

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

**Company Appeal (AT) (Insolvency) No.1032 of 2023
& I.A. No.3485, 3526 of 2023**

IN THE MATTER OF:

Chandrashekhar Exports Pvt. Ltd.

...Appellant

Versus

Babanraoji Shinde Sugar & Allied Industries Ltd.

...Respondent

Present:

**For Appellant: Mr. Kunal Tandon, Mr. Pulkit Agarwall and Mr.
 Ashutosh Kumar, Advocates.**

For Respondent: Mr. Prakhar Tandon, Advocate.

ORDER

07.08.2023: This Appeal has been filed against order dated 28.04.2023 passed by the Adjudicating Authority by which order on a Section 9 application filed by the Appellant – the Operational Creditor, the Adjudicating Authority has refused to initiate the insolvency proceeding and rejected the application.

2. Learned counsel for the Appellant challenging the order contends that the Agreement at Clause 10 provides that:

“10. If Party No.2 fails to perform as per this Agreement, party no.2 has to repay the advance to party no.1 along with compensation penalty and losses incurred by party no.2 as claimed by party no.1.”

Hence, the Appellant was entitled for compensation penalty. Mere fact that principal amount of Rs.3 Crores has been returned does not absolve the Corporate Debtor from making payment of compensation penalty.

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3. The Adjudicating Authority in Para 19 and 20 has observed that the amount now claimed by the Appellant is Rs.1.70 Crore, which was claimed as compensation. The Adjudicating Authority took the view that the claim of compensation cannot be said to be amount on basis of which application under Section 9 can be admitted. It has been held that the Operational Debt claimed by the petitioner must be crystallized, undisputed and not something which requires adjudication by competent authority. We are of the view that the Adjudicating Authority has not committed error in rejecting Section 9 application.

4. As per Clause 10 of the agreement, the entitlement is for compensation and penalty if there is failure in performance on part of the Corporate Debtor. We are of the view that for crystallization of said compensation penalty adjudication is required by Competent Court and Adjudicating Authority has rightly not admitted Section 9 application. We are of the view that it is always open for the Appellant to take a remedy as available as per the contract in accordance with law. With these observations, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Archana/nn