IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (COURT NO.-II)

KOLKATA

I.A (IB) No. 1636/KB/2025

In

C.P (IB) No. 308/KB/2022

An Application under Section 60(5) of the Insolvency and Bankruptcy, 2016.

IN THE MATTER OF:

PEGASUS ASSETS RECONSTRUCTION PRIVATE LIMITED.

……Financial Creditor

VERSUS

FAIRDEAL SUPPLIES LIMITED.

……Corporate Debtor

AND

IN THE MATTER OF:

MR. YOGESH GUPTA, Resolution Professional of R. Piyarelall Iron & Steel Private Limited

……Applicant

VERSUS

Mr. Bijay Kumar Murmuria, Resolution Professional of Fairdeal Supplies Limited

……Respondent

Date of Pronouncement: 06.08.2026

Coram:

Shri. Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances(via Physical / Hybrid Mode):

For the Applicant:

Mr. D.N Sharma, Sr. Adv.

Mr. A. Rai, Adv.

Ms. Sakshi Kejriwal, Adv.

For the Resolution Professional:

Ms. Manju Bhuteria, Sr. Adv.

Ms. Tanvi Luhariwala, Adv.

Mr. Parikshit Poddar, Adv.

Ms. Madhuja Barman, Adv.

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

1. The Court convened through physical/hybrid mode.
2. The Present Interlocutory Application has been filed by **Mr. Yogesh Gupta**, Resolution Professional of R. Piyarelall Iron & Steel Private Limited (herein referred to as "**Applicant**"), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein referred to as "**IBC**") *inter alia,* seeking the following reliefs:

a. *Set aside the decision of the Opposite Party vide its e-mail dated 19th June, 2025 treating the admitted claim of Rs. 114,23,40,385.26/-(Rupees One Hundred Fourteen Crores Twenty-Three Lakhs Forty Thousand Three Hundred Eighty-Five and Paise Twenty-Six only) as "operational debt" and hold that the claim of the Applicant, arising out of the Award dated 16th December, 2019, is in the nature of "financial debt";*

b. *Direct the Opposite Party to admit the claim of the Applicant in its entirety as "financial debt" and treat/declare the Applicant as a Financial Creditor of the Corporate Debtor;*

c. *Direct that the name of the Applicant be included as a Financial Creditor in the list of creditors of the Corporate Debtor and be allotted appropriate voting share in the Committee of Creditors in accordance with law;*

d. *Pending the final adjudication of the present application, direct that the CoC proceedings /resolution process shall not be concluded, and the Applicant shall be permitted to participate with voting rights proportionate to its admitted claim;*

e. *Pass such order and/or orders as this Hon'ble Tribunal may deem fit and proper.*

3. **BRIEF FACTS OF THE CASE**

i. M/s. R. Piyarellal Iron & Steel Private Limited availed financial services from MMTC Limited for importing 20,000 MT of LAM Coke from China. M/s. R.Piyarellal Iron & Steel Private Limited (hereinafter referred to as "RIPL") entered into a **High Sea Sales Agreement dated 03.06.2008**[1] for the purpose of selling 19,883.720 MT of LAM Coke to the Corporate Debtor along with a **Deed of Pledge dated 03.06.2008**[2] as the Corporate Debtor did not possess adequate liquidity of funds to meet its payment obligations. The Corporate Debtor failed to meet its payment obligations in terms of the High Sea Sales Agreement and the Applicant invoked the **Arbitration Clause by letter dated 25.03.2011** to claim its dues.

ii. The **Arbitration Award dated 16.12.2019**[3] was passed by the Arbitral Tribunal in favour of the Applicant. The Award held that the Applicant is entitled to a sum of **Rs. 31,67,19,156/-** from the Corporate Debtor being the price of goods sold and delivered along with interest on the said sum @12% p.a. from 14.03.2014 till 11.12.2019 and further interest @12% p.a. until payment alongwith costs assessed at Rs. 4 Lakhs plus a sum of INR 4,87,62,851/- towards expenses.

iii. The Applicant also filed an Execution Proceedings being E.C. No. 176 of 2021 against the Corporate Debtor, its directors

[1] Page No: 51-52 of the Rejoinder
[2] Page No: 53-54 of the Rejoinder
[3] Annexure- A (Page No: 55-56)

and its sister concern namely, M/s. Frontline Corporation Limited. In the meantime, pursuant to an application filed by State Bank of India being **C.P. (IB) No. 82/KB/2021** was admitted by this Hon'ble Tribunal and Insolvency Proceedings against M/s. RIPL was initiated vide Order dated **19.01.2024**[4] and appointed the Applicant as the Interim Resolution Professional.

iv. CIRP in respect of the Corporate Debtor was initiated by this Hon'ble Tribunal vide Order dated **19.03.2024**[5] wherein the Respondent was appointed as the Interim Resolution Professional. Form A inviting claims from the creditors of the Corporate Debtor was published by the Respondent on 22.03.2024. Last date for submission of claims was 02.04.2024. The CIRP Proceedings initiated against the Corporate Debtor was stayed by the Hon'ble National Company Law Appellate Tribunal, New Delhi pursuant to an appeal filed by the members of the suspended board of directors of the Corporate Debtor in Company Appeal (AT) (Ins) 648 of 2024 with effect from 08.04.2024[6] and 10.07.2024[7].

v. The Applicant filed its claim on **02.04.2024**[8] for a sum of **Rs. 114,79,10,462/-** by virtue of the arbitral award dated 16.12.2019 in "Form C". Mean while the stay was vacated by

[4] Annexure- F (Page No: 199)
[5] Annexure- G (Page No: 234)
[6] Annexure- H (Page No: 237-238)
[7] Page No: 255
[8] Annexure- J (Page No: 296-302)

the Hon'ble National Company Law Appellate Tribunal, New Delhi vide Order dated 01.05.2025[9]. Thereafter, the Respondent undertook verification of the claims.

vi. The Applicant relying upon the judgements of Hon'ble Supreme Court of India and Hon'ble National Company Law Appellate Tribunal, New Delhi contended that an arbitral award constitutes an acknowledgement of debt and forms the basis of a Financial Debt and requested the Respondent to consider its debt in the category of Financial Debt[10].

vii. The RP vide email dated **02.05.2025**[11] requested the Applicant to submit a revised claim in Form-B instead of Form-C on the ground that the claim arises out of an arbitral award and such award holder is not covered under the definition of financial creditor under section 5(7) and 5(8) of the IBC.

viii. The RP has on non-receipt of any revised claim in Form B has admitted the claim submitted in Form C by the Applicant to its entirety amounting to INR 114,23,40,385.26 as the Operational debt[12]. Hence, this Application.

4. **SUBMISSION ON BEHALF OF THE APPLICANT**

i. Learned Counsel appearing for the Applicant submitted that the present Application has been preferred challenging the decision of the Resolution Professional communicated through

[9] Page- 292
[10] Annexure- O (Page No: 452)
[11] Annexure- N
[12] Annexure- T (Page No: 478)

email dated 19.06.2025 whereby the Applicant's admitted claim amounting to ₹114,23,40,385.26 has been classified as an Operational Debt instead of a Financial Debt. It is contended that the Resolution Professional failed to appreciate that the claim emanates from a Money Arbitral Award dated 16.12.2019, which has attained the status of a deemed decree under Section 36 of the Arbitration and Conciliation Act, 1996. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy & Anr***., wherein it has been held that an unsatisfied arbitral award for payment of money would fall within the ambit of a financial debt under the Insolvency and Bankruptcy Code, 2016.

ii. It is further submitted that, apart from the arbitral award, the underlying transaction itself satisfies the ingredients of a financial debt under Section 5(8)(f) of the Code. According to the Applicant, a conjoint reading of the arbitral award along with the documents and evidence relied upon therein clearly demonstrates that the transaction had the commercial effect of a borrowing and was not a mere transaction for sale and purchase of goods.

iii. Learned Counsel submitted that the Corporate Debtor had raised finance through the Applicant for acquisition of approximately 19,883 metric tonnes of Lam Coke imported through MMTC Limited. Owing to the inability of the Corporate Debtor to make payment for the imported goods, two High Seas Sale Agreements and a Deed of Pledge, all dated 03.06.2008, were executed whereby the Applicant extended an interest-free credit period of 120 days. It is submitted that in the event of default, the Corporate Debtor was liable to bear the interest levied by MMTC Limited, while the imported goods valued at approximately ₹59 crores were hypothecated in favour of the Applicant, who in turn created a hypothecation in favour of MMTC Limited.

iv. It is further submitted that since the Corporate Debtor failed to discharge its obligations under the High Seas Sale Agreements, a subsequent tripartite arrangement was entered into amongst the Applicant, the Corporate Debtor and MMTC Limited, whereby the sale proceeds of the imported consignment were agreed to be paid directly to MMTC Limited for release of the hypothecated goods. According to the Applicant, these arrangements establish that the transaction was fundamentally one involving financial accommodation and financing rather than an ordinary commercial sale.

v. Learned Counsel contended that the arbitral award records the aforesaid admitted facts and clearly demonstrates that the parties were engaged in discharging the financed liability raised from MMTC Limited together with the applicable interest. It is, therefore, argued that the transaction squarely falls within the scope of Section 5(8)(f) of the Code as an amount raised under a transaction having the commercial effect of a borrowing.

vi. It is further submitted that, apart from the financing relating to the import transaction, the Applicant had also extended an independent financial accommodation of ₹2.60 crores to the Corporate Debtor. Reliance has been placed upon the letter dated 13.10.2009 issued by the Corporate Debtor requesting such financial accommodation, which was secured by five post-dated cheques. It is submitted that the said transaction also finds due recognition in the arbitral award.

vii. Learned Counsel further submitted that the Applicant had incurred additional expenditure on behalf of the Corporate Debtor towards wharfage charges, supervision charges, handling charges and other statutory liabilities. According to the Applicant, the Arbitral Tribunal awarded a sum of ₹4,87,62,851/- on account of such financial accommodations and reimbursements, apart from directing payment of the outstanding consideration relating to the imported Lam Coke together with interest.

viii. It is submitted that the liability of the Corporate Debtor towards the balance consideration was further acknowledged by the Corporate Debtor through a Balance

Confirmation/Acknowledgment of Accounts dated 05.10.2010, which formed one of the foundations for the passing of the arbitral award.

ix. Learned Counsel further submitted that the Corporate Debtor had also issued thirty-five post-dated cheques aggregating to ₹22.10 crores in favour of MMTC Limited, which were subsequently substituted in favour of the Applicant. It is submitted that the hypothecated goods were released by MMTC Limited only upon receipt of payments in accordance with the agreements between the parties, thereby demonstrating the financing structure underlying the transaction.

x. On the basis of the aforesaid facts, Learned Counsel submitted that the Applicant had arranged finance, raised funds and provided financial accommodation for and on behalf of the Corporate Debtor for import of Lam Coke and had additionally extended loans and financial assistance to discharge the Corporate Debtor's statutory and commercial liabilities. Accordingly, it is contended that the underlying transaction constitutes a financial debt and not an operational debt.

xi. In support of the aforesaid submissions, reliance has also been placed upon the decision of the Hon'ble National Company Law Appellate Tribunal in ***Syed Najam Ahmed v. National Agricultural Cooperative Marketing Federation of India Ltd.***

(NAFED), wherein it has been held that where an arbitral award arises out of a loan transaction, the decree-holder would be entitled to be treated as a Financial Creditor.

xii. Reliance has further been placed upon the judgment of the Hon'ble NCLAT in ***Rakesh Kumar Jain v. ADTV Communications Pvt. Ltd***., wherein, following the judgment of the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy***, it was held that a decree-holder is not precluded from being recognised as a Financial Creditor where the underlying transaction satisfies the requirements of a financial debt under the Code.

xiii. Learned Counsel further submitted that the audited financial statements of the Corporate Debtor for the financial year 2010-11 disclose unsecured loans aggregating to ₹2,74,11,201/-, which, according to the Applicant, include the financial accommodation of ₹2.60 crores extended by the Applicant together with accrued interest. It is contended that such disclosure constitutes an unequivocal acknowledgment by the Corporate Debtor that the said amount was treated as an unsecured loan in its books of account.

xiv. It is further submitted that the audited financial statements of the Corporate Debtor for the financial year 2019-20 also disclose the Applicant's claim as a contingent liability amounting to ₹63,70,72,441.65, comprising the awarded amount together with accrued interest. According to the Applicant, notwithstanding the note regarding settlement, the disclosure itself constitutes acknowledgment of the subsisting liability. It is also submitted that although the Corporate Debtor reflected its alleged counterclaim in the financial statements, such counterclaim had already been rejected by the Arbitral Tribunal.

xv. Learned Counsel lastly submitted that the Applicant has consistently reflected the sum of ₹2.60 crores in its own audited financial statements under the head "Short Term Loans and Advances to Body Corporates", thereby consistently treating the transaction as a loan. It is contended that the accounting treatment adopted by both the Applicant and the Corporate Debtor unequivocally demonstrates that the transaction has throughout been regarded as one of financial accommodation.

xvi. On the strength of the aforesaid submissions, Learned Counsel prayed that the Resolution Professional be directed to reclassify the Applicant's admitted claim from an Operational Debt to a Financial Debt and consequently recognise the Applicant as a Financial Creditor with all consequential rights, including voting rights in the Committee of Creditors.

5. **SUBMISSION ON BEHALF OF THE RESPONDENT**

i. Learned Counsel appearing for the Resolution Professional ("RP") submitted that the claim of the Applicant has been rightly classified as an Operational Debt in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. It is submitted that Section 5(21) of the Code defines an "Operational Debt" and Regulation 7(2) of the Insolvency Resolution Process for Corporate Persons Regulations, 2016 specifically contemplates that an operational creditor may rely upon an order of a court or tribunal adjudicating upon the non-payment of a debt while submitting its claim before the Resolution Professional.

ii. Learned Counsel further submitted that the reliance placed by the Applicant upon the judgment of the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy*** is misplaced. According to the Respondent, the said judgment has subsequently been interpreted by the Hon'ble National Company Law Tribunal, Mumbai Bench in ***HPCL-Mittal Pipelines Limited v. Coastal Marine Construction and Engineering Limited***, wherein it has been observed that the underlying transaction in ***Dena Bank*** was financial in nature and, therefore, the decree therein constituted a financial debt. It is submitted that where the original transaction is not financial in nature, an application under the Code would not be maintainable merely because an arbitral award or decree has been passed.

iii. Learned Counsel also placed reliance upon the judgment of the Hon'ble National Company Law Appellate Tribunal in ***National Agricultural Cooperative Marketing Federation Limited (NAFED) v. Synergy Products Private Limited***, wherein it has been observed that while considering the effect of the decision in ***Dena Bank***, the nature of the underlying transaction is the determinative factor for classifying the debt.

iv. It is further submitted that the Resolution Professional is under a statutory obligation to independently verify and classify the claims received during the Corporate Insolvency Resolution Process. In this regard, reliance has been placed upon the judgment of the Hon'ble National Company Law Appellate Tribunal in ***Umesh Kumar v. Narendra Kumar Sharma, Resolution Professional of Indirapuram Habitat Centre Pvt. Ltd***., wherein it has been held that the Resolution Professional is expected to exercise due diligence while verifying claims and cannot mechanically accept the classification suggested by the claimant.

v. Learned Counsel submitted that upon verification of the claim and the supporting documents, the entire claim of the Applicant has been admitted by the Resolution Professional. However, considering that the underlying transaction pertains to the sale of goods under the High Seas Sale Agreements, the claim has rightly been admitted under the category of Operational Debt. It is further submitted that since the Applicant holds more than ten per cent of the operational debt, it has been invited to attend the meetings of the Committee of Creditors in accordance with the provisions of the Code.

vi. Learned Counsel further submitted that the statement of claim filed by the Applicant before the learned Arbitral Tribunal itself demonstrates that the principal claim pertained to the unpaid price of goods sold and delivered together with legal expenses, other incidental expenses and interest thereon. It is submitted that the ledger accounts relied upon by the Applicant also record receipts towards security deposit, godown insurance, licence fees, various incidental expenses and payments received against the materials supplied. According to the Respondent, the amount claimed represents the shortfall in the sale consideration of the materials supplied, which ultimately formed the basis of the arbitral award.

vii. It is further submitted that the High Seas Sale Agreement dated 03.06.2008 is, in substance, a contract for the sale of Low Ash Metallurgical Coke containing the usual commercial terms relating to payment, delivery and other contractual obligations. The Respondent submits that the Deed of Pledge executed on the same date merely secured the payment of the sale consideration and facilitated the implementation of the High Seas Sale Agreement by providing a credit period of 120 days for realization of the sale proceeds. According to the Respondent, the execution of the Deed of Pledge did not alter the fundamental nature of the transaction from one of sale of goods to one of financial accommodation or borrowing.

viii. Learned Counsel further submitted that the arbitral award itself records that the Applicant was held entitled to recover the outstanding price of the goods sold and delivered together with certain incidental expenses. It is contended that the additional expenses incurred by the Applicant were merely ancillary to and in furtherance of the sale transaction and cannot alter the operational character of the underlying debt.

ix. On the basis of the aforesaid submissions, Learned Counsel contended that the underlying transaction between the parties has, from its inception, remained one for the sale and supply of goods and, therefore, the Resolution Professional has rightly classified the Applicant's claim as an Operational Debt. It is accordingly prayed that the present application, being devoid of merit, be dismissed.

6. **ANALYSIS AND FINDINGS**

i. We have heard the Ld. Counsel appearing for the Applicant and Respondent and pursued the documents on reocrd and rival contentions made by the parties.

ii. It is an undisputed fact that the Corporate Debtor was admitted into the CIRP by order dated 19.03.2024, pursuant to which the Resolution Professional issued a public announcement on 22.03.2024 inviting claims from creditors on or before 02.04.2024. In response thereto, the Applicant filed its claim on 02.04.2024 as a Financial Creditor for an amount of Rs. 114,79,10,462/-. However, the Resolution Professional rejected the claim as a financial debt and took the view that the claim was in the nature of an operational debt and admitted claim of Rs. 114,23,40,385.26. Since the Applicant's request for classification of the claim as a financial debt was not accepted, the present application came to be filed before this Adjudicating Authority.

iii. Primarily, the question which begs for an answer in this case is as to "***Whether the claim amount, in respect of which the present Petition has been filed, is a financial debt or Operational debt***".

iv. Before adverting to the issue under consideration, it is considered appropriate to briefly recapitulate the relevant facts and findings recorded by the Arbitral Tribunal in its

Award dated 16.12.2019, as the same are material for the proper adjudication of the issues arising in the present proceedings:

FACTS:-

The Claimant in April 2008 approached MMTC for financial assistance to import 20,000 MT. of Lam coke from China. MMTC agreed to finance the claimant to purchase the said coke and on 7th May, 2008 entered into two separate associate ship agreement whereunder the claimant would purchase the coke at the following rates :-

i) 16,000 At $ 584.75 per MT. C & F Haldia/Paradeep Port basis.

ii) 4000 MT At $ 622.62 per MT. C&F Haldia/Paradeep Port basis.

Pursuant to the said agreement two separate high seas sale agreements were entered between MMTC and claimant on 2nd June, 2008 for sale of 19,883.720 MT. of Lam Coke.

The respondent approached the claimant for the purpose of purchasing the said consignment of Lam Coke carried on both the vessel M V Iran Kashani.

On 3rd June, 2008 the respondent agreed to purchase the said consignment of Lam Coke on board the said vessel on high seas sale basis at a price of US $ 690 per MT. CIF Haldia plus usual bank charges along with charges to be made by MMTC.

Pursuant to the said agreement the claimant and the respondent executed two separate instruments on 3.6.2008 being ;-

a) Agreement for high seas sale of 19,883.72 MT of Lam Coke sold to the respondent; the goods were sold to the respondent on an interest free credit of 120 days.

b) Since the respondent did not have funds to immediately pay for the said consignment of Lam Coke, a supplemental agreement was executed between the parties on 3.6.2008 recording that the goods sold to the respondent would remain the property of the claimant till the value has been paid for by the respondent, and manner of storage of the said goods in the interim period. The title to the goods sold to the respondent would remain with the claimant until the price of Rs.59 crore is paid by the respondent. The respondent would take physical delivery of the material upon payment of the value thereof. The storage charges would be borne by claimant. It was also agreed that respondent did not take delivery of the goods within the pre-determined schedule, then the claimant would be entitled to dispose of the pledged material or any part thereof in any manner it deemed fit. In case the respondent paid for a particular quantity or the entire quantity during the tenure of the agreement but failed to take delivery of the goods during the tenure of the agreement then the claimant would not stop respondent from taking delivery of the cargo. The extra cost i.e. port charges, customs charges and storage charges would be on account of the respondent.

On 25th June, 2008 the respondent paid to the claimant a sum of Rs.1 crore.

By the letter dated 26th September 2008 the respondent requested the claimant for extension of the validity period by two months of the high seas sale agreement and assured the claimant that the respondent would complete the lifting the entire quantity of goods by 3rd December 2008. The claimant could not agree to sixty days extension because MMTC agreed to extend the due date by 30 days. However, the respondent failed and neglected to take delivery of the goods and also failed and neglected to make payments of the price of the goods in spite of repeated requests by the claimant.

The said consignment of Lam Coke was stored in Haldia Dock Complex in a licensed plot but since the respondent failed and neglected to take delivery or to sell the consignment or to pay the consideration thereof, demurrage charges was being levied by Haldia Dock Complex.

Consequently it was agreed that the said consignment of Lam Coke would be kept outside the port area to avoid levy of further demurrage. The claimant had also hypothecated the said consignment in favour of MMTC Ltd. to secure the money payable by the claimant to MMTC.

Before removing the said consignment from Haldia Dock Complex, demurrage charges of Rs.2.71 crore required to be paid to Kolkata Port Trust by G K Shipping Pvt. Ltd. the Customs House Agent appointed by respondent. Under the agreements between the parties it was obligation of the respondent to pay clearing, handling and storage charges. The said goods were to be stored at FIVE STAR LOGISTICS PVT. LTD. the owner of the stockyard suggested by the respondent and an agreement dated 14th September 2009 was entered into between MMTC claimant and Five Star Logistics.

On 13th October, 2009 the respondent requested the claimant for an accommodation / loan of Rs.2.60 crore to pay for the demurrage charges imposed by Haldia Port Authorities and enclosed to the letter dated 13th October, 2009 the respondent sent five post dated cheques aggregating Rs.2.60 crore to secure such accommodation. The claimant gave the said loan and forwarded a demand drafts of Rs.2.60 crore favouring Kolkata Port Trust on account of demurrage charges payable by the respondent. The respondent by its letter dated 30th December 2009 acknowledged its liability to the claimant for the demurrage paid on account of the respondent.

Since the respondent failed to sell the consignment of Lam Coke and pay the consideration to the claimant within the time prescribed under the said agreements, it was agreed between the parties that part of consignment may be sold from time to time and on clearance by MMTC the material would be sold and the purchaser would pay directly to MMTC the price of the material sold. The claimant remained liable to pay any further sum to MMTC. Similarly the respondent remained liable to pay the balance sum to the claimant.

From time to time until February 2011 the said consignments had been sold in several batches and the entire amount realised had been paid to MMTC Ltd. who adjusted the same against the principal sum due and interest accrued thereon. However, the respondent remained liable to liquidate the dues to the claimant being the differential value of the materials sold and interest charged by MMTC as also the respondent remained liable to reimburse the claimant the expenses incurred for payment to Haldia Dock Complex as also other expenses incurred.

The claimant has also paid Rs.58,34,200/- on respondent's account to Five Star Logistics Pvt. Ltd. through MMTC on account of transportation of the said material from Haldia Dock Complex to stock yard and handling charges and stockyard rent. The respondent is liable to reimburse the claimant under the agreement between the parties.

The respondent failed and neglected to liquidate its liability to the claimant. The claimant by its letter dated 31st December, 2009 sent a detailed statement of accounts to the respondent showing a sum of Rs.67,69,21,474/- remained due and payable by the respondent to the claimant. The said sum did not include the payments made subsequently by claimant to Five Star Logistics Pvt. Ltd. on account of respondent between January 2010 and March 2011.

NOTARY Regd. No. 13802/18 31.12.28 Govt. of India

The said statement of account was confirmed by the respondent by its letter dated 5th February 2010. However the respondent did not confirm the amount of Rs.11 crore and odd payable on account of interest and bank charges and deferred it till a tripartite meeting held between the parties and MMTC Ltd.

In February 2011 8,883.720 MT of Lam Coke was lying in the stockyard of Five Star Logistics Ltd. and the same was sold. However, the delivery could take place only after the outstanding dues of Five Star Logistics was cleared. The claimant paid the outstanding dues of Five Star Logistics through MMTC. Upon payment MMTC by claimant, MMTC in turn issued cheques through Five Star Logistics and only then the materials sold could be delivered to the purchaser.

The claimant states that a sum of Rs.15,75,91,729/- was realised by selling the said 8,883.720 MT. of Lam Coke.

MMTC had raised the claim on claimant on 7th March, 2011 for a sum of Rs.15,32,62,692.48 on account of interest and other charges. The respondent is liable to pay the same to the claimant in view of the admission made by the respondent in its letter dated 5th February, 2010.

The claimant by its letter dated 27th December, 2010 demanded from the respondent all the outstanding amount and the respondent by its letter dated 1st February 2011 denied its liability and raised disputes.

The claimant claimed a sum of Rs.57,75,05,286/- as payable by the respondent as on 7th March, 2011. The claimant further states that the arrangement was arrived at between MMTC and the parties herein in first week of September 2009 whereby the respondent agreed to issue post dated cheques on account of the sum payable by the claimant to MMTC as on 31st August, 2009.

The respondent offered to issue post dated cheques of Rs.22,59,88,360/- ranging for a period upto 4 months. The respondent issued 35 post dated cheques aggregating the aforesaid sum. The cheques were issued in favour of MMTC Ltd. spread over the period September 2010 to January 2012. Since it was agreed the cheques would be issued in favour of the claimant, upon request by the claimant the respondent replaced thirty five post dated cheques favouring claimant. The claimant states that all cheques upon presentations have been dishonoured. Due notice whereof has been given to the respondent.

Claimant claimed a sum of Rs.74,90,97,133/- due and payable by the respondent particulars whereof has been set out in paragraph 53 of the statement of claim. Claimant also claims interest @11% per annum on the said sum from 1st March, 2014. The claimant also claims a sum of Rs.65 lakhs on account of costs incurred by the claimant.

v. From the material available on record, it is observed that the Applicant entered into two Associateship Agreement in or about April, 2008 with MMTC Ltd., a Government of India undertaking for importing 20,000 MT of Low Ash Metallurgical ("LAM") Coke from China. Subsequently, two separate High Seas Sale Agreement dated 02.06.2008 was executed between the Applicant and the MMTC Ltd., to facilitate such import.

vi. The records further indicate that on 03.06.2008, the Applicant and the Respondent executed two agreements, namely a High Sea Sale Agreement and a Deed of Pledge. Under the High Sea Sale Agreement, the Applicant agreed to sell 19883.72 MT of the imported LAM Coke to the Respondent. Simultaneously, under the Deed of Pledge, the goods purchased by the Respondent were pledged in favour of the Applicant, with the stipulation that the pledged goods would be released only upon payment of the equivalent value of the goods released.

vii. Further, the records reveal that the Applicant raised demands upon the Respondent seeking payment according to the agreement. Upon failure by the Corporate Debtor to discharge its obligations, the Applicant invoked the arbitration clause contained in the Agreement. The dispute culminated in an arbitral award dated 16.12.2019, whereby the Respondent was directed to pay an amount aggregating to Rs. 36,54,82,007/- to the Applicant.

viii. A careful consideration of these arrangements, we observe that the main purpose of the transaction was the import and sale of LAM coke. The Applicant's role was essentially confined to facilitating the import and thereafter selling the imported product to the Respondent. The contractual framework demonstrates a commercial trading arrangement rather than a financial arrangement involving lending or borrowing of money.

ix. Particular significance must be attached to the High Sea Sale Agreement dated 03.06.2008, which expressly contemplated the transfer of ownership in the imported Product from the Applicant to the Respondent against payment of a specified consideration. The inclusion of a trading margin as part of the sale price further reinforces the commercial nature of the transaction and reflects that the parties intended to structure their relationship as one of buyer and seller.

x. The nature of the Deed of Pledge executed between the parties indicates that the pledged goods were the very same goods that had been sold by the Applicant to the Respondent under the High Sea Sale Contract. The pledge was therefore intended only to secure payment of the sale consideration and cannot be construed as evidence of a loan transaction, financial accommodation, or disbursal of funds by the Applicant. Rather, it constituted a security arrangement ordinarily adopted in commercial transactions involving the sale of goods.

xi. The effect of the arbitral award dated 16.12.2019 also requires consideration. The award merely crystallized the liability arising from the Respondent's failure to discharge its contractual obligations under the transaction. It did not create a fresh or independent financial relationship between the parties. Consequently, the nature of the debt continued to be governed by the underlying transaction from which the liability originated. Relevant extract of the arward is reproduced herein below:

"In the Facts and circumstances, the claimant is entitled to Rs. 31,67,19,156/- for price and of goods sold and delivered and remaining outstanding. The claimant is also entitled to sum of Rs. 4,87,62,851/- for various sums paid by the claimant on behalf of the respondent towards expenses. Thus the aggregate sum is Rs. 36,54,82,007/-."

xii. At no point in time the applicant has given any loan or made any financial accommodation to be called as financial creditor. In other words, none of the ingredients mentioned in **Section 5(8) of IBC** which deals with "**financial debt**" are present in the transactions between the Applicant and Respondent. In this context, we would refer Section 5(8) of the IBC, reproduced verbatim as:

*"(8) **"financial debt"** means a debt alongwith interest, if any, **which is disbursed against the consideration for the time value of money** and includes–*

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

xiii. Under Section 5(8) of IBC, a financial debt necessarily requires a disbursal of money against consideration for the time value of money. The agreements and supporting documents placed on record do not disclose any arrangement whereby money was advanced or lent by the Applicant to the Corporate Debtor for repayment over a period of time. Instead, the liability arose on account of unpaid consideration for the purchase of imported goods. The essential ingredients necessary for classifying the claim as a financial debt are therefore absent.

xiv. Further, the Applicant has claimed that since the claim has culminated into the award, it should be treated as a financial debt in the light of the law laid down ***Dena Bank Vs. C. Shivakumar Reddy and others*** reported at **(2021) 10 SCC 330** whereby it was held that decree of any court or tribunal or any arbitral award for payment of money would be fall within the ambit of financial debt.

xv. However, the aforesaid proposition of law, put forward by the Counsel for the Applicant, does not appear to be a correct one. In this connection a reference can be made to the law laid down in ***Sushil Ansal Vs. Ashok Tripathi and others*** reported at **(2020) Ibclaw.in 43 NCLAT** whereby it was held that mere holding of a decree/award per se by an individual will not make it debt fall within the ambit of financial debt. Relevant portion of the order are extracted below:

> ***"20. A 'decree-holder' is undoubtedly covered by the definition of 'Creditor' under Section 3(10) of the 'I&B Code' but would not fall within the class of creditors***

classified as 'Financial Creditor' unless the debt was disbursed against the consideration for time value of money or falls within any of the clauses thereof as the definition of 'financial debt' is inclusive in character. *A 'decree' is defined under Section 2(2) of the Code of Civil Procedure, 1908 ("CPC" for short) as the formal expression of an adjudication which conclusively determines the rights of the parties with regard to the matters in controversy in a* lis. *A 'decree-holder', defined under Section 2(3) of the same Code means any person in whose favour a decree has been passed or an order capable of execution has been made.******"*

(Emphasis Added)

xvi. The above cited case was upheld by the Hon'ble Supreme in the matter of ***Mansi Brar Fernandes Vs. Shubha Sharma and Anr***., reported at **(2025) ibclaw.in 353 SC** and held that the decision in ***Sushil Ansal*** was correct on its own facts.

xvii. In ***Cholamandalam Investment and Finance Company Limited Vs. Navrang Roadlines Private Limited***, reported at **2022 ibclaw.in 331 HC**, the Hon'ble High Court of Madras held that a decree/award of the court or tribunal is a measure of debt and mere holding of a decree per se by an individual will not make its debt fall within the ambit of financial debt. It was further held that it is the underlying claim under a decree that will decide the nature of the debt whether it is financial or operational. Relevant portion of the order are extracted below:

*"**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*."**

(Emphasis Added)

xviii. Undisputedly, the claim on the basis of which arbitral proceedings were initiated by the Applicant emanated from a sale contract which originally was at best an operational debt and as per the law laid down in the afore cited cases, the nature of debt would not change with the passing of a decree or an award and, therefore, simply because an award was passed in respect of an operational claim, it will not by itself metamorphose into a financial debt.

xix. So far as the law laid down in ***Dena Bank Vs. C. Shivakumar Reddy and others*** ***(Supra)*** is concerned, in this case also the proceedings were initially pending before DRT for recovery of financial debt in respect of which a certificate for recovery was issued. Thus, the nature of the debt from the very beginning involved in the said case was a financial debt.

7. Therefore, in light of the foregoing discussion, **the claim asserted by the Applicant cannot be brought within the ambit of a financial debt as defined under Section 5(8) of IBC**. The liability emanates from a commercial transaction involving the import and sale of goods and consequently bears the character of an operational debt. The decision of the

Resolution Professional in rejecting the Applicant's claim as a Financial Creditor, therefore warrants no interference.

8. In view of the above discussion, the present application being **I.A. (I.B) No. 1636/KB/2025** is **dismissed** and **disposed of.**

9. Certified copies of this order, if applied, be supplied to the parties upon compliance with all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Labh Singh)
Member (Judicial)

Order signed on the 6th day of August, 2026

S.T. (LRA)