IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - IV

CP No.: IB 719(ND)/2024

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:
M/s Brilliant Metals Pvt Ltd
...Financial Creditor / Applicant

VERSUS

M/s Aveena Cold Storage Pvt. Ltd.
...Corporate Debtor / Respondent

Pronounced on: 07.02.2025

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Present:
For Applicant : Mr. Abhishek Anand, Mr. Raghu Vasishth, Advs.

For Respondent : -

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by M/s Brilliant Metals Pvt Ltd ("**Applicant**"), seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against M/s Aveena Cold Storage Pvt. Ltd. [CIN: U74140DL2014PTC271494] ("**Corporate Debtor**")

which is the corporate guarantor to loans availed by the M/s Avdhesh Construction and Impex Ltd. ("**Principal Borrower**").

2. The Corporate Debtor was incorporated on 11.09.2014, under the Companies Act, 2013. Its registered office is at BB-1 7, Basement, GK Enclave, South Delhi, Delhi, India, 110048. Therefore, this Bench has jurisdiction to deal with this petition.

3. The Ld. Counsel for the Applicant has made the following submissions:

3.1 The Applicant, Brilliant Metals Pvt. Ltd., is engaged in the business of manufacturing and supplying equipment, including milk and milk processing plants. It is submitted that Mr. Avadhesh Mittal, Chief Financial Officer (CFO) of Avdhesh Construction and Impex Ltd ("**the Principal Borrower**"), approached the Financial Creditor with a proposal to set up milk plants across various locations in India.

3.2 On 15.05.2017, the applicant issued an offer letter to Mr. Avdhesh Mittal, detailing definitive terms. Pursuant to this letter, a work order dated 07.07.2017 was issued to the Corporate Debtor, followed by work orders for other companies associated with Mr. Mittal. To secure the transactions, Mr. Avdhesh Mittal and the aforementioned companies executed guarantees on 07.07.2017.

3.3 Subsequently, Mr. Mittal, via a letter dated 01.04.2019, sought financial accommodation for the Principal Borrower and the existing guarantees were extended to cover the financial accommodation.

3.4 The Principal Borrower, defaulted on its repayment obligations, leading the Applicant to issue a demand notice on 15.09.2023. Despite

the issuance of a final demand notice on 10.10.2023, the Corporate Debtor and other guarantors failed to honour their commitments.

3.5 In response to the final demand, Mr. Avdhesh Mittal, on behalf of the Principal Borrower and guarantor companies, provided an evasive reply dated 16.10.2023, including for Aveena Cold Storage Pvt. Ltd. (Corporator Debtor / Guarantor). This prompted the Applicant to initiate arbitration proceedings against the Corporate Debtor and the guarantors.

3.6 The Arbitral Tribunal, in its award dated 02.07.2024, held the Corporate Debtor and guarantors jointly and severally liable for the outstanding amount of Rs. 2,46,48,957/-, along with interest and costs amounting to Rs. 1,25,000/-. The Applicant subsequently issued a notice on 05.08.2024, calling upon the Corporate Debtor to satisfy the award, which went unheeded.

3.7 It is further submitted that the Corporate Debtor, being the corporate guarantor, has willfully and deliberately failed to discharge its obligations under the arbitral award. Consequently, the Corporate Debtor is liable to pay the awarded amount of Rs. 2,46,48,957/-, along with accrued interest of Rs. 10,83,203/- as of the date of the award, costs of Rs. 1,25,000/-, and further interest at the rate of 8% per annum until payment.

3.8 The failure of the Corporate Debtor to honour its obligations demonstrates its inability to pay its debts, thereby making it liable for the initiation of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016.

4. It is observed that the Respondent/Corporate Debtor was set ex-parte by this Bench vide order dated 28.11.2024.

Findings & Analysis:

5. We have duly heard the Learned Counsel for the Applicant and examined the documents and evidence submitted. Upon comprehensive analysis, it is observed that the debt for which the present application is filed amounts to **Rs. 2,46,48,957/-**, bifurcated into a principal amount of **Rs. 2,35,65,754/-** and interest of **Rs. 10,83,203/-**. This debt forms the basis of the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), which arises from an arbitral award which is discussed in the later part of this order.

6. At this juncture, it is imperative to delineate the legal framework governing the admission of a petition under Section 7 of the IBC. For a Section 7 petition to be admitted, this Adjudicating Authority must ascertain the existence of a "financial debt" as defined under Section 5(8) of the IBC and determine whether there has been a default in the repayment of such debt. It is incumbent upon the Applicant to substantiate both the existence of the debt and the occurrence of default.

7. The next question that is crucial to be answered is the nature of the underlying transaction that underpins the present petition. Upon scrutinizing the Board Resolution dated 26.04.2019, it is evident that the Corporate Debtor extended a guarantee for the repayment of a financial accommodation/loan provided to the Principal Borrower, Avdhesh Construction and Impex Ltd. This guarantee unequivocally

binds the Corporate Debtor to the repayment obligations of the Principal Borrower, thereby establishing the Corporate Debtor as a guarantor for the financial loan extended by the Applicant.

8. The principal question before us is whether the default in payment pursuant to an arbitral award dated 02.07.2024 can be said to have occurred immediately upon the pronouncement of the award or only after the expiration of a reasonable or statutorily prescribed period.

9. On perusal of Part IV of Form 1 of the Application filed by the Applicant, we find that the date of default mentioned by the Applicant is 02.07.2024 *(being the date of the arbitral award)*. It is well-settled that until the expiration of such a timeframe, a debtor cannot be deemed to have committed a default.

10. At this juncture, it becomes pertinent to underscore that where no time limit is prescribed for compliance with an arbitral award, a reasonable period must be allowed to elapse before legal proceedings against the debtor can be initiated. This is consistent with the principles of fairness and due process.

11. The next question that arises is whether the statutory period specified under Section 34 of the Arbitration and Conciliation Act, 1996 for filing objections against an arbitral award constitutes the timeframe for compliance with the award itself. It is significant to note that the period of 90 days and the condonable period of 30 days stipulated under Section 34 pertain solely to the filing of objections to the arbitral award. These provisions do not, in our considered view, govern the timeframe for implementing or enforcing the award.

12. At this juncture, we rely upon the settled legal principle that an arbitral award attains finality only upon the lapse of the statutory period prescribed for filing objections under Section 34 of the Arbitration and Conciliation Act, 1996, or upon the dismissal of such objections, if filed within the prescribed time. Furthermore, Section 36 governs the enforceability of arbitral awards, laying down the framework for their execution as a decree of the court. The pertinent portion of the statutory provision is extracted herein for reference:

> *"**Section 36: Enforcement.***
>
> ***36**. (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*
>
> *(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*
>
> *(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

[2][Provided further that where the Court is satisfied that a prima facie case is made out,-—

(a) that the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award."

13. The simple proposition before this Adjudicating Authority is whether a default can be deemed to have occurred on the date of the arbitral award itself for the purpose of initiating proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). In our considered view, a default can be said to have occurred only upon the expiration of the timeframe prescribed for compliance with the award or upon the lapse of the statutory period for filing an appeal.

14. Section 7(1) of the IBC provides as follows:

"7. Initiation of corporate insolvency resolution process by financial creditor.—(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate

debtor before the Adjudicating Authority when a default has occurred."

15. Furthermore, Regulation 2A(b) of the IBBI (CIRP) Regulations, 2016 provides:

"2A. Record or evidence of default by financial creditor. For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely: - (b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired."

16. At this juncture, we rely upon the judgment rendered by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in M/s ***Annapurna Infrastructure Pvt. Ltd. vs. M/s SORIL Infra Resources Ltd.*** [Company Appeal (AT)(Ins) No. 32 of 2017]. The Hon'ble NCLAT observed as follows:

"Under Section 36 of the Arbitration Act, an arbitral award is executable as a decree but it can be enforced only after the time for filing the application under Section 34 has expired and no application is made, or such application having been made has been rejected. That means, the arbitral award reaches finality after expiry of enforceable time under Section 34 and/or if application under Section 34 is filed and rejected."

17. The next question that follows is whether rectifying the date of default as mentioned by the Applicant in Part IV of Form 1 of the Application would make the application compliant with the requirements of law.

Upon examination, we find that the date of filing the present application is 10.09.2024, which is significantly before the date of default. Even if we were to permit the Applicant to rectify the date of default, the date of filing the Application would still remain the same and by no means can the date of filing the Application be rectified.

18. Hence, it will not be logical or lawful for this Adjudicating Authority to adjudicate an application that was filed even before the occurrence of the date of default. Consequently, rectification of the date of default by the Applicant would not salvage the maintainability of the present application.

19. In light of the foregoing, this Adjudicating Authority is of the considered view that the arbitral award dated 02.07.2024 could not be enforced or deemed to have been defaulted upon as of 10.09.2024, when the present application was filed. The statutory period for compliance or challenge had not elapsed by that time.

20. Consequently, this Adjudicating Authority finds that no default had occurred as of the date of filing the present Application.

Accordingly, the present petition bearing CP No. **IB 719 (ND)/2024** is **dismissed**. No order as to cost.

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(DR. SANJEEV RANJAN)

MEMBER (TECHNICAL)

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(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (JUDICIAL)