

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1811 of 2024

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I.A. No. 6979 & 8862 of 2024

[Arising out of order dated 30.08.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Chandigarh Bench, Chandigarh,) in C.P.
(IB) No. 138/CHD/HRY/2023]

IN THE MATTER OF:

**Vikram Bhavanishankar Sharma,
Member of the Suspended Board of Directors of
Supreme Panvel Indapur Tollways Pvt. Ltd.**

...Appellant

Versus

State Bank of India & Anr.

...Respondents

Present:

**For Appellant : Mr. Ishaan Duggal, Mr. Abhirup Dasgupta and Ms.
Jayashree S. Dasgupta, Advocates.**

**For Respondents : Mr. Assem Chaturvedi and Mr. Siddhant Kumar,
Advocates for R-1.**

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a suspended director of the corporate debtor – Supreme Panvel Indapur Tollways Pvt. Ltd. has filed challenging order dated 30.08.2024 passed by National Company Law Tribunal (NCLT), Chandigarh Bench, Chandigarh by which Section 7 application by State Bank of India (SBI) has been admitted. Aggrieved by the order admitting Section 7 application, this appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The consortium of Bank lead by SBI executed a Common Loan Agreement with the corporate debtor on 30.08.2011 for extending financial facility of Rs.900 crore for part financing the project namely Designs Engineering Construction Operation and Maintenance of four laning of Panvel Indapur Section of NH-17 from Panvel to Indapur, Maharashtra.
- ii. The corporate debtor committed default in repayment of the loan, account was declared NPA on 01.11.2016. The project Concession Agreement in favour of the corporate debtor was executed by National Highways Authority of India (NHAI) on 30.08.2011.
- iii. NHAI issued a circular for grant of One-Time Fund Infusion Scheme (OTFIS) for revival and completion of project of NHAI. The corporate debtor approached the NHAI for financing under the said OTFIS Scheme. A Tripartite Agreement was entered between NHAI, the corporate debtor and the lenders on 09.11.2016. NHAI under the scheme provided finance of ₹540 crore to the corporate debtor.
- iv. The Tripartite Agreement contained stipulation for payment of NHAI facilities as well as facilities extended by the lenders.
- v. Corporate debtor sent a revival letter to the lender, admitting the liability of the Common Loan Agreement on 16.01.2018 and 23.12.2020 after the Agreement with NHAI dated 09.11.2016. The date for

commercial operation of the project was December 2021. The NHAI terminated Concession Agreement by a letter dated 17.11.2021.

- vi. The corporate debtor sent one-time settlement (OTS) offer to the lenders on 14.06.2022 and 01.11.2022. On 09.11.2022, the SBI issued a recall notice, recalling the loan.
- vii. On 11.05.2023, SBI filed section 7 application claiming a default of ₹610,25,39,513/- as on 17.04.2023, date of default mentioned in Part – IV was 09.11.2022.
- viii. Along with section 7 application relevant documents including the balance sheet of the corporate debtor for financial year 2016–17 to 2021–2022 was filed.
- ix. Notice under section 7 application was issued to the corporate debtor. Corporate debtor filed a reply opposing section 7 application. Corporate debtor in the reply relied on Tripartite Agreement dated 09.11.2016. It was pleaded that in view of Tripartite Agreement, there is no debt, Common Loan Agreement provides for substitution of concession upon default and not for recall of the common loan facility, hence there was no default. It was pleaded that SBI has no authority to file section 7 application without their being no consent by all lenders of the consortium. There was pre-existing dispute between the parties since arbitration proceeding under Section 9 of the arbitration and conciliation act, 1996 has been initiated.

- x. It was further pleaded by corporate debtor that there is no debt and default in view of the novation of Common Loan Agreement by Agreement dated 09.11.2016. Adjudicating Authority heard the parties, by impugned order has admitted section 7 application, challenging, which order this appeal has been filed.
- 3.** We have heard learned counsel for the appellant and learned counsel appearing for the SBI.
- 4.** Learned counsel for the appellant challenging the order raised two submissions. Firstly, it is submitted that in view of the Tripartite Agreement dated 09.11.2016, the Common Loan Agreement dated 30.08.2011 stood novated. The Common Loan Agreement having been novated, the SBI had no authority or jurisdiction to file Section 7 application which was premised on Common Loan Agreement. Under the Novated Agreement dated 09.11.2016, the repayment of facilities extended by NHAI has to take place first. It is submitted that very basis of Section 7 has been knocked out due to novation of the Common Loan Agreement. The learned counsel for the Appellant has referred to various clauses of Agreement dated 09.11.2016 to support his submission as well as financial arrangement entered under the Agreement dated 09.11.2016. Secondly, it is submitted that the SBI has no authority to initiate Section 7 proceeding, there being no consent of all lenders of the consortium for initiation of Section 7 proceedings.
- 5.** Learned counsel appearing for the SBI refuting the submissions of the counsel for the appellant submits that the Common Loan Agreement dated

30.08.2011 was neither rescinded nor novated by Agreement dated 09.11.2016. The financial facilities extended by the SBI and other lender continues and corporate debtor is obliged for repayment. It is submitted that Tripartite Agreement dated 09.11.2016 only provided manner of repayment of loan both to NHAI and the lenders. Although, the principal amount due to the lenders was to become payable from 2031, but interest liability was continuing in which the corporate debtor defaulted. The loan recall notice issued by the SBI was on account of event of default committed by the corporate debtor. The NHAI itself has cancelled the Concession Agreement on 17.11.2021, the Agreement dated 09.11.2016 did not continue thereafter. Learned Counsel for the SBI has referred to various clauses of Agreement dated 09.11.2016 to support his submission that financial facilities to the corporate debtor by lenders continuous and corporate debtor was obliged to service the debt, only fresh time schedule was fixed. It is submitted that SBI was fully entitled to initiate proceeding as per Common Loan Agreement dated 30.08.2011. It is submitted that the corporate debtor having time and again submitted OTS proposals, acknowledging the debt subsequent to Tripartite Agreement dated 09.11.2016, it is not open for appellant to even contend that the debt of the lender do not exist after Agreement dated 09.11.2016. Subsequent to letter dated 09.11.2016, various OTS proposals have been submitted by the corporate debtor including OTS proposal 14.06.2022 and 01.11.2022.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. By Common Loan Agreement dated 30.08.2011 to the corporate debtor for four laning of Panvel – Indapur section NH 17 from Panvel to Indapur Maharashtra on a built operate transfer basis, sanction term loan of facility of ₹900 crore out of which ₹210 crore was sanctioned by SBI and ₹100 crore by State Bank of Patiala. State Bank of Patiala was subsequently merged in the SBI. Section 7 application was filed by the SBI for default, claiming an amount of ₹610,25,39,513/- of the facility of ₹310 crores extended by SBI and State Bank of Patiala. Along with section 7 application, all relevant documents, including balance sheets of the corporate debtor was filed. Loan recall notice issued on 09.11.2022 was issued by SBI due to default on the part of the corporate debtor.

8. The fact of disbursement of term loan facilities by SBI upto ₹110 crore and State Bank of Patiala of ₹100 crore is not subject matter of dispute. The disbursal of the amount of ₹210 crore was made from 2012 to 2017, similarly, disbursal of ₹100 crore was made in 2012 to 2017.

9. The first submission which has been pressed by the counsel for the appellant is that on account of Tripartite Agreement dated 09.11.2016 entered between NHAI, the corporate debtor and the lenders the Loan Agreement dated 30.08.2011 stood novated hence no debt of the lenders subsisted after the said novation of the Agreement and the application filed under Section 7 based on Loan Agreement dated 30.08.2011 was without any basis and deserve to be rejected. Tripartite Agreement dated 09.11.2016 was entered with the SBI, NHAI corporate debtor and other two sister companies. The said

Agreement has clearly noticed about the loan dated 30.08.2011 taken by concessionaire i.e., the corporate debtor for amount of ₹900 crore for financing the project in question, which fact is noted in clause C of the Agreement, which is as follows:

*“(C) The Concessionaire had raised debt from the Senior Lenders under a common loan agreement dated August 30, 2011 executed inter alios amongst the Senior Lenders and the Concessionaire, as amended from time to time (hereinafter referred to as the **"Common Loan Agreement"**) for an aggregate principal amount not exceeding Rs.900,00,00,000.00 (Rupees Nine Hundred Crores only) (**"Facility"**) as specified in Schedule II for financing the Project out of which, an approximate amount of about Rs. 110,00,00,000.00 (Rupees One Hundred and Ten Crores only) is yet to be disbursed (**"Undisbursed Amount"**) as on September 30th, 2016.”*

10. The Agreement notice that corporate debtor has requested for amount of ₹540 crore for complete the balance work of developing the project for which concessionaire has approached the NHAI under OTFIS for completion of the project. NHAI agreed for fund infusion of ₹540 crore to complete the balance work for which Tripartite Agreement was entered. With regard to amount of NHAI under OTFIS facility, concessionaire was liable to pay as per clause 6(h) of the Agreement, which was stated in clause 3.1(c). Clause 6 of the Agreement provides for operating procedure. Clause 6(h) provides for mechanism of payment. Clause 6(h)(vii) also contemplated that interest payment as per financial model to be agreed between the authority of senior lender, which clause is as follows:

“6. OPERATING PROCEDURE

(h) The detailed waterfall for payments to be made from the Sub-Escrow Account (Construction and Operation) under OTFIS till the due repayment and discharge of the entire outstanding under the NHAI OTFIS Facility and the interest thereon shall be as under:

(vii) monthly proportionate provision of Debt Service due in an Accounting Year as more particularly provided in the financial model to be agreed between the Authority and the Senior Lenders. It is clarified that the interest payments in relation to the Facility till COD shall be made from this account in accordance with the financial model to be agreed between the Authority and the Senior Lenders and these payments shall be permitted since interest during construction is factored into the amounts of the Facility. Also, it is clarified that after COD, the interest due in relation to the Facility shall be payable monthly from this account in accordance with the financial model to be agreed between the Authority and the Senior Lenders. It is also clarified that the service of principal amount of the Facility under this Clause shall be restricted to only 1% (one percent) of the principal amount till the due repayment and discharge of the outstanding amounts in relation to the NHAI OTFIS Facility;”

11. We need to also notice certain more clauses of the Tripartite Agreement.

The interpretation Clause 1.3(c) clearly contemplated continuance of Financial Agreement with lenders and contemplated for harmonious construction of the Financial Agreements. Paragraph 1.3.1(e) is as follows:

“1.3 Interpretation

1.3.1 In this Agreement, unless the context otherwise requires,

(e) to the extent possible, the terms and conditions of this Agreement and those of the Concession Agreement, the Escrow Agreement, the Substitution Agreement, and the Financing Agreements shall be construed harmoniously, however in the event of any conflict between the terms and conditions of this Agreement on one hand and the terms and conditions of the Concession Agreement and/or the Escrow

Agreement and/or the Substitution Agreement and/or the Financing Agreements on the other hand, the terms and conditions of this Agreement shall apply and be deemed to convey the correct understanding of the Parties and the inconsistent terms of the other documents as aforesaid shall not apply;”

12. The submission of the counsel for the appellant that the Agreement dated 09.11.2016 has novated the Common Loan Agreement dated 30.08.2016 is not reflected from the Agreement dated 09.11.2016. Learned counsel for the appellant has placed reliance on Clause 6(c) of the Agreement, which, according to him overrides all other financial arrangements with the corporate debtor. Clause 6(c) is as follows:

“6. OPERATING PROCEDURE

(c) Notwithstanding anything to the contrary contained in the Concession Agreement, the Escrow Agreement or any Financing Agreement, the mechanism provided in this Clause 6 shall override the waterfall mechanism stated in any of the aforesaid documents till the repayment of NHAI OTFIS facility;”

13. When we look into clause 6(c) as above, it provides that waterfall mechanism as provided in clause 6 shall override. Clause 6(h) itself, contemplates mode and manner of payment, which payment also include payment to the lenders as per financing arrangement between the parties. Clause 6(h), which provides waterfall mechanism for payment is as follows:

“6. OPERATING PROCEDURE

(h) The detailed waterfall for payments to be made from the Sub-Escrow Account (Construction and Operation) under OTFIS till the due repayment and discharge of the entire outstanding under the NHAI OTFIS Facility and the interest thereon shall be as under:

(i) all taxes due and payable by the Concessionaire;

(ii) all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(iii) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(iv) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concessions, Agreement and that the amounts claimed are due to it from the Concessionaire;

(v) Concession Fee (including Premium) due and payable to the Authority,

(vi) interest due and accrued on the outstanding principal amounts of NHAI OTFIS Facility. It is clarified that any interest on the outstanding principal amounts of the NHAI OTFIS Facility till COD shall get accrued and will be due only after COD and shall be repaid from in accordance with the financial model to be agreed between the Authority and the Senior Lenders;

(vii) monthly proportionate provision of Debt Service due in an Accounting Year as more particularly provided in the financial model to be agreed between the Authority and the Senior Lenders. It is clarified that the interest payments in relation to the Facility till COD shall be made from this account in accordance with the financial model to be agreed between the Authority and the Senior Lenders and these payments shall be permitted since interest during construction is factored into the amounts of the Facility. Also, it is clarified that after COD, the interest due in relation to the Facility shall be payable monthly from this account in accordance with the financial model to be agreed between the Authority and the Senior Lenders. It is also clarified that the service of principal amount of the Facility under this Clause shall be restricted to only 1% (one percent) of the principal amount till the due repayment and discharge of the outstanding amounts in relation to the NHAI OTFIS Facility;

(viii) principal outstanding under the NHAI OTFIS Facility in accordance with the financial model to be agreed between the Authority and the Senior Lenders. It is clarified that the servicing of the principal amount of NHAI OTFIS Facility shall not commence till COD;

(ix) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement including repayment of Revenue Shortfall Loan;

(x) debt service payments in respect of Subordinated Debt;

(xi) any reserve requirements set forth in the Financing Agreements; and

(xii) balance, if any, shall be retained in the Sub-Escrow Account (Caution and Operation) until OTFIS and shall be utilized for the payments to be made in the succeeding month;”

14. Learned counsel for the appellant has also referred to pages 333 & 334 of the paper book which, according to the appellant is the financing arrangement with regard to payment of NHAI and lenders. At page 334 of the paper book “NHAI loan repayment schedule” as well as “bankers loan repayment schedule” are separately dealt with. Table at page 334 itself indicates that bankers loan repayment is also to be paid by the corporate debtor. As far as under the Agreement dated 09.11.2016, Learned Counsel for the appellant submitted that bankers loan repayment does not mention that no payment is to be made till 2031. The above is payment for principal amount but bankers loan repayment schedule itself indicates that interest is payable with effect from March 2018, which is reflected in the bankers loan repayment schedule. With regard to SBI share which is dealt in the separate column interest payment is reflected from 2018 onwards. The above financing arrangement as contemplated in Agreement dated 09.11.2016 itself indicates that payment obligation of the corporate debtor as per the Loan Agreement continues. Only consequence of the Agreement was to shift the date of payments as per Agreement. The above clearly indicates that loan Agreement

dated 30.08.2011 is not wiped out or rescinded obligation of the corporate debtor to make payments as per the Loan Agreement dated 30.08.2011 along with the Tripartite Agreement dated 09.11.2016 continuous and on any default committed by the corporate debtor, lenders were fully entitled to take such proceeding as permissible in law. It is further relevant to notice that corporate debtor time and again has made OTS proposal to the financial creditors even after 09.11.2016. It is useful to refer to the OTS proposal dated 14.06.2022, where the proposal was given by the corporate debtor to SBI (Annexure A-20 to the appeal), where OTS proposal was given for ₹250 crore towards full and final settlement. Following part of the letter is useful to extract where following has been stated:

“Compromise and One Time Settlement Proposal

The Company hereby offers Rs. 250.00 Crores towards full and final settlement of all the outstanding dues of all the banks/ lenders which shall be payable within 180 days from the sanction of Compromise and One Time Settlement Proposal by all the lenders and duly acceptance by the company with the terms and conditions mentioned below.

The Terms of Payment of Compromise and One Time Settlement Proposal is as follows:

Sr. No.	Particulars	Proposed Payment (In Crores)	Timelines
1.	<i>Upfront Payment (5%) (In no lien account)</i>	12.50	<i>Along with the Proposal Compromise and One Time Settlement Proposal</i>
2.	<i>Balance (95%) Payment</i>	237.50	<i>Payable in 180 days of sanction of</i>

			<i>Compromise and One Time Settlement Proposal and duly acceptance by the company.</i>
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**This amount shall not be adjusted against the current dues in case of non-sanction of compromise and one time settlement proposal by the lenders. In such a case, the said amount will be refunded immediately.*

Justification for the Compromise and One time settlement proposal

- Project has already been terminated by NHAI, therefore company is unable to start the toll and generate the revenue and therefore settlement is the main option.*
- The lenders are not likely to get any value more than the amount proposed in compromise and one time settlement proposal considering a high amount of OTFIS and premium payable to NHAI*

Source of Funds

Source of funds for the payment proposed in Compromise and One Time Settlement Proposal will be from infusion from potential investor.”

15. The above proposal was given much after Agreement dated 09.11.2016 and also after termination of Concession Agreement by NHAI to terminate the Agreement on 17.11.2021. The submission of the appellant that there is no debt and default in view of the Agreement dated 09.11.2016 towards the lender cannot be accepted. The obligation of the corporate debtor under the Loan Agreement continues and even according to Agreement dated 09.11.2016, even on the revised dates, default was committed. The SBI was fully entitled to recall the entire loan which was recalled on 09.11.2022 and entire loan was recalled entire amount payable by corporate debtor became

due and the loan recall notice 09.11.2022 was as per Common Loan Agreement. It was after loan recall notice proceeding under Section 7 was initiated on account of default by the corporate debtor. We, thus do not find any substance in this first submission of the counsel for the appellant that after execution of Agreement dated 09.11.2016, no debt or default continues on the part of the corporate debtor.

16. Coming to the second submission of the appellant that SBI was not authorised to file Section 7 application no consent having been obtained from all lenders. Learned counsel for the SBI has referred to clause 7.2 (i), (ii) & (iii) which provides as follows:

“7.2 CONSEQUENCES OF DEFAULT

If one or more of the aforesaid Events of Default has occurred, Lenders may without prejudice to any other right take one or more of the following actions:

(i) declare the unpaid principal amount of an interest in respect of the Loans, and all other obligations and all other amounts payable by the Borrower hereunder and under the Security Documents to be forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding;

(ii) exercise any and all rights specified in the Security Documents and other Transaction Documents including without limitation, to accelerate the obligations of the Promoter with intimation to NHAI, to make equity and other contributions and to enforce all of the Security created pursuant to the Security Documents;

(iii) exercise such other remedies as permitted or available under Applicable Law;”

17. Learned counsel for the SBI has also referred to the Inter-Creditor Agreement dated 30.08.2011, which has been brought on record in the reply of the SBI in this appeal. Reference has been made to clause 4.3(a), which clearly provides that on event of default, each creditor shall have the right without prejudice to its other rights and to the rights of any other creditor to enforce its claim against the borrower. Clause 4.3(a) is as follows:

“4.3 Provisions relating to Accelerator and Enforcement Action

(a) If any Group A Event of Default shall have occurred and then be continuing, each Creditor shall have the right without prejudice to its other rights and to the rights of any other Creditor to enforce its claims against the Borrower, to declare the Available Commitment of such Creditor terminated, to declare all or any of the Secured Obligations owed under the Finance Documents to such Creditor to be immediately due and payable without presentment, demand, protest or other notice of any kind and to take Enforcement Action.”

18. We, thus do not find any substance in the submission of the appellant that SBI has no authority to file Section 7 application.

19. Now coming to the impugned order passed by the adjudicating authority, the adjudicating authority in the impugned order has noticed all relevant facts, including the Agreement dated 09.11.2016. Adjudicating Authority after hearing the parties and considering all relevant record has come to the finding that amount of ₹6,10,25,59,513/- is still pending for payment, which amount stood default by the corporate debtor, there being finding of debt and default which has been acknowledged by the corporate

debtor time and again as noted above. We do not find any error in the order of the adjudicating authority admitting Section 7 application.

There is no merit in the appeal. Appeal is dismissed. Connected IAs, if any, are closed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

20th August, 2025

himanshu