

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 2375 of 2024

IN THE MATTER OF:

Syed Najam Ahmed

...Appellant

Versus

**National Agricultural Co-Operative
Marketing Federation of India (Ltd.)
(NAFED) & Anr.
Present:**

...Respondent

**For Appellant : Ms. Soumya Priyadarshinee, Mr. Amit Kumar
Srivastava, Advocates**
**For Respondents : Mr. Rakesh Kumar, Ms. Arti Rathore, Advocates for
NAFED**

O R D E R
(Hybrid Mode)

Per:- Justice Rakesh Kumar Jain (Oral)

19.09.2025: The present appeal is filed by the Suspended Director of the Corporate Debtor to challenge the order dated 07.11.2024 by which application filed under section 7 of the IBC 2016, by Financial Creditor namely, National Agricultural Cooperative Marketing Federation of India (NAEFED), for the resolution of an amount of Rs. 194,01,78,454/- has been admitted and Mr. Sanjeet Kumar sharma was appointed as the IRP.

2. The facts in brief are that, the NAEFED agreed to grant financial debt to the Corporate Debtor (Zenith Mining Pvt. Ltd.) by way of an agreement dated 12.02.2004 for extracting iron ore from mines in India and to execute its export orders.

3. On 27.02.2004, the Corporate Debtor submitted a proposal to the Financial Creditor that certain Chinese and Korean companies had

approached it for export of iron ore which Corporate Debtor wanted to execute with the aid of the Financial Creditor. The proposed, financial creditor executed a separate agreement dated 16.02.2004, with the Corporate Debtor which was later on amended with consent of both the parties. The Financial Creditor advanced a sum of Rs. 90,22,00,000/- from 26.02.2004 to 12.05.2005 and also paid it EGGC premium to the tune of Rs. 57,13,606/- as financial debt, totalling to Rs. 90,79,13,606/-.

4. The Corporate Debtor, between the period 01.03.2004 to 30.03.2007 repaid a sum of Rs. 30,65,00,000/-, leading to an outstanding amount of 60,14,00,000/-. The Corporate Debtor was allegedly liable to pay outstanding amount of Rs. 59,64,00,000/- plus Rs. 17,11,09,611/- towards interest, calculated @ 8% p.a. from 01.03.2004 to 30.09.2007, aggregated to a sum of Rs. 76,75,09,611/-.

5. The Corporate Debtor, however, did not make the payment against the aforesaid debt. Consequently, the financial creditor invoked the arbitration clause and filed the arbitration petition bearing No. 196 of 2007 before the Hon'ble Delhi High Court in which sole arbitrator was appointed. The arbitrator passed his award on 20.05.2019 directing the Corporate Debtor to pay to the financial creditor a sum of Rs. 76,75,09,611/- and was made liable to pay pendente lite interest @ 8% p.a. and the same interest on the awarded amount till realisation.

6. According to the financial creditor the entire amount payable as on 31.03.2023 would work out to Rs. 194,01,78,454/-.

7. Since the amount was not paid, therefore, the application under section 7 was filed which was registered as CP (IB) No. 4/CB/2024 before the NCLT Cuttack Bench. The Tribunal while admitting the application

recorded the findings that “Hence, here the arbitral award is a decretal debt and the word "decree holder satisfies it and it comes under the purview of the definition of creditor under section 3(10) of the I&B Code and the filing of the petition under section 7 of I&B Code is maintainable.”

8. Aggrieved against the award, the present appeal has been preferred under section 61 of the code by the Suspended Director of the Corporate Debtor. Counsel, appearing on behalf of the appellant has vehemently argued that impugned order is erroneous and deserves to be set side. The Tribunal has not given a finding as to whether the arbitral award is based upon the supply of goods/services or the loan. She has submitted that the arbitrator has dealt with both the agreements dated 12.02.2004 and 16.03.2004 but did not give any award qua the breach of the agreement dated 12.02.2024 because claim of Rs. Fifty lacs was rejected. It is further submitted that in so far as the agreement dated 16.03.2006 is concerned, the said agreement was not an agreement of advance of loan which would enable the respondent to file the application under section 7.

9. She has relied upon a decision of the Hon’ble Madras High Court passed in O.S.A (CAD) No. 115 of 2022 titled as Chola mandalam Investment and Finance Company Ltd. Vs. Navrang Roadlines Private Limited. Decided out on 01.12.2022. In which it was held as under:

“12. A mere perusal of the above observations of the Hon'ble Supreme Court in the decisions cited supra, shows that the liability in respect of a claim arising out of a recovery certificate issued by the DRT would be considered as “financial debt” within the ambit of Section 59(8) of Insolvency and Bankruptcy Code, 2016. It has also held that the underlying claim of the Bank/Claimant under the lending documents would have to be categorised as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Therefore, a recovery certificate issued in respect of the same

claim, which is essentially a crystallization of the claim through the process of adjudication, had also be classified as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings.”

10. According to the appellant, the arbitral award or a decree is not sufficient because the court can still find out as to whether it was a financial or an operational debt for the purpose of enabling the parties to file the application either under section 7 or 9 of the code.

11. She has further relied upon decisions of this court in the case of Mukul Agarwal, Ex-Director V/s Royale Resinex Pvt. Ltd. and Ors. (2022) 19 Comp Cas-OL 198: 2022 SCC Online NCLAT 255 and Sushil Ansal V/s Ashok Tripathi and ors. 2020 SCC Online NCLAT 680.

12. On the other hand, counsel appearing on behalf of the financial creditor has submitted that in so far as the amount claimed on the basis of the breach of the terms and condition of the agreement dated 12.02.2004 is concerned, the same has been rightly rejected by the learned arbitrator and it has not been further challenged. But the award of arbitrator in respect of breach of terms and condition of the agreement dated 16.03.2004 is concerned the same is the agreement for advancement of loan to the Corporate Debtor. In this regard he as referred to investment and terms and conditions contained in the agreement which are reproduced as under:

“INVESTMENT AND TERMS & CONDITIONS

a) NAFED's investment shall not exceed INR 200 million at any given point of time in the proposed venture.

b) NAFED shall finance 80% of the FOB value of goods to be exported.

c) The L/C from the foreign buyer would either be directly opened in the name of NAFED or the transferable sight L/C would be transferred in the name of NAFED and a 2% PG band would be issued by the purchaser,

d. The exports would be made on FOB basis.

e) NAFED would advance money to ZENITH upto 80% of the FOB value of Goods (Short term finance) at an agreed rate of interest of 8.00% p.a.

f) ZENITH would arrange a cash margin of 10%, which would be deposited with NAFED.

g) The money received as advance would be adjusted against the total value of exports and the balance payment released to ZENITH.

6. SERVICE CHARGES

NAFED will charge minimum service charges @1% from ZENITH on the FOB value of goods to be exported.

7. DELIVERY OF GOODS AT PORT

a) ZENITH shall make sure that it delivers the goods on FOB basis and obtain the Bill of Lading and all other relevant documents as mentioned in the buyers' contract.

b) That all the expenses of the goods to make the consignment Free on Board shall be borne by ZENITH.

c) That it would be the duty of ZENITH to deliver the goods as per the Terms and Conditions of the contract entered by it with its customer.

8. INSURANCE

All the stocks would be insured at the cost of ZENITH till they are loaded in the ship / vessel indicating NAFED as the beneficiary.

9. DURATION OF THE CONTRACT

This agreement shall be effective initially for a period of 12 months and may be renewed with mutual consent of both the parties.

10. NOT-PERFORMANCE/UNDER PERFORMANCE

ZENITH shall indemnify NAFED al the expenses and penalties that may be imposed by the buyer for non-performance of the contract.”

13. He has also submitted that in the arbitration proceedings, the Corporate Debtor had admitted its liability of Rs. 71,78,00,000/-. In this regard he has drawn our attention to the evidence placed before the Tribunal which is in the nature of Minutes of Meeting dated 08.09.2005. The extract is reproduced as under:

(iii) The witness has also placed reliance on the minutes of the meeting dated 08.09.2005, wherein the respondents did not deny their liability of Rs.71.78 Crores. The respondents No. 2 & 4 also deposed before the Hon'ble High Court that they attended the meeting and signed the minutes. It is stated that the original minutes of the said meeting are in the custody of the CBI and the copy of the minutes is marked as Ex.PW-1/8(Ex.F). The certified copies of the statements made by the respondents before the High Court on 25.11.2008 have been exhibited as Ex.PW-1/9.

14. In rebuttal, counsel for the appellant has submitted that the agreement dated 16.03.2004 is in regard to indemnity.

15. We have heard counsel for both the parties and perused the record.

16. In so far as, the issue raised by the appellant that the court can look into the contents of the award to find out as to whether the money awarded to the party is basically in regard the goods and services supplied or the advancement of the loan. In this regard, the judgment relied upon by the appellant, in the case of Cholamandalam Investment and finance company Ltd. Vs. Navrang Roadlines Pvt. Ltd. supra clearly hold it. However, the issue as to whether the Tribunal has awarded the amount in the arbitral award while interpreting the terms and condition of the agreement dated 16.03.2004 is in regard to the advancement of loan is concerned or not, we

have perused the terms and conditions of the agreement much less condition no. 6 of the investment terms and conditions in which it has been specifically mentioned that the money received as advance which would be adjusted against the total value of exports and the balance payment released to ZENITH. It is further pertinent to mention, that in part 5 of the application filed under section 7 both the agreement dated 12.02.2004 and 16.03.2004 are specifically relied upon by the Financial Creditor.

17. Thus from the aforesaid facts and circumstances, we are of the considered opinion that the award which has been passed by the arbitrator in favour of the financial creditor was with regard to the loan advanced by the respondent to the corporate debtor and thus, it falls within the definition of financial creditor.

18. In such circumstances there is no error committed by the respondent financial creditor in filing the application under section 7 of the code. With these observations, we do not find any merit in this appeal and the same is hereby dismissed. No Costs.

IAs, if any, pending are also closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Justice Md. Faiz Alam Khan,]
Member (Technical)**

**[Naresh Salecha]
Member (Technical)**

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