

## LEGAL UPDATES

### **SC: APEX COURT UPHOLDS THE ADVANCE PAYMENT FOR GOODS' SUPPLY TO CORPORATE DEBTOR TO BE 'OPERATIONAL DEBT'**

The 3-Judge Apex Court Bench presided by Justice Dr Dhananjaya Y. Chandrachud, Justice Surya Kant and Justice Vikram Nath dismissed an order of the NCLAT set aside the Appellant's application under sec.9 of IBC, and held that the Appellant fell within the scope and definition of 'operational creditor', clarifying that an 'operational debt' includes debt by virtue of a contract for the furnishing of goods or services from the Debtor. The bench noted that the appellant signed a contract for the supply of light fixtures with a firm while working on a project for Chennai Metro Rail Ltd. (CMRL). NCLT noted that the company was paid INR 50 Lakh by CMRL on the appellant's behalf as an advance payment for their order and the project between the appellant and CMRL was cancelled. Further, the company encashed the sum of INR 50 Lakhs as paid by CMRL and the appellant paid INR 50 Lakhs to CMRL, meanwhile, the company was acquired by the Respondent. The Apex Court further observed that on receiving a demand notice under sec.8 of IBC by the appellant for INR 50 Lakhs, the respondent refused to have any debts due, therefore, the appellant approached the Hon'ble NCLT and filed an insolvency application which was accepted by the Adjudicatory Tribunal. SC opined that when the appellant entered into a contract with the Proprietary Concern for the provision of light fixtures, the appellant provided operational service. Additionally, when the contract was cancelled, the Proprietary Concern still cashed the check for the advance payment, it created an operational debt in the appellant's favour that is still outstanding. Further, SC also observed on the essential part about the debt due with the company paid as an advance that Sec.5(1) of IBC/Code states that an 'operational debt' is a "claim in respect of the provision of "goods or services" and the practical implication or prerequisite is that the demand must be connected with providing goods or services. Lastly, the Hon'ble Apex Court upheld that the contract for the supply of light fittings entered between the appellant and the company clearly shows availing an operational service, and highlights that when the contract was cancelled, the Proprietary Concern still cashed the cheque which resulted in an operational debt in the appellant's favour that is still outstanding today. Hence, SC allowed the appeal by holding the appellant as an operational creditor.