

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(IB)/1106(PB)/2020

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of

M/s. National Agriculture Cooperative Marketing Federation Limited

---(NAFED)Financial Creditor

Vs.

M/s. Synergy Petro Products Private Limited

---Corporate Debtor

Order delivered on: 31.05.2021

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**B.S.V. PRAKASH KUMAR,
HON'BLE ACTG. PRESIDENT**

**HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)**

For the Financial Creditor/Applicant: Mr. Harsh Upadhyay, Advocate

For the Corporate Debtor/Respondent: Ms. Priya Soni, Advocate

ORDER

Order Pronounced on: 31.05.2021

It is an Insolvency and Bankruptcy Application filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") by the Financial Creditor namely M/s. National Agricultural Cooperative Marketing Federation Limited (NAFED) for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor namely, M/s. Synergy Petro Products Private Limited on the ground that Corporate Debtor defaulted in repaying the Arbitral Award dated

10.07.2019, amounting to ₹55,37,797/- (i.e. monthly license fee from April 2007 to October 2009) and due license fee from November 2009 to 15th July, 2015, with interest of 6% per annum, aggregating to ₹3,14,36,864/- as on 11.10.2019.

2. Looking at the Company Application, it appears that this Applicant/Financial Creditor and the Corporate Debtor had entered into an Agreement dated 17.08.2005 and subsequently on 03.07.2006 in pursuance of which a Plot No. B-481 situated at Industrial Area, Bhiwadi, Rajasthan admeasuring 8444 sq. mts consisting of building and vacant land was given to Corporate Debtor for its business purpose (i.e. production of wide width PE Film, rigid PVC pipe, etc.) for 5 years and the Corporate Debtor was liable to pay the Applicant/Financial Creditor a monthly license fee of ₹50,000/- for the covered area and ₹0.50/- per sq. ft. for the open area subject to increase of 25% every 3 years, but the Corporate Debtor defaulted in paying the same from April 2007 onwards.

In these circumstances arbitral dispute arose between the Applicant/Financial Creditor and the Corporate Debtor which

culminated in Arbitral award dated 10.07.2019 passed by Sh. A.K. Garde, Ld. Sole Arbitrator and in the terms of said Arbitral award, the Corporate Debtor is liable to pay a sum of Rs. 55,37,797/- (i.e. monthly license fee from April 2007 to October 2009) and due license fee from November 2009 to 15th July, 2015 and interest @ 6% per annum from 01.04.2007 to 15.07.2015, as the Corporate Debtor continued to hold the possession of the said premise for the period mentioned above. The Applicant Counsel have submitted that 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 has failed to make the payment in terms of award and has thus committed default in terms of Section 7 of Insolvency and Bankruptcy Code, 2016.

3. In response to this, the corporate debtor has filed reply and raised some preliminary objections and as such sought for dismissal of the present application. The preliminary objections raised by the Corporate Debtor are that the Applicant doesn't fall under the definition of Financial Creditor and there is no existence of Financial Debt as defined under the provisions of the Code. The Corporate

debtor has submitted that the calculation of the license fees and interest is specifically denied and disputed. Furtherance to this Corporate Debtor submitted that the Alleged Arbitration Award dated 10.07.2019 was never within the knowledge of them and it is specifically denied that the Arbitration award has attained finality and mentioned that the Arbitration award is vague and is against the provisions of law and the same is subject to challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

4. Heard the submissions made by the Learned Counsel for both the parties. In the present case, the Applicant has submitted that the award was passed on 10.07.2019 and the same becoming enforceable on expiry of a period of 90 days thereafter and since the Corporate Debtor has failed to make the payment in terms of award, has committed default in terms of Section 7 of Insolvency and Bankruptcy Code, 2016. Further, it must be noted that the arbitral award was passed on the basis of rental agreement dated 17.08.2005 and subsequently on 03.07.2006 in pursuance of which a Plot No. B-481 situated at Industrial Area, Bhiwadi, Rajasthan admeasuring 8444 sq.

mts consisting of building and vacant land was given to Corporate Debtor for its business purpose. The basic nature of transaction is not covered under financial debt. Rental lease agreement can be operational debt but not financial debt. In any case, the transactions which transpired between the parties does not partake the character of a 'Financial debt' and as such the Applicant does not qualify to be a Financial Creditor in relation to the Corporate Debtor. Under these circumstances, we are of the considered opinion that the instant Application is liable to be dismissed and accordingly stands **dismissed.**

SD/-

**(B.S.V PRAKASH KUMAR)
ACTNG. PRESIDENT**

SD/-

**(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)**

31.05.2021
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