

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 783 of 2022**

[Arising out of Order dated 31.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench-I, Kolkata in CP (IB) No.2073/KB/2019]

**IN THE MATTER OF:**

**Sinki Commodities Pvt. Ltd.**

**...Appellant**

**Versus**

**ABC Floors Pvt. Ltd.**

**...Respondents**

**Present:**

**For Appellant: Ms. Sadapurna Mukherjee, Advocate.**

**For Respondents: Mr. Abhishek Anand, Mr. Ashish Choudhury, Mr. Akash Agarwal, Mr. Abhishek Arora, Mr. Anand Kamal and Ms. Prachi Grover, Advocates.**

**J U D G M E N T**  
**(14<sup>th</sup> October, 2025)**

**Ashok Bhushan, J.**

This Appeal has been filed by Financial Creditor challenging the order dated 31.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench-I, Kolkata rejecting Section 7 application filed by the Appellant.

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

2.1. Appellant, an NBFC disbursed an amount of Rs.1,60,00,000/- to the Corporate Debtor. Disbursement was agreed with interest at the rate of 8% per annum. Disbursement took place between 18.03.2019 to 12.07.2019. The Corporate Debtor has given post dated cheques in lieu of the disbursement. The post dated cheques were dishonoured. The Corporate Debtor by letter dated 25.07.2019 requested the Financial Creditor to return the post dated cheques furnished to it and to collect post dated cheques as there has been change in the authorised signatory of the Bank account of the Corporate Debtor. The Corporate Debtor has paid an amount of Rs.3,55,067/- between 18.03.2019 to 19.07.2019 on account of interest on the loan advanced to it. Respondent has also deposited TDS on the interest paid with the Income Tax Department up to June 2019. The Financial Creditor issued demand notice dated 24.09.2019 demanding amount with interest. No payment having been paid by the Corporate Debtor, Section 7 application was filed on 18.11.2019. Reply was filed to Section 9 application to which rejoinder was also filed. Adjudicating Authority by the impugned order dated 31.03.2022 although accepted the disbursement made by the Financial Creditor of Rs.1,60,00,000/, however, rejected the application observing that the intention of the parties is not clear and the Financial Creditor being a Non-Banking Financial Company has to issue a document wherein the NBFC states the amount of loan to be sanctioned, the terms and conditions including the rate of interest. Such a document has not been filed by the Financial Creditor. Financial Creditor having failed to establish the nature of transaction entered between the parties,

it cannot be held to be financial debt. It is useful to notice paragraphs 16 and 17 of the impugned order which contain reasoning of the Adjudicating Authority for rejection of the application:-

*“16. It is not in dispute that money was transferred by the Financial Creditor to the Corporate Debtor but the intention of the parties is not clear. The Financial Creditor being a Non-Banking Financial Company is under statutory obligation as per the RBI guideline dated 18 February 2013 wherein a NBFC has to issue a document wherein the NBFC states the amount of loan to be sanctioned, the terms and conditions including the rate of interest. Such a document has not been filed by the Financial Creditor.*

*17. The Financial Creditor has failed to establish the nature of the transaction entered between the Financial Creditor and the Corporate Debtor. In view of the above circumstances, we are not satisfied that the transaction falls within section 5(7), section 5(8) read with section 7 of the Code as the due to the lack of proper documentation. The Financial Creditor is, however, at liberty to pursue other remedies as may be available to them under the law.”*

3. We have heard Ms. Sadapurna Mukherjee, Learned Counsel for the Appellant and Shri Abhishek Anand, Learned Counsel for the Respondent.

4. Counsel for the Appellant in support of the Appeal submits that the disbursement of the amount of Rs.1,60,00,000/- was loan given to the

Corporate Debtor @ 8% per annum. It is submitted that it is not necessary to have a written agreement between the parties of the loan for it being financial debt within the meaning of Section 5(8). It is submitted that the financial transaction was fully established from the relevant documents brought on the record and further the Corporate Debtor in its reply itself has admitted that amount of Rs.1,60,00,000/- was received with 8% interest per annum. The nature of transaction has been admitted by the Corporate Debtor itself. Rejection of Section 7 application by the Adjudicating Authority on the ground that intention of the parties is not clear is unsustainable.

5. Shri Abhishek Anand, Learned Counsel for the Respondent refuting the submissions of the Appellant submits that the disbursement of Rs.1,60,00,000/- is not denied in the present case. It is submitted that the Appellant being NBFC it is obliged under the provisions of the RBI Act, 1934 and Circular issued by the RBI including Circular dated 01.07.2015 to have conveyed in writing to the borrower a sanction letter or otherwise the amount of loan sanctioned along with terms and conditions including annualised rate of interest, NBFC have not done so. Adjudicating Authority has rightly rejected Section 7 application. The Circular issued by the IBBI which are nature of guidelines are mandatory and statutory in character. There being absence of written agreement, the amount given to the Corporate Debtor cannot be classified as financial debt under Section 5(8). In alternative, it is submitted that the arrangement stood novated by the conduct of the parties. Respondent has paid the entire interest for total period of 120 days and as per the oral

arrangement between the parties, old cheques were asked to be refunded and new cheques were issued by letter dated 17.09.2019 with cheque dated 30.03.2020 and thereafter till 31.03.2022, hence, the application filed under Section 7 in November 2019 was premature and the application needs to be dismissed on this ground.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. The case of both the parties has been noted by the Adjudicating Authority itself in the impugned order. In paragraph 8 of the impugned order, the Adjudicating Authority has noted the documents which have been relied by the Financial Creditor in support of the case. Paragraph 8 of the impugned order is as follows:-

*“8. The Financial Creditor has placed the following documents on record:*

*a. Copies of Bank Statements of the Financial Creditor for the period of 01 March 2019 to 28 March 2019.*

*b. Confirmation of accounts dated 01 April 2019.*

*c. Letters dated 18 March 2019, 19 March 2019, 20 March 2019, 22 March 2019, 26 March 2019, 25 July 2019.*

*d. Form No. 16A for the Assessment Year 2019-20 dated 17 June 2019.”*

8. It is undisputed between the parties that amount of Rs.1,60,00,000/- was disbursed and interest of 8% as agreed between the parties was paid by

the Corporate Debtor. Reply has been filed by the Corporate Debtor to Section 7 application. It is useful to notice paragraph 3(b) & (c) of the reply where disbursement of Rs.1,60,00,000 @ interest of 8% per annum is pleaded by Corporate Debtor itself:-

*“b. At the instance of Ashok Kumar Dugar, a sum of Rs. 1,60,00,000/- was given to the Respondent for a period of 120 days carrying interest of 8% p.a. between the period March 18, 2019 and March 22, 2019,*

*c. As part of the arrangement, various post dated cheques were issued in favor of the alleged Financial Creditor towards repayment of the principal as well as interest. A schedule showing the list of post dated, cheques is annexed here to and marked with the letter "A". The Respondent has made paid interest tip to July, 2019. A schedule showing payment of such interest up to July, 2019 is annexed hereto and marked with the letter "B"”*

9. The pleading of the Corporate Debtor itself indicate that disbursement of interest @ 8% and interest was paid. For a financial debt within the meaning of Section 5(8), it is settled law that transaction need to be commercial borrowing and the disbursement should be for time value or money. The borrowing by the Corporate Debtor was commercial borrowing which disbursement was for the time value of money since the interest @ of 8% is an admitted fact between the parties as is clear from the pleadings. We are unable to subscribe to the view of the Adjudicating Authority that intention of the parties is not clear from the

material of the record. In paragraph 8 of the impugned order, the Adjudicating Authority itself has noticed the copies of the bank statements of the Financial Creditor, confirmation of the accounts, Form No.16A for the assessment year 2019-20 dated 17.06.2019 which reflected payment of interest. It is true that Form 16A itself cannot be a basis for declaring a transaction to be financial debt but Form 16A corroborates the case of the Financial Creditor that disbursement was for time value of money and interest on loan was paid. The Corporate Debtor's letter regarding confirmation of an account dated 01.04.2019 which has been relied is referred to in paragraph 8 of the impugned order itself had contained entry of interest of loan. It is useful to notice letter dated 01.04.2019 which is as follows:-

“To: Sinki Commodities Pvt. Ltd.  
33/1, N.S.Road, Room No. 344  
Marshall House  
Kolkata-700001

From: ABC FLOORS PVT.LTD  
72 Hemanta Basu Sarani (13 B B D Bag Road)  
KOLKATA-700001

Dear Sir/Madam,

Date: 1-Apr-2019

**Sub: Confirmation of Accounts**

**1-Apr-2018 to 31-Mar-2019**

*Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.*

*Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is*

received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

<b>Date</b>	<b>Particulars</b>	<b>Debit Amount</b>	<b>Date</b>	<b>Particulars</b>	<b>Debit Amount</b>
30-Mar-2019	Bank	7,671.00	18-Mar-2019	Bank	25,00,000.0
30-Mar-2019	Bank	5,699.00	19-Mar-2019	Bank	20,00,000.0
30-Mar-2019	Bank	9,205.00	20-Mar-2019	Bank	20,00,000.0
30-Mar-2019	Bank	8,767.00	20-Mar-2019	Bank	15,00,000.0
30-Mar-2019	Bank	3,945.00	22-Mar-2019	Bank	40,00,000.0
			26-Mar-2019	Bank	30,00,000.0
			30-Mar-2019	Interest on Loan	7,671.0
			30-Mar-2019	Interest on Loan	5,699.0
			30-Mar-2019	Interest on Loan	9,205.0
			30-Mar-2019	Interest on Loan	8,767.0
			30-Mar-2019	Interest on Loan	3,945.0
		35,287.00			1,50,35,28
	Closing Balance	1,50,00,000.00			1,50,35,28
		1,50,35,287.00			

Yours faithfully,

Authorised Signatory”

10. There were other letters accepting various amounts from the Corporate Debtor and in the letter which was written by the Corporate Debtor to the Financial Creditor, there is clear admission of containing receipt of the amount as loan. One of the letter dated 19.03.2019 is as follows:-

“Date: 19-03-2019

To,

SINKI COMMODITIES PVT LTD

MARSHALL HOUSE, ROOM NO. 34

33/1, N.S.ROAD

KOLKATA-700001

**PAN NO. AADCS7440L**

*Sub: Loan*

*Dear Sir,*

*We Confirm to accept Rs. 20,00,000.00 (Rupees Twenty lacks Only) as Loan from you for the period 19-03-2019 to 16-07-2019 for 120 days @8% p.a.*

*We are sending you herewith following cheques (payable at Kolkata /At Par) in your favour towards repayment of the principal and interest (net of TDS @10%) on due date for the above referred Loan.*

<i>Cheque No.</i>	<i>Cheque Date</i>	<i>Amount</i>	<i>Cheque Drawn On</i>
000133	17-07-2019	20,00,000.00	HDFC
000134	30-03-2019	5,129.00	HDFC
000135	16-07-2019	42,214.00	HDFC

*The above referred cheques are accepted by our director on behalf of the company within their power to do so.*

*Thanking you,*

*Yours Truly,*

*For A B C FLOORS PRIVATE LIMITED”*

11. These are all documents which are on the record of the Adjudicating Authority. Counsel for the Appellant has relied on judgment of this Tribunal in **“Agarwal Polysacks Ltd. vs. K. K. Agro Foods & Storage Ltd.- CA(AT)(Ins) No. 1126 of 2022”** where it was held by this Tribunal that requirement of written financial contract between the parties is not pre-condition for accepting an amount as a financial debt.

12. Now we come to the submissions raised by the Respondent. The principle submission which has been raised by the Counsel for the Respondent is that under the RBI guidelines namely— ‘Master Circular’ dated 01.07.2015 issued by the RBI. Guidelines have been issued on fair practices Code for NBFCs. Guideline 2A(ii) & (iii) has been relied which is as follows:-

*“(ii) Loan appraisal and terms/conditions*

*The NBFCs should convey in writing to the borrower in the vernacular language as understood by the borrower by means of sanction letter or otherwise, the amount of loan sanctioned along with the terms and conditions including annualised rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower on its record. As complaints received against NBFCs generally pertain to charging of high interest / penal interest, NBFCs shall mention the penal interest charged for late repayment in bold in the loan agreement.*

*It is understood that in a few cases, borrowers are not fully aware of the terms and conditions of the loans including rate of interest at the time of sanction of loans, either because the NBFC does not provide details of the same or the borrower has no time to look into detailed agreement. Not furnishing a copy of the loan agreement or enclosures quoted in the loan agreement is an unfair practice and this could lead to disputes between the NBFC and the borrower with regard to the terms and conditions. NBFCs are, therefore, advised to furnish a*

*copy of the loan agreement as understood by the borrower along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction/ disbursement of loans.*

*(iii) Disbursement of loans including changes in terms and conditions*

*(a) The NBFCs should give notice to the borrower in the vernacular language or a language as understood by the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.*

*(b) Decision to recall / accelerate payment or performance under the agreement should be in consonance with the loan agreement.*

*(c) NBFCs should release all securities on repayment of all dues or on realisation of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled/paid.”*

13. The submission of the Respondent is that the guidelines of the RBI are mandatory which has been held by the Hon'ble Supreme Court in **“Nedumpilli Finance Company Limited vs. State of Kerala and Ors.- (2022) 7 SCC 394”**. It is submitted that the said guidelines have been issued by RBI under Section 45 (JA) of the RBI Act, 1934. There can be no dispute to the submission of the Respondent that guidelines issued by the RBI are statutory and required to be followed by the NBFC. Reliance has been placed on paragraphs 48 and 50 of the judgment which are as follows:-

*“48. It is too long in the day to dispute the fact that the directions issued by RBI are statutory in character and binding on all NBFCs. It is so, in respect of the directions issued both under the RBI Act and under the Banking Regulation Act.*

*50. Apart from the provisions of Chapter III-B, the Regulations, directions and Master Circulars issued by RBI from time to time, also bind the NBFCs. There is a long list of Regulations/directions or Master Circulars issued by RBI from 1977 onwards, which shows that even before the 1997 Amendment to the RBI Act, some kind of control was exercised by RBI over NBFCs. After the 1997 Amendment, every aspect of the business of NBFCs, including loans, is covered by Master Circulars/directions issued by RBI. In other words, the only field occupied by the State enactments stands appropriated by the Master Circulars/directions.”*

14. In event, an NBFC is in breach of guidelines with respect to disbursement of any amount to company statutory consequences need to be followed and there can be no quarrel to the said proposition, but the question which has arisen for consideration is as to whether the amount which was disbursed by the Financial Creditor to the Corporate Debtor is a financial debt or not. When the amount was disbursed for time value of money and the amount is nothing but a commercial borrowing, the mere fact that there is some breach of RBI Guidelines which are statutorily in character, the Corporate Debtor cannot be permitted to contend that definition of financial debt under Section 5(8) need to be looked into with reference to the guidelines. IBC is a special legislation and it has been enacted with the object and purpose of insolvency resolution for corporate persons in a time bound manner. Financial debt within the meaning of Section 5(8) has to be looked into to find out as to whether the Corporate Debtor owes a financial debt or not which empowers the financial creditor to initiate insolvency proceeding against the Corporate Debtor.

15. We take notice of the recent judgment of the Hon'ble Supreme Court in ***“Global Credit Capital Ltd. vs. Sach Marketing (P) Ltd.- (2024) 9 SCC 482”*** where Hon'ble Supreme Court has held that the nature of transaction has to be found out to take a decision as to whether debt is a financial debt or not. The real nature of transaction thus, is a key to come to decision as to whether financial debt exists or not. It is true that there are no written agreements but financial contract between the parties is reflected from bank statement and

other materials which have been referred in paragraph 8 of the impugned order, as noted above. Even if there is no financial contract exists between the parties, Court is not precluded from looking into the real nature of transaction which can be proved by the Financial Creditor from the materials brought on the record. In the present case, Financial Creditor has brought sufficient material on record to prove that transaction between the parties was a financial debt.

16. We need to notice another submission which has been advanced by the Respondent is that the contract between the parties was novated by letter dated 17.09.2019 which was written by the Corporate Debtor by which new post dated cheques were sent to the Corporate Debtor which were all post dated upto 31.03.2022. The said letter has been brought on the record of the Appeal at Page 103.

17. Reliance has been placed on the letter by the Counsel for the Respondent which letter itself mentioned the amount that Corporate Debtor has taken loan from the Financial Creditor with interest which is clear from the aforesaid letter itself which letter is at Page 117:-

*“To  
Sinki Commodities Pvt. Ltd.  
33/1, NS. Road Room 344  
Marshall House, Kolkata- 700000*

*Sub: Inter Corporate Deposit as Interest free*

Re: Our letter dated 25.07.2019

Dear Sir

Please find enclosed herewith the below mention Cheque in favour of Sinki Commodities Pvt. Ltd as mutually agreed upon as a Interest free.

<i>Cheque No.</i>	<i>Cheque Date</i>	<i>Amount</i>	<i>Cheque Drawn On</i>
044803	30-3-2020	15,00,000.00	Axis Bank
044807	30-9-2020	10,00,000.00	Axis Bank
044808	31-10-2020	5,00,000.00	Axis Bank
044810	30-03-2021	15,00,000.00	Axis Bank

The below mention cheque should not be deposited without our prior written permission as mutually agreed upon.

002249	30-6-2021	40,00,000.00	Axis Bank
002250	31-12-2021	40,00,000.00	Axis Bank
002252	31-03-2022	35,00,000.00	Axis Bank

Thanking you

For ABC Floors Pvt. Ltd.”

18. The said letter clearly accept the liability when fresh post dated cheques are given according to own case of the Corporate Debtor. Counsel for the Appellant submits that prior to the said letter another letter was sent by the Corporate Debtor on 25.07.2019 wherein Financial Creditor was requested to send all post dated cheques and to collect the fresh cheques which letter was replied by the Financial Creditor vide letter dated 24.09.2019. Letter dated

17.09.2019 has also been referred to in letter dated 24.09.2019 which is as follows:-

*“24<sup>th</sup> September 2019*

*The Director*

*ABC Floors Private Limited*

*72 Hemanta Basu Sarani (13 B B D Bagh)*

*Kolkata 700001*

***Re: Refund the loan alongwith up to date interest within 30<sup>th</sup> September 2019***

*Respected Sir,*

*We refer to your earlier letter dated 25<sup>th</sup> July 2019 (enclosed as Annexure 1) mentioning that the change of authorized signatories has been done your respective bank accounts and therefore not to deposit the old cheques issued in our favour by your Company to refund the loan taken by your Company. As per the letter, it was requested to send our representative with the old cheques to collect the new ones. In response thereto, we had sent our representative to, your office many times for getting the cheques exchanged but there was no response/action from your end.*

*Surprisingly, yesterday only, we have received your letter dated 17<sup>th</sup> September 2019 (copy enclosed as Annexure 2) along with some cheques, details of which is as follows:*

<i>Serial No.</i>	<i>Date of post dated cheque</i>	<i>Cheque No.</i>	<i>Cheque drawn on</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>30-03-2020</i>	<i>044803</i>	<i>Axis Bank</i>	<i>1,500,000</i>
<i>2</i>	<i>30-09-2020</i>	<i>044807</i>	<i>Axis Bank</i>	<i>1,000,000</i>
<i>3</i>	<i>31-10-2020</i>	<i>044808</i>	<i>Axis Bank</i>	<i>500,000</i>

4	30-03-2021	044810	Axis Bank	1,500,000
5	30-06-2021	002249	Axis Bank	4,000,000
6	31-12-2021	002250	Axis Bank	4,000,000
7	31-03-2022	002252	Axis Bank	3,500,000

*In the letter, it is also mentioned that the loan given by our Company Sinki Commodities Private Limited to your Company A B C Floors Private Limited is interest free which is highly objectionable and not desirable. In this regard, kindly note that as per earlier agreed terms for the short term loan, interest was @ 8% per annum which has been paid by your Company upto 31<sup>st</sup> March, 2019. The contents of your letter are not acceptable to us. Considering both the letters, our Board of Directors have decided to call back our short term loans given to your Company Immediately. Thus, we request you to refund all the loans alongwith interest within 30<sup>th</sup> September 2019 which was earlier agreed between us when the loan was initially given to your Company for a temporary period. If our loan is not refunded within 30<sup>th</sup> September 2019, the effective rate of interest rate chargeable on the loans from 1<sup>st</sup> April 2019 onwards would be 18% per annum (in view of the continuous default from your side).*

*Our agreed rate of 8% per annum was fixed only for 90 days against which your Company had issued past dated cheques for interest and principal amounts. However, the cheques could not be produced before the bank for clearing because of change in signing authority in your bank. Please acknowledge receipt of this letter and do the needful in this regard within 30<sup>th</sup> September 2019.*

*Yours faithfully  
for Sinki Commodities Private Limited*

*Ashok Agrawal*

*Director*

*Copy to Mr Ashok Kumar Duggar and the directors of ABC Floors Private Limited (Mr Gopal Laha and Mr. Rajib Supre)”*

19. The materials on record, thus, clearly established that there was a financial debt and the case set up by the Respondent by giving fresh post dated cheques from 30.03.2020 to 31.03.2022 itself indicate that liability is being acknowledged and the financial debt has never been paid off. The application under Section 7 was filed on 14.11.2019. The novation of agreement is denied by the Financial Creditor and Financial Creditor clearly pleaded that it never accepted the post dated cheques. In the letter dated 24.09.2019 it was clearly stated that if the loan is not refunded within 30.09.2019, rate of interest would be 18%.

20. The materials brought on the record thus, clearly proved that Financial Creditor successfully proved that Corporate Debtor owe a financial debt which remain unpaid. We, thus, are satisfied that the Adjudicating Authority committed error in rejecting Section 7 application. In result, the order dated 31.03.2022 cannot be sustained and is set aside. Section 7 application having been rejected on 31.03.2022 and the Appeal being pending thereafter and there is nothing on the record to indicate that debt has been discharged by the Corporate Debtor, we are of the view that one opportunity be given to the Corporate Debtor to discharge its debt along with 8% interest which was initially agreed between the parties. We, in the ends of justice grant three

months time to the Corporate Debtor to discharge the debt and file proof of discharge of debt before the Adjudicating Authority within three months from today.

21. In view of the above, we dispose of the Appeal in following directions:-

- (i) The Financial Creditor having successfully proved financial debt to which Corporate Debtor is in default. The order dated 31.03.2022 cannot be sustained. The order dated 31.03.2022 is set aside.
- (ii) The Corporate Debtor is allowed three months' time to discharge its debt by paying the amount of Rs.1,60,00,000/- with 8% interest per annum within the period of three months from today and file a proof of discharge of debt before the Adjudicating Authority.
- (iii) In event of Corporate Debtor failure to discharge the debt within time allowed, the Adjudicating Authority shall pass an order for admission of Section 7 application.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

**New Delhi**  
**Anjali**