

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2022 of 2024
& I.A. No. 7591 of 2024

IN THE MATTER OF:

Decor Paper Mills Ltd.

...Appellant

Versus

Mahashakti Plasto Pvt. Ltd.

...Respondent

Present:

**For Appellant : Mr. Amit Agrawal, Mr. Abhikaran Deo Agrawal,
Advocates.**

For Respondent : Mr. Rahul Sahastrabuddhe, PCS.

ORDER
(Hybrid Mode)

26.11.2024: Heard learned counsel for the Appellant. This Appeal has been filed against order passed by the Adjudicating Authority dated 06.09.2024 rejecting Section 9 application filed by the Appellant. The Adjudicating Authority by the impugned order has held that the amount of invoices covered under Section 10A has to be excluded and there is no agreement for interest and the amount which is claimed is reduced to Rs.92,09,732/-, which is less than the threshold limit of Rs.1 Crore and Section 9 application cannot be admitted. Aggrieved by the impugned order this appeal has been filed.

2. Learned counsel for the Appellant submits that there was running account between the parties and in view of the fact that there was running account and the Corporate Debtor has acknowledgment the payment by the

balance confirmation, amount which is to be accepted is that amount which is at the foot of the running account. He further submits that the Operational Creditor was a MSME and under Section 15 of the MSME Act, they were entitled for statutory interest and in event such interest is added, the claim amount will be more than Rs.1 Crore.

3. We have considered the submissions of learned counsel for the Appellant and perused the record.

4. The Adjudicating Authority in the impugned order has noticed the details of all invoices in Para 14 of the judgment and has come to conclusion that the invoices of 10A period are to be excluded from the claim amount and if the invoices falling under 10A period are excluded, balance amount will be Rs.92,09,732/-. The submission of the Appellant is that since there was running account, the amount which was at the foot of the account has to be treated as balance amount due towards the Corporate Debtor and 10 A period may not be considered. The Adjudicating Authority in Para 25 and 26 has considered and made following observations:

“25. It cannot be disputed that as many as 54 invoices issued between 14.05.2020 and 16.03.2021 fall under the period covered by Section 10A of the Insolvency and Bankruptcy Code, 2016. The total amount of the said invoices comes to Rs. 2,46,37, 735/-. It has been argued on behalf of the Operational Creditor that since the Corporate Debtor acknowledged the debt aggregating to Rs. 3,66,08,054/ ~ on 27.04.2023 by

way of balance confirmation letter dated 17.04.2023, the Corporate Debtor has, thus, waived its right and admitted the existence of the debt and in support of his contention, Counsel for the Petitioner has relied upon Naresh Chaudhary (Suspended Director JJ NIK-SAN Engineering Company v. Sterling Enamelled Wires Pvt. Ltd. And Anr., Company Appeal (AT) (Insolvency) No. 39 of 2023 & IA No. 137 of 2023. However, we have gone through the cited case and it has not been held anywhere in this case that if the debt falling due within 10A period is subsequently acknowledged by the Corporate Debtor, it would not be barred under Section 10A of the Insolvency and Bankruptcy Code, 2016. Therefore, it cannot be successfully argued on behalf of the Operational Creditor that if the operational debt falling due within 10A period is acknowledged subsequently by the Corporate Debtor, it would be absolved of the bar under Section 10A of the Insolvency and Bankruptcy Code, 2016. Therefore, we have no hesitation and holding that the aforementioned 54 invoices, which fall within 10A periods, have to be excluded as the claim under these invoices is clearly barred under section 10A of the Insolvency and Bankruptcy Code, 2016.

26. If the invoices failing under 10A period are excluded, we are left with as many as 17 invoices, the total value of which comes to Rs. 92,09,732/-. Now, the question arises whether there was any agreement between the parties with regard to the payment of interest or not. The Operational Creditor has claimed that the interest clause is duly mentioned on most of

the invoices and on as many as 5 invoices issued between 26.05.2023 and 30.06.2023, no interest clause is mentioned and even if interest in respect of these invoices is not counted, qua the rest of the invoices, the amount of interest comes to Rs.47,82,482/- which makes the total claim much more than the threshold limit of Rs. 1 crore.”

5. Even if, the argument of the Appellant is accepted for the time being that there was running account, the invoices which fall within the 10A period has to be excluded. The acknowledgment of debt for invoices during 10A period cannot permit the Operational Creditor to maintain the application and for invoices which are under 10A period has to be excluded since Section 10A clearly bars recovery of amount for default occurred during 10A period which is statutory scheme for a purpose and object. The statutory scheme which is reflected in Section 10A cannot be allowed to be defeated, even by claim of Appellant that amount claimed being running account or any action of the Corporate Debtor of confirmation of debt.

6. In so far as interest under MSME Act is concerned, the Adjudicating Authority has considered the same in Para 27 and returned following findings:

“27. On the other hand, it has been argued by the Counsel for the Corporate Debtor that there was no agreement between the parties with regard to the payment of interest nor any interest was paid by the Corporate Debtor at any point of time. He has referred to the ledger produced by the Operational Creditor itself which also shows that the interest was not

charged at any point of time, even in the past. Even in the balance confirmation dated 27.04.2023 executed by the Corporate Debtor, the interest is not included. Therefore, there was no agreement between the parties with regard to interest and the Operational Creditor has wrongly charged interest and the Petition is liable to fail on this ground.”

7. Neither there was any interest paid nor there was any agreement for interest at any point of time, hence, the Adjudicating Authority has rightly excluded the interest. In so far as interest under MSME Act is concerned, said interest can be looked into in proceeding which are initiated under the said act and that interest cannot be treated as operational debt in facts of the present case.

8. We do not find any infirmity in the order of the Adjudicating Authority rejecting Section 9 application filed by the Appellant. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn