



IBC Case Law Capsule

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(October 17, 2022)



National Agriculture Cooperative Marketing Federation Limited (NAFED)
Vs

Synergy Petro Products Private Limited,
Company Appeal (AT) (Insolvency) No. 862 of 2021
Date of NCLAT's Judgement: October 11, 2022.

Facts of the Case: -

This appeal under Section 61(1) of IBC was filed by NAFED, hereinafter referred as “Appellant”, who is a Creditor of Corporate Debtor (Synergy Petro Products Private Limited), against the order passed by the Adjudicating Authority (New Delhi). The appellant had filed an Application u/s 7 of IBC 2016, before the AA as a Financial Creditor and claimed its License Fee (in terms of Arbitral Award) and to get back the possession of their premises from the Respondents.

The Appellant, is a multi-state Co-operative Society formed and registered under the provisions of the Multi State Cooperative Societies Act, 2002 and has given building to the Respondent for the use of in its business. The Respondents is unable to pay the rent in terms of the Agreement despite reminders as well as Legal Notices, in furtherance of same the Appellant move for Arbitration. As per Arbitral Award the Respondent is liable to pay to the Appellant a license fee along with the Interest on it.. In pursuance of order of Ld. District Collector, Alwar, the Appellant got back the possession of the said premise on 15.07.2015. Despite the award being passed on 10.07.2019 and the same becoming enforceable on expiry of a period of 90 days thereafter, the Corporate Debtor failed to make the payment in terms of the award and also fails to vacate the premises. Therefore, Appellant filed an Application in terms of Section 7 of the IBC. However, the Adjudicating Authority dismissed the said Application filed by the Appellant under Section 7 of the IBC.

NCLAT's Observations: -



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(Company formed by ICAI under Section 8 of the Companies Act 2013)



The court observed that the transactions which transpired between the parties does not partake the character of a 'financial debt' and the Appellant does not qualify to be a Financial Creditor in relation to the Corporate Debtor.

Order: - The court affirmed the order passed by the Adjudicating Authority wherein the rental lease agreement can be 'operational debt' but not 'financial debt'.

Case Review: - Appeal dismissed.