NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 405 of 2025

IN THE MATTER OF:

Gogia Leasing Ltd. ...**Appellant**

Versus

Sunanda Polymers LLP ...**Respondent**

Present:

For Appellant : Mr. Prithu Garg, Mr. Ashutosh Arvind Kumar and Mr. Shivam Singh, Advocates

For Respondent :

O R D E R
(Hybrid Mode)

08.04.2025 Heard Learned Counsel for the Appellant.

This Appeal has been filed against the order dated 20.12.2024 by which order the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'Code') filed by the Appellant has been dismissed. The Appellant claim to be assigner from two individuals who were earlier the partners of a firm which got it registered as LLP. Subsequently, the partners of the firm had converted their dues as a loan to the firm which loan is subsequently claimed to be assigned to the Appellant. The Adjudicating Authority after the considerations made following observations in paragraphs 14 and 19:

> *"…*
> *14. On perusal of the facts of the case, it is evident that there is no trace of the outstanding loan amount which is being showcased as due to the Assignor from the borrower. Notably, the Borrower underwent significant structural changes, with the erstwhile partners (assignors) exiting the Borrower company in October 2022, followed by its transition from a partnership to a Limited Liability Partnership in April 2023. These changes cast serious doubt on the legitimacy and origin of the alleged dues. Moreover, the Assignors purportedly converted their outstanding dues into an interest-bearing loan*

without any clear basis or documentation to substantiate the claim. The Applicant in this present application has not addressed the Origin of the Outstanding dues of ₹2,98,19,253/-. The circumstances strongly indicate that this petition is collusive in nature. The lack of transparency and traceability regarding the alleged dues, coupled with the questionable timing and nature of the conversion of the Partnership firm to a LLP, raises suspicion that the application is orchestrated without a genuine claim or justification for the amounts now purportedly due.

....

19. Upon reviewing the facts of the case, it is evident that the Financial Creditor has not adequately demonstrated the origin of the alleged debt or the outstanding dues payable to the Assignors (Mr. Abhishek Goel and Mrs. Angori Devi) by the Partnership Firm, (which was later converted into an LLP) of whom the Assignors were erstwhile partners. The lack of clarity and supporting evidence raises significant doubts regarding the legitimacy of the claim. Consequently, the petition appears to be collusive in nature, potentially filed to misuse the insolvency process and facilitate the siphoning of funds, thereby wrongfully subjecting the Corporate Debtor to insolvency proceedings."

Learned counsel for the Appellant submits that the Appellant is only assigner and the time when assignment was made, the LLP was already registered, hence, the Appellant could have initiated the proceeding under Section 7 for its due.

We have considered submissions of the Appellant and perused the record. The nature of debt has looked into find out whether the debt is financial debt or not. The present case is a case where partners of the firm have certain dues against the partnership firm which they converted as a loan against the partnership firm. At the time when the debt arose i.e. a loan against the partnership firm that was not a financial debt within meaning of Section 5(8) of the IBC. The mere fact that the debts were assigned to the Appellant at the time LLP was constituted shall not make it a financial debt within meaning of Section 5(8) of the IBC.

We thus are of the view that the Adjudicating Authority has rightly taken the view that Application under Section 7 cannot be admitted. Appeal is dismissed.

Learned Counsel for the Appellant lastly submitted that there are finding of the collusion against him which were without any basis. In view of the fact that we have held that there was no financial debt within the meaning of Section 5(8), we need not inter into any other issues raised by the Appellant. The finding that there was no debt was sufficient and it was no necessary for the Adjudicating Authority to make any observation regarding collusion at that stage.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

pks/nn