

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

**Company Appeal (AT) (Insolvency) No. 12 of 2023**

**&**

**I.A. No. 4980 of 2022**

**IN THE MATTER OF:**

**Sanjay Bansal & Ors.**

**...Appellants**

**Versus**

**Utkal Steel and Power Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellants : Ms. Misha Rohatgi Mohta and Ms. Riya Dhingra,  
Advocates.**

**For Respondent : None.**

**ORDER**  
**(Hybrid Mode)**

**13.01.2025:** This Appeal has been filed challenging the Order dated 30.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Cuttack Bench, Cuttack) by which C.P. (IB) No. 22/CB/2022 filed by the Appellant to initiate Insolvency Resolution Process against the Corporate Debtor has been rejected.

**2.** Brief facts necessary to be noticed for deciding the Appeal are:

- i. The Appellants are Shareholders of Company namely SSAB Energy and Minerals Limited engaged in iron ore. A Share Transfer Agreement between the Shareholders of SSAB represented by the Appellant and Respondent was entered on 26.02.2021 for consideration of Rs.9,59,34,418/- .

- ii. The Share Transfer Agreement also contemplated sale of existing iron ore stock was about 8,000 MT.
- iii. The Agreement contemplated that iron ore shall either be sold by the Appellant on the price agreed or the Respondent shall purchase the existing stock or can be sold at the agreed rate between the Parties and the sale consideration shall be remitted to the Appellant.
- iv. It is submitted that after the Share Transfer Agreement, the entire stock was sold in May & June, 2021 and the Appellant thereafter sent several emails to the Respondent for remitting the amount received from sale of the iron ore and ultimately only an amount of Rs.1 Crore was remitted to the Appellants 25 Lakhs each which is reflected in their email dated 30.06.2021.
- v. It is submitted that in spite of several reminders when no amount was paid legal notice was also issued on 22.08.2021 and thereafter Application under Section 7 was filed claiming an amount of Rs. 1.65 Crores. In which Application Notices were issued, Corporate Debtor appeared and filed the Reply and Adjudicating Authority by Impugned Order has rejected the Application observing that there is no time value of money and further it is not clear as to what is the date of default and no time was fixed for selling the stock. Aggrieved by this Order, this Appeal has been filed.
- vi. The Appeal was heard by this Tribunal and Notices were issued on 17.01.2023.

- vii. In response to the Notice, the Reply has also been filed and the matter was also heard on 09.07.2024, where submission of the Respondent was recorded that amount of Rs.25 Lakhs each paid to the Appellant was towards the Share Purchase amount.
- viii. We had permitted the Parties to file the Additional Affidavit. The Additional Affidavit have been filed by the Appellant on 31.07.2024, where the Appellant has pleaded that the amount of Rs.25 Lakhs each totalling to Rs.1 Crore transferred to Appellant was towards proceed of the sale of iron ore and that was not paid towards the share sale consideration. In Paragraph 3 of the Affidavit following has been pleaded:

*“3. I further state and affirm that the said amount of Rs.1,00,00,000/- was paid by the Respondent to the Appellants as part of the proceeds from the sale of 8795 MT of iron ore, out of the total market value amounting to Rs.2.65 Crores due to the Appellants, as communicated to respondents vide email dated 08.04.2021. The said amount was not paid towards the share sale consideration to the outgoing shareholder, i.e., the Appellants herein.”*

**3.** Learned Counsel for the Appellant challenging the Order submits that the transaction clearly involved the Financial Debt within meaning of Section 5(8)(e) of the Insolvency and Bankruptcy Code, 2016 (for short ‘The IBC’ or ‘The Code’) to which the Adjudicating Authority has not adverted and the observation of the Adjudicating Authority that there is no time value of money in the transaction is not correct. It is further submitted that the

correspondence between the Parties clearly indicates that the amount of Rs.1 Crore was towards the value of sale of iron ores.

**4.** When the case was taken up today for hearing, no one appears for the Respondent. The Share Transfer Agreement is part of record which is filed as Annexure A-2 and the Share Transfer Agreement contemplated following:

*“...Further buyer and seller have agreed that the stock of iron ore of various grades and sizes as per annexure is lying in the factory premises as per the details which is excluding the total consideration. The stock will be valued and purchase has the option to buy it at a mutual agreed price or else facilitate sale of the same and remit the proceeds to outgoing equity shareholders through four representatives namely Sanjay Bansal, Ajay Bhat, Binod Sharma and Santosh Singhi in equal proportion. The sellers may arrange to sell the material and the buyer will be obligated to remit the proceeds to outgoing shareholders as agreed above. It is further agreed that the sale of iron ore will require appropriate permissions from mining dept....”*

**5.** Thus, the sale of iron ore which was contemplated in the above part of the Share Transfer Agreement was clearly apart from the sale consideration for the Share Transfer and was receivable and is clearly covered by Section 5(8)(e) and shall fall within the definition of Financial Debt. The correspondent between the Parties which has been brought on the record indicate that Appellant has been asking the Respondent to make the payment of Rs. 2.65 Crores, out of which amount of only Rs. 1 Crore was transferred which is reflected in the email dated 30.06.2021. In spite of the legal Notice issued on 22.08.2021, balance amount was not paid, hence the Application was filed under Section 7.

6. We have noticed that conflicting stands were being taken by the Respondent before the Adjudicating Authority as well as before this Tribunal. At the time of hearing on 09.07.2024, as noted above the amount of Rs. 1 Crore was sought to be explained towards consideration of Share Purchase Agreement which is apparently incorrect. The email dated 30.06.2021 which was sent by the Respondent, the series of correspondence has been brought on record where the Appellants have been requesting the Respondent to make the payment towards the sale of iron ore in the email dated 07.05.2021, the Appellant has informed the Respondent that the amount has been showed as a marked value of the iron ore is Rs. 2.65 Crores. In the email dated 08.04.2021 filed as Annexure A-3 it is mentioned that iron ore has been sold for amount of Rs. 2.65 Crores.

7. The main question for consideration for the Adjudicating Authority was as to whether there was a default on the part of the Respondent or whether the amount transaction was involved as a Financial Debt. The Adjudicating Authority in Paragraph 14 observed that there is no consideration for time value of money. In Paragraph 13 of the Order following has been observed:

*“13. Heard the learned counsel of both sides. Material on record perused. The dispute herein arises out of a Share Transfer Agreement executed on 26.02.2021. Apparently, there is no dispute at present in regard to transfer of shares. The claim of the Financial Creditors are in context of sale proceeds of iron ore stocks of SSAB, which in terms of the aforesaid Share Transfer Agreement was to be received by CD and then to be remitted to the Financial Creditors. FC claims that towards sale of aforesaid iron ore CD has received Rs.2.65 Crore and made remittances to the tune of*

*Rs.1.00 crore however, defaulted to remit the balance amount of Rs.1.65 crore.”*

**8.** Adjudicating Authority has made observation that in Paragraph 15 the date of default is an important factor and there is no sufficient reasoning given for arriving at the date of default. Appellants having been writing to the Respondent that about the value of the iron ore and the fact that has been sold and the fact that amount of Rs.1 Crore was remitted by Respondent clearly proves that the said amount was paid towards the price for sale of iron ores. No justification has come as to why the Respondent has not paid back the amount of Rs.1.65 Crores as claimed by the Appellant. In the Reply which was filed by the Respondent before the Adjudicating Authority it was sought to contended that the claim of damages cannot be decided in proceeding under Section 7 and there is no time value of money involved in the case. Acknowledgment of liability was also denied.

**9.** In view of the foregoing, we are of the view that Appellant has proved that the transaction involved as Financial Debt within meaning of Section 5(8)(e) of the IBC and Adjudicating Authority erred in rejecting the Application filed by the Appellant under Section 7.

**10.** In result, the Appeal is allowed. The Order impugned is set aside and Appeal is disposed of with following directions:

- i. Subject to depositing of balance amount of Rs.1.65 Crores before the Adjudicating Authority within a period of two months from the date of this Order and filing a sufficient prove before the Adjudicating Authority

about the deposit of the amount, the Adjudicating Authority shall close the proceedings.

- ii. Failing debt to be discharged as directed above, the Adjudicating Authority shall proceed to pass an Order of admission under Section 7 Application along with the consequential directions.

Appeal is disposed of accordingly.

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

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

*himanshu/kam*