IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-IV

C.P. (IB) No. 528/(MB-IV)/2024

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

In the matter of

8 Peaks LLC

(EIN: 84-3260440)

…Operational Creditor

Versus

Solomont Conglomerate India Pvt. Ltd.

(CIN: U74999MH2018PTC318658)

…Corporate Debtor

Pronounced: 22.07.2026

CORAM:

SHRI ANIL RAJ CHELLAN	**SHRI K. R. SAJI KUMAR**
HON'BLE MEMBER (TECHNICAL)	**HON'BLE MEMBER (JUDICIAL)**

APPEARANCE : Hybrid

For the Operational Creditor: Adv. Ranveer Chapekar

For the Corporate Debtor : None (*ex-parte)*

ORDER

1. This Application was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by 8 Peaks LLC, the Operational Creditor (Applicant/Operational Creditor), through Mr. Conrad Ferriera the Authorised Representative of the Operational Creditor, authorised *vide* the Asset Management and Investment Advisory Agreement dated 04.02.2022, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against, Solomont Conglomerate India Private Limited (Respondent/Corporate Debtor).

2. The Operational Creditor is a Limited Liability Company having its registered address at Wyoming, United States of America. The Corporate Debtor is a company incorporated on 21.12.2018, under the Companies Act, 2013, and having its registered address at Koparkhairne, Navi Mumbai, Maharashtra. Therefore, this Bench has jurisdiction to deal with the present Application.

3. The Application is filed on the ground that the Corporate Debtor has failed to make the payment of USD 82,799,901.76/- (Rs. 688,12,51,435.57/-) outstanding as on 14.09.2023. The dues arise out of an International Arbitration Award dated 16.11.2022 (Arbitration Award), which was confirmed by the High Court of the Republic of Singapore on 10.01.2023. The date of default provided in Part IV of this Application is 10.01.2023, which is the date of confirmation of the Arbitration Award.

<u>Submissions of Operational Creditor</u>

4. The Operational Creditor and the Corporate Debtor entered into a Sale and Purchase and Project Funding Agreement dated 10.06.2022 (Agreement), for the sale and purchase of natural uncut gemstone, i.e., rough crystal sapphire. Under the Agreement, the Corporate Debtor was supposed to buy the gemstone from the Operational Creditor and would pay 10% of the agreed amount within 7 days from the date of execution of the Agreement, and the balance was to be remitted within 20 days of the payment. A Corporate Payment Guarantee dated 14.06.2022 was also provided by the Corporate Debtor to the Operational Creditor. It is submitted

that despite the Operational Creditor having completed its duties and obligations, the Corporate Debtor failed to make the payment.

5. The Ld. Counsel for the Operational Creditor submits that the parties went into arbitration as per the clauses of the Agreement. The California State Law concluded the arbitration and passed the Arbitration Award amounting to USD 69,651,000/- along with interest at the rate of 10% p.a., accruing from and after 30.10.2022, in favour of the Operational Creditor on 16.11.2022.

6. The Operational Creditor further submits that this Award was subsequently confirmed by the High Court of the Republic of Singapore by order dated 10.01.2023. Since there was no appeal preferred by the Corporate Debtor within the stipulated time, the High Court of the Republic of Singapore, *vide* order dated 09.03.2023, attached the DBS bank account of the Corporate Debtor to the value of USD 71,628,929.53/-.

7. It is submitted that DBS Bank of the Corporate Debtor, by letter dated 14.03.2023, informed the Bailiff-in-Charge Supreme Court of Singapore and the Sheriff of that Court, with a copy to Wong Tan and Molly Lim LLC (Advocates & Solicitors of the Enforcement Applicant/Operational Creditor), that the Enforcement Respondent/Corporate Debtor did not maintain any existing account with the Bank.

8. It is further submitted by the Operational Creditor that they issued two legal notices to the Corporate Debtor dated 06.06.2023 and 08.08.2023, demanding payment. Thereafter, the Operational Creditor issued a demand notice under Section 8 of the Code to the Corporate Debtor *vide* email dated 04.09.2023 and by RPAD to the registered address of the Corporate Debtor dated 04.09.2023; however, there was no response to the said notices.

9. The Operational Creditor states that no payment has been received in response to the demand made and prays that CIRP be initiated in respect of the Corporate Debtor under Section 9 of the Code.

Contentions of Corporate Debtor

10. The Corporate Debtor did not enter appearance despite service by mail and substituted service on 29.07.2027. Hence, the Application was heard *ex-parte* by order dated 18.11.2025, and is decided based on the pleadings and documents as available.

Analysis and Findings

11. We have heard the Ld. Counsel for the Operational Creditor and perused the documents on record.

12. The case of the Operational Creditor is that it entered into the Sale and Purchase and Project Funding Agreement dated 10.06.2022 with the Corporate Debtor whereby the Corporate Debtor agreed to purchase the natural uncut gemstone, owned by the Operational Creditor for an amount of USD 232,170,000/-. The uncut gemstone was held in a certain depository trust account with Global Trust Depository located in California, United States of America and evidenced by Safe Keeping Receipt (SKR). As per Clause 3 (d) of the Agreement, upon the receipt of the assignment of the assets, the Corporate Debtor shall, within 7 days, remit the agreed first payment amount to the Operational Creditor, i.e., 10% of the complete asset value of USD 232,170,000/-. Further, as per Clause 3 (e) of the Agreement, the Corporate Debtor shall, within 20 days after the first remittance as provided in Clause 3 (d) of the Agreement, remit the remaining payment, i.e., 90% of the asset value, to the Operational Creditor and that all funds would have been used by the Operational Creditor for mining projects, infrastructure development projects, oil gas and fuel projects, real estate and commercial projects and various humanitarian benefits. The Operational Creditor performed its obligations under the Agreement by having the SKR released, as specifically instructed by the Corporate Debtor, to the DBS account located in the Republic of Singapore, where Solomont Conglomerate India Private Limited, does business and was the designated beneficiary. The Corporate debtor has also provided a corporate payment guarantee dated 14.06.2022, undertaking to pay the agreed amount as per Clauses 3(d) and 3(e) of the Agreement. However, the Corporate Debtor defaulted on its obligations and made no payment in terms of the Agreement.

Consequently, the Operational Creditor invoked the arbitration clause under the Agreement, leading to the Arbitration Award dated 16.11.2022 issued by the sole Arbitrator. This Arbitration Award records that the Corporate Debtor and its Legal Advisor admitted the delivery of the SKR to the Corporate Debtor and the transfer of ownership of uncut gemstone to the Corporate Debtor. The Arbitration Award states that the Corporate debtor, therefore, had the intention to defraud the Operational Creditor. The Award was passed in favour of the Operational Creditor and against the Corporate Debtor, Mr. Rama Naidu Pyla and Solomont Conglomerate India Pvt. Ltd., jointly and severally, for an amount of USD 69,651,000/- with simple interest at 10% p.a. from 30.10.2022, together with legal fees and costs of arbitration, as stated therein. The Operational Creditor further states that the Arbitration Award was recognised by the High Court of Singapore on 09.01.2023 and passed an order on 30.01.2023, for a total value of USD 69,651,000/- with simple interest at the rate of 10% per annum accruing from 30.10.2022. A notice of Attachment was also issued by the High Court of Republic of Singapore, whereby it was ordered that a value of USD 71,628,929.53/- in the DBS Bank Account of the Operational Creditor be attached. The Operational Creditor issued a Notice under section 8 of the IBC on 04.09.2023, but there was no response to the said Notice. Accordingly, the Operational Creditor filed the present Application on 07.10.2023, and the stated date of default is 10.01.2023.

13. The Operational Creditor asserts that the present Application is maintainable as the Arbitration Award has been passed under the jurisdiction of California law. The California Law has been recognised under the New York Convention, and India became a signatory to it on 10.06.1958 and subsequently ratified on 13.07.1960. The United States of America ratified the New York Convention on 30.09.1970. The Operational Creditor further relies on Section 46 of the Arbitration and Conciliation Act, 1996 (Arbitration Act), which stipulates that any foreign award which would be enforceable under Chapter I of Part II of the Arbitration Act (relating to New York Convention Awards), shall be treated to be binding on all parties involved in the award. The Operational Creditor has also placed reliance on the judgment of the Hon'ble Supreme Court in *Gemini Bay Transcription Private Limited v. Integrated Sales Services & Anr, [Civil Appeal Numbers 8343-8344 of 2018].*

14. The Operational Creditor also states that the Arbitration Award has been confirmed by the High Court of the Republic of Singapore, which is the Superior Court with reference to the territory of Singapore. The Republic of Singapore has been recognised as a reciprocating territory as per the notification of the Gazette of India dated 17.06.1968 for the purposes of section 44A of the Code of Civil Procedure, 1908 (CPC). Hence, the order of the Republic of Singapore dated 09.01.2023 is considered a decree under Section 44 of CPC and executable in India. Further, the Operational Creditor places reliance on the judgement of NCLT, Mumbai in *Agrocorp International Private Limited (PTE) Limited v. National Steel and Agro Industries Limited,* [CP(IB) No. 798/MB/2019].

15. In view of the above assertions of the Operational Creditor, it is pertinent to consider the definition of 'creditor' given in Clause (10) of Section 3 of the Code, which provides as under:

"(10) creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and ***a decree-holder****."*
(emphasis added).

16. Although "creditor" includes an operational creditor, it is the settled position of law that the creditor in respect of a decree would be categorised as a financial creditor, operational creditor, secured creditor, or unsecured creditor depending on the underlying transaction. In the present case, Clauses 3 (d) and (e) of the Sale and Purchase and Project Funding Agreement provide that, upon the receipt of the assignment of the assets, the Corporate Debtor shall make payment as provided in the Agreement. In the circumstances, the Applicant has claimed that it is an operational creditor under the Code, based on the Arbitration Award passed in respect of the Agreement and recognised by the High Court of Singapore, which is deemed a decree under Section 44A of the CPC.

17. In order to examine the above submission, we may consider Section 44A of the CPC, which reads as under:

"44A. Execution of decrees passed by Courts in reciprocating territory. - (1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been ***filed in a District Court****, the decree may be executed in India as if it had been passed by* ***the District Court****.*

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings ***of a District Court executing a decree*** *under this section, and the* ***District Court*** *shall refuse execution of any such decree, if it is shown to the satisfaction of* ***the Court*** *that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.*

Explanation 1.- "reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and superior Courts, with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.- "decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, ***but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment****."*

(emphasis supplied)

18. It is relevant to notice that Section 44A of the CPC enables a decree of a reciprocating territory to be executed in India as if the decree had been passed by a District Court in India. However, *Explanation 2* to Section 44A categorically excludes an arbitration award from this provision. This distinction can further be

made clear from the definition of 'foreign judgment' in Section 2(6) of the CPC as a judgement of a foreign court, and the expression 'foreign court' in Section 2(5) refers to a court situated outside India and not established or continued by the authority of the Government of India.

19. The Hon'ble Supreme Court in *Noy Vallesina Engineering Spa v. Jindal Drugs Limited, [2006(5) BOMCR155],* while considering a petition seeking enforcement of a foreign award, under Section 47 read with Section 48 of the Arbitration Act, held as under:

> *"Thus, in our view, a party holding a foreign award can apply for enforcement of it but the Court before taking further effective steps for the execution of the award has to proceed in accordance with Sections 47 to 49. In one proceeding there may be different stages. In the first stage the court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that the foreign award is enforceable, it can proceed to take further effective steps for execution of the same."*

20. It is, thus, clear that the foreign award operates as a decree only upon the District Court in India recording its satisfaction that it is enforceable, and it is only at that point in time that the award becomes a decree as if passed by that Court. If stated otherwise, while a foreign award is capable of being considered as a decree of a District Court in India, it cannot be regarded as a decree before that Court determines it to be enforceable. In any case, this Tribunal does not have jurisdiction of a District Court in executing foreign judgments.

21. For the reasons stated above, the debt claimed under a foreign arbitral award cannot be considered by this Tribunal affirming its enforceability. As such, the debt asserted in the Application does not qualify at this stage as an operational debt that would permit the initiation of insolvency resolution process against the Corporate Debtor. In light of this conclusion, it is unnecessary to address the additional submissions made in the Application.

22. In consideration of the aforesaid findings, this Application bearing **C.P (IB) No. 528/(MB-IV)/2024** filed under Section 9 of the Code by 8 Peaks LLC, the Applicant/Operational Creditor, seeking the initiation of CIRP in respect of

Solomont Conglomerate India Pvt. Ltd., the Respondent/Corporate Debtor, is hereby **rejected.**

23. The rejection of this Application shall not prejudice the rights of the Applicant, if any, to pursue other remedies that may be available in accordance with applicable law.

Sd/-	Sd/-
ANIL RAJ CHELLAN	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

/JJ/