

**For Respondent:** Mr. Arun Kathpalia, Senior Advocate with Ms. Pooja M. Saigal, Mr. Akshay Gupta, Advocates.

**J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

The 'Centrum Capital Limited' filed application(s) under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short), one for initiation of the 'Corporate Insolvency Resolution Process' against 'Orient Green Power Company Limited' and another against 'Shriram EPC Limited'. Both the applications have been rejected almost on similar grounds, one by impugned order dated 31<sup>st</sup> July, 2018 (against 'Orient Green Power Company Limited') and another by impugned order dated 31<sup>st</sup> August, 2018 (against 'Shriram EPC Limited') passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai.

**'Orient Green Power Company Limited'**

2. The case of the Appellant is that it had entered into an agreement dated 27<sup>th</sup> February, 2014 for refinancing and restructuring the existing loan accounts of 'Beta Wind Farm Limited' being a subsidiary of 'Orient Green Power Company Limited'. As per the said terms of the agreement, the Appellant was entitled to receive an arranger's fee on receipt of individual sanction letter from each individual lender, irrespective of the status of proposal with other lenders of the Respondent- 'Orient Green Power Company

Limited'. The Appellant provided its services to the Respondent as defined under the scope of services of the said agreement.

3. By a letter dated 27<sup>th</sup> September, 2014, the Appellant requested the Respondent for an extension of the agreement. The Respondent even after the expiry of the agreement continued to seek assistance from the Appellant in support of which reliance has been placed on e-mails.

4. Further case of the Appellant is that 'Beta Wind Farm Limited' received sanction from lead lender i.e. Axis Bank and further received sanction for additional funding of Rs. 248 Crores and Rs. 22 Crores respectively in the month of November, 2014. The Appellant obtained the sanction for additional funding from Axis Bank, Karnataka Bank, TMB, Canara Bank, IOB, Central Bank, Dena Bank and Andhra Bank. The status of the said sanctions was also confirmed and provided by the Respondent by e-mail dated 23<sup>rd</sup> January, 2015.

5. Thereafter, the Appellant by its e-mail dated 21<sup>st</sup> November, 2014 reduced the compensation fees for all three companies from Rs. 19,21,00,000/- to Rs. 13,50,00,000/- on the assurance given by the Respondent that the payment will be made in two installments by December, 2014.

6. It is stated that that the Respondent by e-mail dated 25<sup>th</sup> November, 2014 requested for further reduction in compensation fee, stating that they recognize the efforts of the Appellant and their contribution in all three companies and the bankers get involved and start questioning every payment, the matter has not proceeded on the basis of the assurance and recognition of efforts made by the Respondent.

7. Further, it is stated that on the basis of the revised amount and terms, the group company of the Respondent managed only to make part payment of only Rs. 50,00,000/- on 30<sup>th</sup> December, 2014, balance payment was not made.

8. It is stated that one of the three companies of 'Shriram Group' being 'Leitwind Shriram Manufacturing Limited' made payment of Rs. 3,84,61,637/- as per negotiated revised amount of Rs. 12,00,00,000/- in respect of invoice raised on it by the Appellant on 1<sup>st</sup> July, 2015. However, the Respondent failed to make payment as per the revised compensation terms.

9. It is alleged that even after part payment and repeated assurances, the Respondent alongwith another company of 'Shriram Group' i.e. 'Shriram EPC Limited' failed and neglected to pay the entire revised amount of Rs. 12,00,00,000/- by end of December, 2014.

10. Learned counsel for the Appellant submitted that the Respondent subsequently sought to give the colour of dispute on the outstanding figures and quality of service only to delay in making the payments. The Respondent has also wrongly asserted in its reply dated 24<sup>th</sup> May, 2017 to the first demand notice that the Appellant has breached the terms of the agreement. In fact, at no given point of time during the subsistence and implied extension of the said agreement, Respondent raised any difficulty/ concern in terms of deficiency of services or breach of the terms of the said agreement by the Appellant.

11. It appears that the Appellant filed petition being C.P. No. 685 of 2017 before the Adjudicating Authority for initiation of 'Corporate Insolvency Resolution Process' against 'Orient Green Power Company Limited' but it was withdrawn on 25<sup>th</sup> January, 2018 with liberty to file fresh petition. The said petition was filed through Advocate and, therefore, it was withdrawn.

12. After withdrawal of such petition, a notice for invocation of arbitration proceedings against the Appellant was issued by the Respondent on 12<sup>th</sup> December, 2017. On receipt of such notice, the Appellant agreed for arbitration.

13. Learned counsel appearing on behalf of the Respondent- 'Orient Green Power Company Limited' submitted that 'Orient Green Power Company Limited' is not the 'Corporate Debtor' of the Appellant 'Centrum Capital

Limited'. No agreement was reached between the Appellant-'Centrum Capital Limited' and the 'Orient Green Power Company Limited'. The alleged agreement is between Appellant and 'Beta Wind Farm Limited' which a separate entity.

14. The Appellant has enclosed a copy of a 'Private & Confidential' letter dated 27<sup>th</sup> February, 2014 addressed by Appellant to the Director of 'Orient Green Power Company Limited' which shows that there was ongoing discussions made for refinancing/restructuring the existing loan accounts of 'Beta Wind Farm Limited'. The refinancing and restructuring do not relate to 'Orient Green Power Company Limited'. This apart, we find that the said letter though signed and accepted by the authorized signatory of 'Orient Green Power Company Limited', it has not been signed by any of the authorized signatories of 'Centrum Capital Limited' (See Page 146 of the appeal preferred by the 'Centrum Capital Limited'). Therefore, the Appellant cannot take advantage of the letter dated 27<sup>th</sup> February, 2014 for initiation of 'Corporate Insolvency Resolution Process' against 'Orient Green Power Company Limited'.

15. One of the ground taken by the Appellant is that the Respondent with a view to delay in making payments has given the colour of dispute relating to quality of service. However, after withdrawal of application under Section 9 on 25<sup>th</sup> January, 2018, the parties invoked arbitration proceeding on 12<sup>th</sup> December, 2017.

16. Invoices enclosed by the Appellant including invoice dated 30<sup>th</sup> June, 2015 show that such invoices were raised in the name of Director of 'Beta Wind Farm Private Limited'. One of them, is extracted below:

**CENTRUM**

ANNEXURE P-15 166

June 30, 2015 PFG/2014-15/Jun/08

To,  
Mr. S. Srinivasan  
The Director,  
Beta Wind Farm Private Limited,  
4<sup>th</sup> Floor, Sigapi Achi Bldg.,  
Door No.18/3, Rukmini Lakshminpathi Salai,  
Egmore, Chennai -600 008,

**INVOICE**

Particulars	Amount(Rs.)
Fees towards completion of additional funding as per mandate letter.	3,07,00,000
Less: Debit note raised earlier	10,00,000
Net total	2,97,00,000
Add: Service Tax @ 14.00%	41,58,000
<b>Total</b>	<b>3,38,58,000</b>

(Rupees Three Crore Thirty Eight Lakh Fifty Eight Thousand Only)

**Bank details for RTGS:**  
 Account Name : Centrum Capital Limited  
 Account No : 00602210002297  
 Account Type : Current  
 Bank : HDFC Bank Limited  
 IFSC Code : HDFC0000060  
 Branch : Manekji Wadia Bldg, Nanik Motwani Marg, Fort, Mumbai -400001.

FOR CENTRUM CAPITAL LIMITED,

  
AUTHORISED SIGNATORY

PAN No: AAACCS099G  
 SERVICE TAX No: AAACCS099G ST001  
 CATEGORY: MANAGEMENT CONSULTANTS



Centrum Capital Limited, (CIN No.: L65900MH1977PLC019966)  
 Corporate Office: Centrum House, CST Road, Vidyanaagar Marg, Kalina, Santacruz (East), Mumbai - 400 098. Tel: +91 22 4215 9000  
 Fax: +91 22 4215 9533 / 9316 website: www.centrum.co.in Registered Office: 2nd Floor, Bombay Mutual Building, Dr. D N Road,  
 Fort, Mumbai - 400 001 Tel: +91 22 2286 2431. Fax: +91 22 2251 1105. info@centrum.co.in website: www.centrum.co.in



  
AUTHORISED SIGNATORY

17. In the demand notice under Section 8(1) of the 'I&B Code' originally issued on 9<sup>th</sup> May, 2018, the Appellant has referred the invoices dated 30<sup>th</sup> June, 2015, which was issued in the name of 'Beta Wind Farm Private Limited'. Thus, there being a dispute as to who was the 'Corporate Debtor' of the Appellant i.e. 'Orient Green Power Company Limited' or 'Beta Wind Farm Private Limited', the Adjudicating Authority rightly rejected the application under Section 9 of the 'I&B Code'.

### **Shriram EPC Limited**

18. In the case of 'Shriram EPC Limited', the Appellant's case is based on a 'Private & Confidential' letter dated 20<sup>th</sup> February, 2014 which is stated to be agreement between the Appellant and the Respondent- 'Shriram EPC Limited'. The letter has been issued to the Managing Director & CEO of 'Shriram EPC Limited' on 20<sup>th</sup> February, 2014. In end of the letter though the authorized signatory of 'Shriram EPC Limited' has signed but nobody signed on behalf of the Appellant-'Centrum Capital Limited'. The extract of the letter aforesaid is as follows:



ANNEXURE - 'P-7'

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CENTRUM

PRIVATE & CONFIDENTIAL

Thursday, February 20, 2014

The Managing Director & CEO  
Shriram EPC Limited  
4<sup>th</sup> floor, Sigapal Achi Building  
18/3, Bukmini Lakshmiipathi Salai,  
Egmore, Chennai - 600008

Kind Attn: Mr. T. Shrivaraman

Dear Sir,

Sub: Our Offer for restructuring the Debt of Shriram EPC Limited

We refer to our ongoing discussions with you for restructuring the existing working capital and term loan limits in Shriram EPC Limited ("SEPC" or "Client"). Centrum Capital Limited ("Centrum") is keen to assist the Client in restructuring its existing accounts with the lenders.

We have outlined in this letter ("the Agreement") our scope of services, compensation structure and other standard terms and conditions. This Agreement and its attachments supersede all previous discussions and correspondence relating to the terms of our engagement.

## 1. Principal Understanding:

1. We understand that Shriram EPC Limited is the listed flagship company of Shriram group. SEPC is a leading provider of integrated EPC solutions for renewable energy, processes and metallurgy and municipality services. The company has significant project experience with an established track record of implementing large size complex projects in various verticals in which it operates. The company has technical collaboration with world's leading companies such as Leitwind, Hamon group, Envirotherm, Perco etc for various verticals. SEPC has achieved turnover of about Rs.1490 crs for the 12 months ended March 31, 2013 and Rs.359 crores for 6 months ended December 31, 2013.
2. Client enjoys total fund based debt facilities (including working capital, term loans, debentures etc) of more than Rs.1512 crs and non fund based facilities of Rs.1382 crs from a number of banks and financial institutions. The amount of debt for the purpose of this mandate shall be crystallized at a later date before approaching lenders.
3. Company is currently facing liquidity constraints and difficulties in meeting its financial commitments as per schedule.
4. Centrum has agreed to approach the Working capital and term lenders for restructuring the outstanding limits.

Centrum Capital Limited, Centrum House, CST Road, Vidyasagar Marg, Kalina, Santacruz (East), Mumbai - 400 098.  
Tel : +91 22 4215 9000 Fax : +91 22 4215 9367  
Mumbai - 400 001, Tel : +91 22 2266 2434 Fax : +91 22 2261 1105 email : info@centrum.co.in website : www.centrum.co.in



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Person') from and against all actions, claims, damages, proceedings, investigations, liabilities or judgments (collectivity claims) and any and all losses, damage, costs, charges, and expenses (collectivity "losses" and including all costs, expenses and fees connected with investigating, preparing or defending any such claim) or whatever nature and in whatever jurisdiction, and which refer to or arise from, directly or indirectly, this Agreement or the role of Centrum in connection with the Transaction, other than for any claims or losses to the extent that are finally determined by a court of competent jurisdiction to have resulted primarily from bad faith or willful default of Centrum.

The Client shall comply with all the terms and conditions of the sanction of respective lender/s. In the event the Client fails to (a) receive the regulatory approvals or (b) complete the Transaction, owing to its willful misconduct, negligence or breach, the Client shall fully indemnify Centrum against any losses, claims, damages or liabilities on account of their role under this Agreement.

**IX. Governing Law and Submission to Jurisdiction**

This letter Agreement shall be governed by and construed in accordance with the laws of the Republic of India. Any dispute or differences arising under the Agreement shall be referred to Arbitration by three arbitrators in Mumbai, India (one to be appointed by Centrum and one to be appointed by the Client and the third to be chosen by mutual agreement by the other two arbitrators) and such arbitration shall be held in accordance with the (Indian) Arbitration & Conciliation Act, 1996, and any re-enactment or modification thereof and judgment upon the award rendered may be entered in the High Court of Mumbai or in any other court in India of competent jurisdiction. The arbitral award shall be treated as final and binding on the parties hereto.

**X. Miscellaneous**

No amendment or modification of the Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by its authorized officer or representative.

If the foregoing correctly sets forth the Agreement between M/s Shriram EPC Limited and Centrum, please sign and return the enclosed copy of this letter, whereupon it shall become our binding Agreement.

Thanking you.

Yours truly,  
FOR CENTRUM CAPITAL LIMITED

AUTHORIZED SIGNATORY

Accepted  
FOR SHRIRAM EPC LIMITED

AUTHORIZED SIGNATORY

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19. The Appellant has enclosed an e-mail dated 8<sup>th</sup> September, 2015 sent by Mr. P.R Kalyanaraman, of the Appellant- 'Centrum Capital Limited' to Mr. Ravish Bansal of 'Shriram EPC Limited'. In reply to the said e-mail, one Mr. Kotteswari by his reply dated 8<sup>th</sup> September, 2015 intimating Mr. Ravish Bansal that they have never agreed to pay the full fee as per mandate terms. The said e-mail enclosed at Page 169 also shows pre-existing dispute.

20. Thus, as there is a pre-existence of dispute raised by the Respondent by their e-mail dated 8<sup>th</sup> September, 2015 stating that the Respondent never agreed to pay full fee to the Appellant and the terms and agreement letter dated 20<sup>th</sup> February, 2014 do not bear the signatures of both the parties, the Adjudicating Authority rightly rejected the application by impugned order dated 31<sup>st</sup> August, 2018.

21. We find no merit in both the appeals. They are accordingly dismissed.  
No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI

8<sup>th</sup> February, 2019

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