

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

**Review Application No.07 of 2020**  
**in**  
**Company Appeal (AT) (Ins) No.680 of 2019**

[Arising out of Order dated 8<sup>th</sup> June, 2020 passed by National Company Law Appellate Tribunal in Company Appeal (AT) (INS) No.680 of 2019]

**IN THE MATTER OF:**

Power2SME Pvt. Ltd.  
AD-13, Basement (LGF),  
Tagore Garden,  
New Delhi,  
West Delhi – 110027

...Review Applicant/Appellant

**Vs.**

1. Allied Strips Limited  
Through Mr. Sandeep  
Mahajan,  
Resolution Professional  
14B, Manohar Park,  
1<sup>st</sup> Floor,  
New Rohtak Road,  
New Delhi

...Respondent No.1

2. G.P. Global Energy  
Private Limited  
301, Udyog Vihar,  
Phase II,  
Gurugram,  
Haryana-122016

...Respondent No.2

**For Appellant:**

**Ms. Shobha Gupta and Shri Pankaj Bhagat,  
Advocates**

**For Respondents:**

**Shri Vikas Sharma, Shri Dinkar Singh and  
Shri Abhishek Anand, Advocates**

**ORDER**

**13.07.2020** Heard Advocate Ms. Shobha Gupta for Review Applicant/Appellant with Shri Pankaj Bhagat. Perused the Review Application and the grounds raised therein. The learned Counsel for the Review Applicant/Appellant is claiming that the decision of COC (Committee of Creditors) did not reflect grounds for making distinction between Secured Operational Creditor and the Secured Financial Creditors. It is also claimed that the Impugned Judgement which is sought to be reviewed has mixed up facts as stated in the Review Application. Learned Counsel is referring to contents of Review Application to argue the same.

2. We have gone through the Review Application as well as the record. The learned Counsel for the Appellant accepts that the Hypothecation Deed dated 1<sup>st</sup> December, 2016 was not filed with the Appeal or when Appeal was taken up. The same appears to have now been filed with the Review Application. The Review Application proceeds by referring to the contents of the Hypothecation Deed as can be seen from Para – 4(g) to make out a case of separating goods supplied under Sale/Purchase and supplied on job work basis. The learned Counsel for the Appellant now states that the Hypothecation Deed was not filed as according to the Appellant, it was not necessary to be filed. In para 4(g), there is reference to contents of the Hypothecation Deed, in which Para – 9 stated to be of Hypothecation Deed, reads as under:-

“9. That the security of hypothecation of raw material and finished goods shall continue.”

Review Application Para – 4(i) reads as under:-

“i) Pursuant thereto, in order to further assist the CD company, the Review Applicant also supplied material to the CD company on job work basis under a separate Agreement.”

[Emphasis supplied]

Thereafter, Paragraphs – 4(o) and (p) read as follows:-

“o) That the Review Applicant thus made a claim of Rs.53,84,17,380.00 for the goods supplied and covered under Hypothecation Agreement and the Ld. RP approved an amount of Rs.47,59,89,098.00.

p) As regards the goods/raw material supplied by the Review Applicant to the CD under job work arrangement, the Review applicant moved an application before Ld. Adjudicating Authority, bearing CA No.377 (PB)/2018 in (IB)-46(PB)/2018, inter alia praying that RP be directed to release the material owned by the applicant and delivered to CD under Agreement for Job Work as the same belongs to the Review Applicant explicitly.”

Para – 4(r) reads as follows:-

“r) In pursuance of the above said order dated 30.07.2018, the Ld. RP after detailed examination of all the documents related to the two transactions under (i) Job Work and (ii) sale purchase, vide its order dated 20.08.2018 held that since CD has no right over the goods/material supplied under Agreement for Job Work, the said goods/material be released in favour of the Review Applicant. A copy of order dated 20.08.2018 passed by Ld. RP is annexed hereto and marked as ANNEXIRE A9.”

3. Para – 4(t) mentions that pursuant to the Order of the learned Adjudicating Authority, “Review Applicant picked up all the stock/raw material lying in the factory of the Corporate Debtor.”

[Emphasis supplied]

4. Going through the Review Application what appears is that the Appellant is now claiming that there was separate Job Work Agreement [para – 4(i)] and goods picked up were those goods under the Job Work Agreement. No such Job Work Agreement was or is placed before us even today.

5. We refer to Para – 8 to 11 of our Impugned Judgement dated 8<sup>th</sup> June, 2020 which reads as follows:-

“8. Counsel for the Appellant (in 680 of 2019) referred to his Appeal and submitted that the Corporate Debtor was declared NPA by lender banks in 2013 and Corporate Debtor was unable to run and operate its plant and nobody was ready to provide financial help to operate the plant and it was only Power2SME Pvt. Ltd. (Appellant) who helped the Corporate Debtor on their request to supply raw material on credit basis. It is claimed that the Corporate Debtor could not succeed even when reference was made to BIFR for rehabilitation and even then the Appellant supplied the material on credit basis with the object of reviving the operations. The Appeal claims that thereafter Agreement dated 19.07.2017 was executed by the Corporate Debtor and as per the said Agreement, the Appellant was a Secured Creditor and the charge was also registered with the Registrar of Companies. The learned Counsel for the Appellant at the time of arguments did not point out or show such agreement to us. The final list of creditors (Annexure – A5 Page – 66 at Page – 87) refers to hypothecation deed dated 1<sup>st</sup> December, 2016. The Appellant has not pointed out even this document from the record to us to claim that it was Secured Operational Creditor on the basis of hypothecation deed. The Appellant is merely relying on the entry made by RP in the final list of Creditors (Annexure A-5) Page – 66 at Page – 86). If Annexure A-5 is perused, at Page – 83, there is list of Creditors of the category of Operational Creditors other than workmen and employees. At Serial No.53, there is reference to the Appellant – Power2SME Pvt. Ltd. showing the admitted claim as of Rs.47,59,89,098/-. At Serial No.78, there is reference to Indian Oil Corporation showing the admitted claim as

Rs.39,01,99,828/-. Indian Oil Corporation is Appellant in Appeal No.688 of 2019. Coming back to the Appellant of Appeal No.680 of 2019, at Page – 86, the footnote after the list of Operational Creditors, reads as under:-

“1. All Operational Creditors are unsecured Except Power2SME Private Limited at S.No.53. Please see annexure 1 for security interest of Power2SME Private Limited.”

The footnote leads us to Annexure – 1 (as at Page – 87) which reads as under:-

“

Annexure I	
Sl.No.	Facility Security Interest-Power2SME Private Limited
1.	Personal Guarantees of Gaurav Aggarwal and Mohender Aggarwal (dated 28-03-2017) For Rs.36 Crores each
2.	Hypothecation of Stocks of HR coils whether Raw or in the process of manufacture and all products goods and any of the moveable property i.e. product from material supplied by the Power2SME of any kind vide hypothecation deed dated 01-12-2016 for Rs.80 Crores. Subject charge in favour of Power2SME is subservient charge to the charges of Financial institutions/banks due to following reasons:- a) No NOC was taken by Power2SME Private Limited from FIs/Banks to create charge on stock on which banks/FIs are first and second charge holders. b) Bank/FIs charge was created prior to the charge of Power2SME Private Limited.

”

9. The learned Counsel for the RP and SRA as well as COC point out that the hypothecation deed being relied on by Appellant is subsequent to the charge on stock which was created in favour of the banks and thus the same was subservient to the banks and would be ineffective when considered in the context of earlier charge which was created in favour of the banks. To counter this, the learned Counsel for the Appellant submitted that although it was stated in Annexure 1 (supra) that the charge of the Appellant

was subservient to the banks, it was of no consequence as the Appellant had already got back the goods taking order of the Adjudicating Authority and thus, it is claimed that such note in Annexure - 1 had no relevance.

10. Question before us is whether the Appellant required separate treatment at par with Secured Financial Creditors on the basis of the claim that it was Secured Operational Creditor.

11. In this context, although the Appellant claims that it was a Secured Operational Creditor and the security was registered with the Registrar of Companies, the Appellant has not filed or shown us the Agreement dated 19.07.2017 referred in the Appeal or the deed of hypothecation dated 01.12.2016 referred by the RP in the final chart. Apart from this, the contents of the Appeal disclose that the Appellant had been supplying goods on credit to the Corporate Debtor when the Corporate Debtor was in distress and in the process, claims that the Agreement dated 19.07.2017 was executed creating charge. The Appellant has not challenged the contents of Annexure – 1 with regard to the fact that the banks already had created in their favour charge on the stock of which the banks /financial institutions had first and second charge and they were such first and second charge holders, and no NOC was taken by the Appellant for creating the charge it wants to rely on.”

In Para – 12, inter alia, we observed:-

“12. .... At the time of arguments before us also, the learned Counsel for Appellant has stated that the goods were hypothecated and the Appellant did get back the goods. Having taken the goods, when Banks had prior charge, the Appellant still wants to rely on the hypothecation of goods seeking equality with the other Secured Financial Creditors and, the above proceeding shows, new RP did not succeed as the learned Adjudicating Authority did not permit the new RP to contest/challenge/review the decision of the erstwhile RP and rather directed to comply with the Order passed by erstwhile RP on 20.08.2018.”

6. In Appeal, the arguments were made that the hypothecated articles were got back and Review is now trying to claim that the articles taken back were with regard to the Job Work Agreement. We are not ready to go into these new details as according to us, the basis for the Review Application is document which was not placed before us or contents argued.

7. We have already dealt with the averments as were raised before us at the time of deciding the Appeal. Under Section 420(2) of the Companies Act, 2013, it cannot be said that there is mistake apparent from the record which requires amendment of our Order. Perusing the Review Application, if it was to be considered, would amount to reopening the case on the basis of deed of hypothecation which was not placed before us at the time of hearing of the Appeal. The Review Application is referring to separate Agreement of job work basis also. The same is not before us although the Review is filed. We do not find any reason to entertain the Review Application.

We decline to admit the same.

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

[V.P. Singh]  
Member (Technical)

rs/md