

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 746 of 2018**

**IN THE MATTER OF:**

**Sarang Bhand**

**...Appellant**

**Versus**

**West Coast Ventures (India) Pvt. Ltd.  
& Anr.**

**...Respondents**

**Present:**

**For Appellant :**           **Mr. Ameya Gokhale, Mr. Saurabh Jain, Ms. Jasveen Kaur, Mr. Vijayant Paliwal and Mr. Shantanu Chaturvedi, Advocates**

**ORDER**

**08.02.2019**       The respondent – ‘West Coast Ventures (India) Private Limited’ (Operational Creditor) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, ‘I&B Code’) for initiation of ‘corporate insolvency resolution process’ against ‘Organic Recycling Systems Pvt. Ltd.’ (Corporate Debtor). The application having admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by order dated 30<sup>th</sup> August, 2018, the present appeal has been preferred by the shareholder of the ‘Corporate Debtor’. Learned counsel appearing on behalf of the appellant submitted that the application under Section 7 was filed on 28<sup>th</sup> September, 2017. The case was heard on the question whether the respondent is a ‘financial creditor’ or not and thereafter the impugned order was passed on 30<sup>th</sup> August, 2018. This order has not been even shown on the website and certified copy of the impugned order was received by the ‘Corporate Debtor’ on 20<sup>th</sup> November,

2018. Learned counsel for the appellant submitted that the main issue whether the respondent can be termed to be a 'financial creditor' within the meaning of Section 5(7) of the I&B Code has not appropriately considered. Learned counsel submits that 'West Coast Ventures (India) Pvt. Ltd.' (so called Financial Creditor) formed a joint venture with M/s. Organic Recycling Systems Pvt. Ltd. (Corporate Debtor) for project to project basis. Both the parties desired to bid, execute and operate various municipal solid waste to Energy Project in consortium with each other.

Notice was issued on the respondent but initially returned unserved with note that 'the addressee (Financial Creditor) has left the place". Notice on the 'Corporate Debtor' has been served. It was in this background we directed the appellant to make paper publication in newspapers one English ('Indian Express' Bengaluru Edition) and another Kannada ('Udayavani' Bengaluru Edition) intimating them that 8<sup>th</sup> February, 2019 at 10.30 A.M. is the next date fixed for admission and the appeal may be disposed of at the stage of admission. In spite of service of notice through newspaper, the respondent – West Coast Ventures (India) Pvt. Ltd. has not appeared. It is informed that the 'Resolution Professional' as was appointed has not taken over the 'corporate debtor', therefore we find that the 'corporate debtor and the 'Resolution Professional' in spite of service not appeared.

2. From the record we find that 'memorandum of understanding' dated 10<sup>th</sup> November, 2014 was executed between the 'corporate debtor and the respondent 'West Coast Ventures (India) Pvt. Ltd.' for funding of Rs. 43 crores from time to time as per timeline mentioned therein. Such funding were to be made eventual investment in the SPVs for Pune and Bangalore Municipal Solid Waste to Energy

Projects. SPV for Bangalore Project with Organic Waste India Private Limited was already in existence as on the date of the 'MOU' and the SPV for the Pune Project namely Pune Urban Recyclers Pvt. Ltd. was incorporated on 9<sup>th</sup> January, 2015. In terms of the 'Memorandum of Understanding' between the parties, the respondent also invested a joint venture company for execution of the project. Thus, we find that both the 'corporate debtor' and the respondent 'West Coast Ventures (India) Private Limited' invested money for the purpose of projects of equity share of third party and, therefore, it cannot be held that the respondent 'West Coast Ventures (India) Private Limited' invested in the company namely 'M/s. Organic Recycling Systems Pvt. Ltd.' (Corporate Debtor) and thereby 'West Coast Ventures (India) Private Limited' cannot be termed to be a 'financial creditor' of M/s. Organic Recycling systems Pvt. Ltd. (Corporate Debtor). The Adjudicating Authority though noticed that such investments were made for purchase of equity share of 3<sup>rd</sup> party but failed to consider the real issue whether the respondent 'West Coast Ventures (India) Private Limited' can be termed to be a 'financial creditor' of 'Organic Recycling Systems Pvt. Ltd.' (Corporate Debtor).

3. In view of the observations aforesaid, we hold that an application under Section 7 filed by 'West Coast Ventures (India) Private Limited' against 'Organic Recycling systems Pvt. Ltd.' (Corporate Debtor) was not maintainable. The impugned order dated 30<sup>th</sup> August, 2018 is accordingly set aside.

4. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions

are declared illegal and are set aside. The application preferred by the 1<sup>st</sup> Respondent under Section 7 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 2<sup>nd</sup> Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

5. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and 'Organic Recycling Systems Pvt. Ltd.' (2<sup>nd</sup> Respondent) will pay the fees for the period he has functioned. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansilal Bhat ]  
Member (Judicial)

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