

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

**Company Appeal (AT) (Insolvency)No.258 of 2019**

**IN THE MATTER OF:**

**Vyomit Shares Stock & Investments Pvt. Ltd. ....Appellant**

**Vs.**

**Securities and Exchange Board of India (SEBI) .....Respondent**

**Present :**

**For Appellant: Mr. Sunil Fernandes, Mr. Siddharth Sharma, Mr. Darpan Sachdeva, Advocates**

**For Respondents: Ms. Udit Singh, Advocate**

**O R D E R**

**15.05.2019** - The '*Corporate Applicant*' filed an application u/s 10 of Insolvency & Bankruptcy Code ('I&B' Code), 2016 for initiation of Corporate Insolvency Resolution Process against it. The Adjudicating Authority, National Company Law Tribunal (*in short 'NCLT'*), Mumbai Bench by impugned order dated 12<sup>th</sup> February, 2019 rejected the application on the ground that the '*Corporate Debtor*' is earning sufficient income. Therefore, prima facie, it appears that there is no reason for the Appellant or the '*Corporate Debtor*' to declare itself eligible for filing an application u/s 10 of Insolvency & Bankruptcy Code ('I&B' Code), 2016. ....contd./

Learned counsel appearing on behalf of the Respondent submits that the Adjudicating Authority has also stated that the **Securities and Exchange Board of India** (SEBI) is not Operational Creditor but we are not accepting such an issue in view of decision of this Appellate Tribunal in **“Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s. Synergies Dooray Automotive Ltd. & Ors. etc. – Company Appeal (AT)(Insolvency) No. 205 of 2017 etc. dated 20<sup>th</sup> March, 2019”** wherein this Appellate Tribunal held and observed as follows:-

27. In **“Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— Writ Petition (Civil) No. 99 of 2018”**, the Hon’ble Supreme Court while dealing with the different provisions of the ‘I&B Code’, including Section 5(20), observed as follows:

“23. A perusal of the definition of “financial creditor” and “financial debt” makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive

*definition. On the other hand, an ‘operational debt’ would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.”*

*28. From the plain reading of sub-section (21) of Section 5, we find that there is no ambiguity in the said provision and the legislature has not used the word ‘and’ but chose the word ‘or’ between ‘goods or services’ including employment and before ‘a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, and State Government or any local authority’.*

*29. ‘Operational Debt’ in normal course means a debt arising during the operation of the Company (‘Corporate Debtor’). The ‘goods’ and ‘services’ including employment are required to keep the Company (‘Corporate Debtor’) operational as a going concern. If*

*the Company ('Corporate Debtor') is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the 'Income Tax', 'Value Added Tax' and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company. For the said reason also, we hold that all statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt'.*

*30. For the said very reason, we also hold that 'Income Tax Department of the Central Government' and the 'Sales Tax Department(s) of the State Government' and 'local authority', who are entitled for dues arising out of the existing law are 'Operational Creditor' within the meaning of Section 5(20) of the 'I&B Code'."*

Learned counsel for the Appellant submitted that the Company is in loss and is not in a position to pay the amount.

However, from the record, it appears that there is income and profit generated by the Company in the financial year 31<sup>st</sup> March, 2017, we are not inclined to interfere with the impugned order. The appeal is dismissed. No Costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice A. I. S. Cheema]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

ss/gc