

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1226 of 2019

IN THE MATTER OF:

Encote Energy (India) Pvt. Ltd.

.... Appellant

Vs

V. Venkatachalam

.... Respondent

Present:

**For Appellant: Mr. Anshul Rawat, Mr. Tushar Bakshi and
 Mr. R. Soundara Rajan, Advocates.**

**For Respondent: Mr. Ashish Joshi, Advocate for Resolution
 Professional.**

O R D E R

13.11.2019 The Appellant – Encotec Energy (India) Pvt. Ltd. filed a claim as ‘Operational Creditor’ before the ‘Resolution Professional’ on the ground that it has not been paid for the period July & August, 2017 and some amount relating to previous Contract, for the services rendered by it to Sai Wardha Power Generation Ltd. (‘Corporate Debtor’). The ‘Resolution Professional’ rejected the claim, against which the Appellant preferred application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘**I&B Code**’), which stands disposed of by the impugned order dated 27th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal) Hyderabad Bench, Hyderabad. The claim of the Appellant was not accepted by the ‘Resolution Professional’ and the same was affirmed by the Adjudicating Authority for the reasons mentioned at paragraph 12, as quoted below: -

“12. The contention of Applicant that it rendered services to the corporate debtor for July as well as August, 2017. The undisputed fact that Corporate Debtor paid the amount for the service up to June, 2017. Main contention of Applicant that it rendered services for July & August 2017. On the other hand the case of the RP that no amount due by the Corporate Debtor to Applicant. Ledger account of Applicant maintained by Corporate Debtor is filed. It shows no amount is due to the applicant. The Counsel for RP raised an important ground that an amount of Rs.10,93,99,500/- was given to set off which was payable by Applicant to KSK Energies Ventures Limited from the amount payable to Applicant by Corporate Debtor. This shows huge amount was treated as set off by Applicant which was payable by Applicant by KSK Energies limited from out of the receivables.”

2. Mr. Ashish Joshi, the Learned Counsel appears on behalf of ‘Resolution Professional’ and oppose the prayer for the same ground. However, we are not expressing any opinion at this stage for the reasons mentioned below.

3. It is brought to our notice that ‘Resolution Plan’ submitted by a Consortium of Siri City Pvt. Ltd. and KCR Enterprise LLP, ‘Resolution Applicant’ has been approved by the ‘Committee of Creditors’ with 75.91% voting shares. The ‘Resolution Plan’ was placed before the Adjudicating Authority under Section 13 and the Adjudicating Authority has approved the same. Therefore, it is not possible for this Appellate Tribunal to decide the

claim on the basis of the disputed question of fact, which can only be decided by a Court of competent jurisdiction.

4. For the reason aforesaid, we allow the Appellant to make a claim before the 'Successful Resolution Applicant' or to avail the remedy of 'Suit' in terms of sub-section (6) of Section 60 of the I&B Code, if prayer is not allowed.

5. It will be open for the 'Successful Resolution Applicant' to settle the matter with the Appellant uninfluenced by the Adjudicating Authority or this Appellate Tribunal. Accordingly, the Appeal stands disposed of.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)