

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
16-06-2026 AT 1:00 PM**

CP(IB) No. 299/7/HDB/2018

AND

IA(IBC) 692 & 1612/2024 in CP(IB) No. 299/7/HDB/2018

u/s. 7 of IBC, 2016

IN THE MATTER OF:

Punjab National Bank
(Erstwhile Oriental Bank of Commerce)

...Financial Creditor

AND

M/s. NCS Sugars Ltd.,

...Corporate Debtor

C O R A M :-

SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 692/2024

Present: Ms. Siva Praneetha, Ld. Counsel for the Applicant.

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

IA(IBC) 1612/2024

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I, HYDERABAD**

INTERLOCUTORY APPLICATION (IBC) No. 692 of 2024

In

Company Petition (IB) No. 299/7/HDB/2018

(Under Section 60 (5) of Insolvency and Bankruptcy Code, 2016 R/w Rule
11 of National Company Law Tribunal Rules, 2016)

**IN THE MATTER OF M/S. NCS SUGARS LIMITED
(CORPORATE DEBTOR)**

BETWEEN:

PEC Limited

(Formerly known as Project and Equipment Corporation of India Ltd.)

Office at: F Block, 3rd Floor, Flatted Factory Complex,

Jhandewalan Jewellery Complex Rani Jhanshi Road,

New Delhi -110055 Rep. by its Senior Manager

.... Applicant

AND

Mr. K. Sivalingam

Resolution Professional of M/s. NCS Sugars Limited

IP Reg. No. IBBI/IPA-001/IP-P01597/2018-19/12430

Office at: Flat No. 1603, Tulive Horizon Residences,

Arunachalam Road, Saligramam, Chennai, Tamil Nadu - 600 093

Email ID: ip.ncssl@ibcpprofessionalsolutions.com

siva.k220353@gmail.com

.... Respondent

Date of Order:16.06.2026

CORAM:-

SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Counsels:

For the Applicant: Ms. Siva Praneeta, Advocate

for the Respondent: Mr. Kanishk Khetan, Advocate

Resolution Professional: Mr. B L Chakravarthy

ORDER

1. The present Application is filed by **PEC Limited**¹ Under section 60(5) R/w Rule 11 of the National Company Law Tribunal Rules, 2016, against **Mr. K. Sivalingam** Resolution Professional of M/s. NCS Sugars Limited², inter alia, praying:

(a) Direct the Respondent to consider the claim of Rs. 171,80,00,145/- as on 13.07.2022 as mentioned in Claim Form C dated 13.07.2022 filed by the Applicant herein as a financial debt that is to be repaid by the Corporate Debtor.

(b) Direct the Respondent to admit the claim of the Applicant submitted vide Claim form C dated 13.07.2022 and consequently, direct the Respondent to make the provision for payment of claim amount in the books of accounts of the Corporate Debtor.

Application:

2. It is submitted by the Applicant that on 20.03.2013, NCS Sugars Ltd.³ and Applicant entered into an Associateship Agreement⁴ (herein after referred to as "Agreement") wherein the Applicant had agreed to enter into another agreement for and on behalf of the Corporate Debtor with M/s. Agrocorp International Pte. Ltd.⁵ to give effect to the terms of the Agreement and to facilitate the import of Brazilian Cane Raw Sugar

¹ Hereinafter referred to as "Applicant."

² Hereinafter referred to as "Respondent."

³ Corporate Debtor

⁴ Annexure 1 at page 15 of the Application

⁵ Hereinafter referred to as "Supplier."

("Product"). Subsequently, the Supplier and the Corporate Debtor have mutually agreed that the Applicant would import the Product for and on behalf of the Corporate Debtor. In furtherance to the import, the Applicant handed over the Product to the Corporate Debtor at the high seas for fulfilling the procedures at the customs.

3. Applicant submits that the Agreement provided for an opening of a letter of credit to facilitate the import of the Product. Further, as per the Agreement, the Corporate Debtor was required to handover postdated cheques for 89% of the total value of liability, to the Applicant and the same shall be encashed in case of default in the payments.
4. Applicant submits that on 08.04.2013, an addendum⁶ to the Agreement was entered into by the Corporate Debtor and the Applicant wherein modifications were made to the quantum of import of the Product by increasing the quantum from 14500 MT to 26500 MT.
5. Further Applicant submits that, in furtherance to the Agreement, the Applicant herein opened a letter of credit dated 23.03.2013⁷ through Corporation Bank in favor of the Supplier for USD 73,22,500. Further, pursuant to the addendum on 12.04.2013, the Applicant increased the amount in the letter of credit from USD 73,22,500 to USD 1,33,82,500⁸.
6. Applicant submits that pursuant to the Agreement and its addendum, the Corporate Debtor and the Applicant entered into a Deed of pledge dated 23.04.2013⁹, wherein it was provided that the Product received from the Supplier shall be pledged to the Applicant, and the Applicant shall have exclusive first charge over the Product. Further, it was agreed that the Corporate Debtor would have the right to take the physical

⁶ Annexure 2 at page 22 of the Application

⁷ Annexure 3 at page 24 of the Application

⁸ Annexure 4 at page 28 of the Application

⁹ Annexure 5 at page 34 of the Application

possession of the Product only upon making an advance payment for the Product.

7. The Applicant submits that, in order to finance the Corporate Debtor by making payment to the Supplier towards the import of the Products, the Applicant, through its bank¹⁰, availed a Buyer's Credit facility amounting to USD 13,382,500 from Punjab National Bank, Hong Kong. The said facility was repayable by the Applicant within 179 days. However, upon the expiry of the said period, the Corporate Debtor failed to repay the amount. Consequently, Corporation Bank transferred a part of the outstanding amount, aggregating to Rs. 6,06,82,210/-, from the credit facilities available to the Applicant and remitted the same to Punjab National Bank, Hong Kong. Pursuant thereto, Corporation Bank issued a bill dated 04.11.2013 to the Applicant for reimbursement of the said amount of Rs. 6,06,82,210/-, which had been paid to Punjab National Bank, Hong Kong.
8. Further, Applicant submits that in order to discharge the balance amount outstanding towards Punjab National Bank, Hong Kong, the Applicant, through Corporation Bank, approached Canara Bank, London and arranged another Buyer's Credit facility amounting to USD 12,467,041.05. The said facility was repayable by the Applicant through Corporation Bank within 123 days, i.e., on or before 04.03.2014¹¹.
9. It is submitted by the Applicant that, despite the expiry of the aforesaid period, the Corporate Debtor failed to make payment of the outstanding dues. Consequently, Corporation Bank repaid the Buyer's Credit facility availed from Canara Bank, London by debiting an amount of Rs. 77,41,53,674/- from the credit facilities available to the Applicant. Thereafter, Corporation Bank issued a bill dated 06.03.2014¹² to the

¹⁰ Hereinafter referred to as Corporation Bank

¹¹ Annexure 6 at page 39 of the Application

¹² Annexure 7 at page 40 of the Application

Applicant, requiring reimbursement of the aforesaid amount of Rs. 77,41,53,674/-, which had been remitted to Canara Bank, London.

10. It is submitted by the Applicant that due to continuous defaults in payment by the Corporate Debtor, the Applicant initiated arbitration proceedings under the Agreement before a Sole Arbitrator. Vide Award dated 01.05.2018¹³, the Sole Arbitrator directed the Corporate Debtor to pay Rs. 85,35,38,188/- along with interest of 14% per annum from 01.04.2017 until realization of the awarded amount. The Corporate Debtor was further directed to pay ₹25,10,000/- towards arbitration costs in favour of the Applicant.
11. The Applicant further submits that after commencement of CIRP against the Corporate Debtor on 24.06.2022, it filed a claim in Form C¹⁴ as a Financial Creditor for an amount of Rs. 171,80,00,145/- on 13.07.2022. However, the Resolution Professional, by email dated 27.08.2022¹⁵, required the Applicant to submit its claim as an Operational Creditor in Form B. The Applicant contends that it objected to the said classification and relied upon the decision passed by **Hon'ble NCLAT, New Delhi in *PEC Limited v. M/s. Sree Ramakrishna Alloys Ltd, Company Appeal (AT) (INS) No. 225 of 2017***, asserting that similar transactions had been recognized as financial debt. Despite the same, the Resolution Professional declined to accept its claim as a financial debt.
12. It is submitted by the Applicant that the claim amount that was rejected arises out of the letter of credit issued in furtherance to the Agreement and the bills dated 04.11.2013 and 06.03.2014.

¹³ Annexure 8 at page 41 of the Application

¹⁴ Annexure 9 at page 69 of the Application

¹⁵ Annexure 10 at page 76 of the Application

13. The Applicant submits that its claim emanates from the Letter of Credit facilities, Buyer's Credit arrangements and the reimbursement obligations arising therefrom, as reflected in the bills dated 04.11.2013 and 06.03.2014. It is therefore contended that the debt falls within the ambit of a "financial debt" under Section 5(8) of the IBC as the amounts were disbursed against consideration for the time value of money. In support of its contention, the Applicant has placed reliance on judgments of the **Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17 (Para 42)* and *Cholamandalam Investment and Finance Company Ltd. v. Navrang Roadlines Pvt. Ltd..O.S.A.(CAD) No.115 of 2022***

Reply:

14. Respondent submits that the Applicant, at best, was a facilitator for the import of goods for the Corporate Debtor. The essence of the transaction is that the Corporate Debtor entered into a contract with Supplier for the import of Brazilian raw sugar in the year 2013. The Applicant agreed to facilitate the import on behalf of the Corporate Debtor and hence to give effect to the terms of the Associateship Agreement (which was yet to be executed) and to facilitate the import of the said cargo under the Letter of Credit, Applicant entered into Contract No. AGS/13/3/4554 dated 06.03.2013 with the Supplier ("Contract"). Thereafter, the Applicant and Respondent execute an Associateship Agreement on 20.03.2013.
15. Respondent submits that the terms of the Agreement includes a trading margin and other charges along with opening up of Letter of Credit to facilitate the said import. Thereafter, Applicant agreed to sell the imported goods at the high sea to Corporate Debtor on simultaneous acceptance by Corporate Debtor to pledge the goods to Applicant by executing a Deed of Pledge. Goods were then stored as per conditions agreed between Applicant and Corporate Debtor. Hence, any services provided by the Applicant towards the said import under the Contract

between Applicant and Supplier, including opening up of Letter of Credit, was in nature of services.

16. Respondent further submits that the recital to the Deed of Pledge dated 23.04.2013 clearly states that Applicant has imported 26500MT of Brazilian Raw Sugar. That the imported goods shall be sold to Corporate Debtor at High Seas and simultaneously pledged in name of Corporate Debtor. The pledged goods are released to Corporate Debtor based on payment of equivalent value including the trading margin.
17. It is submitted by the Respondent that, as per the prayer made in the statement of claim filed by the Applicant before the Arbitrator, the Applicant has claimed the amounts for inter alia the loss caused to the Applicant on account of the import undertaken under the Agreement and therefore, the same cannot be considered as a "Financial Debt".
18. Respondent submits that the facts in **PEC Limited Supra** relied upon by the Applicant are completely different from the facts of the instant case. In the instant case, the Applicant's claim is arising out of an Arbitral Award, which is a completely different cause of action, whereas the Hon'ble NCLAT in **PEC Limited** had dealt with the agreements entered into between the parties therein. Moreover, the terms and conditions of the agreement referred to by the Hon'ble NCLAT in its order and the agreement entered into by the Applicant with the Corporate Debtor are not identical.
19. It is further submitted that the applicant has admitted in the application that the nature and the object of the Agreement is to facilitate the import of the Product, and as such any ancillary activity by the Applicant is also in furtherance of the said object and cannot be deemed to be a financial debt. The judgment cited by the Applicant (**Cholamandalam Investment and Finance Company Ltd Supra**) is in fact favouring the Respondent and does not support the case of the

Applicant. In the very same judgment, it is held that the liability arising out of an arbitral award or court decree would be categorised either as financial or operational debt depending upon the nature of the underlying claim which stands crystallized through the arbitral or court proceedings.

20. It is submitted by the Respondent that the Applicant relying upon the judgment passed in **PEC LTD Supra** is different from the facts of the present case and as such the ratio laid down in the said case cannot be made applicable to the facts of the present case. The case cited by Applicant is irrelevant and the Applicant has conspicuously not provided a more recent judgement of Hon'ble NCLAT to this Tribunal.
21. Further, the Respondent submits that the Judgement of **Hon'ble NCLAT in PEC Ltd Vs. M/s Phulchand Exports Pvt Ltd, Company Appeal (AT) (Insolvency) No. 1071 of 2021**, squarely covers the instant issue as an emphasis that the debt contended by Applicant herein is not in the nature of financial debt. The Phulchand case is a simple reversal of **PEC LTD Supra**. In the Phulchand case, Applicant (PEC) is procuring from M/s Phulchand and exporting to a foreign buyer. For this, packing credit is given by the Applicant to M/s Phulchand. This involved a trading margin as a result of an Associate Supplier Agreement, by which interest bearing finance was given to Phulchand (Corporate Debtor). Hon'ble NCLAT had held that the claim did not partake the character of financial debt.

Findings and Analysis

22. We have gone through the entire record and have heard the learned Counsel appearing on behalf of the Applicant as well as the Respondents at length.
23. From the records, it is evident that vide order dated 05.02.2026 passed in I.A. No. 2000 of 2025 in C.P. (IB) No. 299/7/HDB/2018, Mr. K.

Sivalingam was discharged from his duties as the Resolution Professional. Consequently, Mr. Bihari Lal Chakravarty was appointed in his stead and assumed charge of the insolvency proceedings of the Corporate Debtor.

24. It is an undisputed fact that the Corporate Debtor was admitted into the CIRP by order dated 24.06.2022, pursuant to which the Resolution Professional issued a public announcement on 02.07.2022 inviting claims from creditors on or before 13.07.2022. In response thereto, the Applicant filed its claim on 13.07.2022 as a Financial Creditor for an amount of Rs. 171,80,00,145/-. 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. 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.
25. From the material available on record, it is observed that the Applicant entered into an agreement dated 06.03.2013 with the overseas Supplier for the import of the Product on behalf of the Corporate Debtor. Subsequently, an Associateship Agreement dated 20.03.2013 was executed between the Applicant and the Corporate Debtor to facilitate such import. Pursuant thereto, the Applicant opened a Letter of Credit for USD 73,22,500 on 23.03.2013, which was later enhanced to USD 1,33,82,500 on 12.04.2013.
26. The records further indicate that on 23.04.2013, the Applicant and the Corporate Debtor executed two agreements, namely a High Sea Sale Contract and a Deed of Pledge. Under the High Sea Sale Contract, the Applicant agreed to sell 26,500 MT of the imported Product to the Corporate Debtor at a consideration of USD 13,382,500, comprising the entire price of the goods together with a trading margin of 1.25%. Simultaneously, under the Deed of Pledge, the goods purchased by the Corporate Debtor 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.

27. Further, the records show that the Applicant raised bills demanding payment from the Corporate Debtor on two occasions. 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 01.05.2018, whereby the Corporate Debtor was directed to pay an amount aggregating to Rs. 171,80,00,145/- to the Applicant.
28. A careful consideration of these arrangements, we observe that the main purpose of the transaction was the import and sale of goods. The Applicant's role was essentially confined to facilitating the import and thereafter selling the imported Product to the Corporate Debtor. The contractual framework demonstrates a commercial trading arrangement rather than a financial arrangement involving lending or borrowing of money.
29. Particular significance must be attached to the High Sea Sale Contract, which expressly contemplated the transfer of ownership in the imported Product from the Applicant to the Corporate Debtor 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.
30. 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 Corporate Debtor 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 disbursement of funds by the

Applicant. Rather, it constituted a security arrangement ordinarily adopted in commercial transactions involving the sale of goods.

31. Much emphasis was placed by the Applicant on the opening of Letters of Credit and the procurement of various financing facilities for facilitating the import. However, the existence of such arrangements does not alter the true nature of the underlying transaction. The Letters of Credit and related financing mechanisms were merely incidental to the import process and were employed to facilitate the procurement and sale of the Product. Such ancillary arrangements cannot, by themselves, transform a commercial sale transaction into a financial transaction within the meaning of IBC.
32. The effect of the arbitral award dated 01.05.2018 also requires consideration. The award merely crystallized the liability arising from the Corporate Debtor'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.
33. Under Section 5(8) of IBC, a financial debt necessarily requires a disbursement 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.
34. 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.

35. In view of the above discussion, the present Application, being devoid of merit, is liable to be dismissed.

Accordingly, the present Application is dismissed and disposed of.

SANJAY PURI
MEMBER (TECHNICAL)

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)