NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1515 of 2023 & I.A. No. 5453 of 2023

IN THE MATTER OF:

Jai Narain Fabtech Pvt. Ltd. ...Appellant

Versus

Cheema Spintex Ltd. ...Respondent

Present:

For Appellant: Mr. Sumit Shukla & Mr. Sanjeev Panda, Advocates.

For Respondent: Already ex-parte.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 20.09.2023 by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by the Appellant/Operational Creditor for the resolution of Rs. 1,41,57,817/- which included interest @ 18% p.a from the due date, has been dismissed, inter alia, on the ground that the application filed under Section 9 was beyond the period of limitation and below the threshold of Rs. 1 Cr. excluding the amount of interest.

2. As per the Appellant, the goods, namely, polyester staple fiber was supplied to the CD on different occasion against the invoices issued from 20.01.2018 to 07.02.2018.

3. As per ledger account of the Respondent/CD maintained in the books of the Appellant, payment by the Respondent was made from time to time and the last payment was received on 05.07.2018.

4. It is submitted that the application under Section 9 was filed by the Appellant before the NCLT, Chandigarh electronically on 12.10.2021 and through physical mode on 18.10.2021 but the defects raised by the registry were not removed in view of the CIRP order dated 06.10.2021 passed by the Tribunal in CP No. (IB) 352/Chd/Chd/2018 in the matter of Kotak Commodity Services Pvt. Ltd. and Kotak Ginning & Pressing Industries Vs. Cheema Spintex Limited/(CD).

5. The Tribunal appointed Mr. Alok Kaushik as the Interim Resolution Professional (IRP) in the case of Kotak Kotak Commodity Services Pvt. Ltd.

6. The Appellant filed its claim in Form B to the IRP of the CD on 02.11.2021 pursuant to publication of Form A by IRP for invitation of claim.

7. The IRP confirmed the admission of claim submitted by the Appellant on 14.02.2022 and the status of the claim, having been accepted, was updated on IBBI portal on 16.03.2022.

8. However, it is further submitted that the order of CIRP dated 06.10.2021 was withdrawn on 30.05.2022 in view of a settlement.

9. It is alleged that the admission of the claim of the Appellant by the IRP gave a fresh base of limitation in view of the email of the RP dated 14.02.2022. It is alleged that the last payment was received from the CD on 05.07.2018 of Rs. 6 lakh as reflected in the ledger of the CD in the books of the Appellant. The limitation of three years had thus expired on 04.07.2021. The claim filed by the Appellant with the IRP was acknowledged on 14.02.2022 giving rise to a fresh period of limitation in terms of Section 18

of the Limitation Act, 1993 because the Hon'ble Supreme Court, vide its order dated 10.01.2022, has excluded the period from 15.03.2020 till 28.02.2022 for the purposes of limitation, as may be prescribed, under any general or special laws in respect of all judicial or quasi judicial proceedings. It is alleged that the balance period of limitation remaining as on 03.10.2021, if any, became available w.e.f. 01.03.2022.

10. It is further alleged that in cases where the limitation would have expired during the period between 15.03.2020 till 20.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have the limitation period of 90 days from 01.03.2022. It is also alleged that if the actual balance period of limitation remaining, w.e.f. 01.03.2022 is greater than 90 days than that longer period shall apply.

11. On this premise, it is submitted that the application filed by the Appellant under Section 9 is within the period of limitation.

12. In so far as the issue regarding the Appellant having not crossed the threshold is concerned, it is submitted that the Tribunal has only considered the claim of Rs. 74,97,097/- which was admitted by the IRP but without considering the amount of interest to which the Appellant was entitled to as per the terms and conditions of the invoice in which there is a provision that "interest @ 12%p.a will be charged if the payment is not made within required time". It is therefore, submitted that the Appellant has also crossed the threshold.

13. Counsel for the Appellant has also brought to the notice of this Court that subsequent to the filing of the present appeal, CIRP has again been initiated against the Respondent vide order dated 17.05.2024 in CP (IB) No. 132/Chd/Chd/2023 and the Appellant has already filed its claim before the IRP for an amount of Rs. 1,59,47,262/- but the IRP has admitted the claim of the Appellant to the tune of Rs. 74,97,097/- (principal amount only).

14. In this case, the Respondent has not been appearing and thus ex-parte argument has been heard.

15. The Appellant has been non-suited by the Tribunal on the issue of limitation and that the petition is being hit by Section 4 of the Code.

16. We will first take up the issue of threshold because if the threshold is not crossed by the Appellant then the petition shall not be maintainable. In this regard, Section 4 of the Code needs to be noticed which is reproduced as under:-

> "**Section 4: Application of this Part.**
>
> *[*]***4.** (1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:
>
> Provided that the Central Government may, by notification[1], specify the minimum amount of default of higher value which shall not be more than one crore rupees.
>
> [2][Provided further that the Central Government may, by notification[3], specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A.]"

17. According to the Appellant, the total amount of invoices is Rs. 74,97,097/- which is less than the amount of Rs. 1 Cr. prescribed as the threshold for filing the petition under Section 9 of the Code before the Tribunal.

18. The Appellant, in order to cross the threshold, has added the component of interest making it an amount of Rs. 1,41,57,817/- alleging that the interest is provided in the invoice which can be charged by the Appellant in case the payment is not made within the required time but the Appellant has failed to show that the said invoice has been signed by the CD.

19. Thus, the question arises as to whether the interest mentioned in the invoice which is not signed by the CD is a unilateral document and cannot be recovered. In this regard, this Tribunal in the case of S.S Polymers Vs. Kanodia Technoplast Ltd., CA (AT) (Ins) No. 1227 of 2019 decided on 13.09.2019 has held as under:-

> "3.The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by 'Corporate Debtor' to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

> 4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.
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> 5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code.
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> 6. We find no merit in this Appeal and it is accordingly dismissed."

20. Similarly, the Hon'ble Karnataka High Court in the case of Jyothi Limited Vs. Boving Fouress Limited, Company Petition No. 48 of 1998 decided on 01.12.2000 regarding winding up of company has observed that the invoice having not been signed by the both parties is an unilateral document and interest cannot be claimed.

21. This court in the case of Rohit Motawat Vs. Madhu Sharma, CA (AT) (Ins) No. 1152 of 2022, while dealing with similar situation has also taken the same view.

22. Thus, in view of the fact that the component interest cannot be added to be principal amount, on the basis of the entry and endorsement in the invoice which is not signed by the CD, the Appellant was entitled only to the

principal amount which is less than Rs. 1 Cr., therefore, the Appellant has failed to prove that it has crossed the threshold of Rs. 1 Cr. for maintaining the application under Section 9.

23. It has also come on record, as submitted by the Appellant, that after the dismissal of his petition filed under Section 9, there was another petition filed by some creditor in which order of CIRP has been passed on 17.05.2024 in CP (IB) No. 132/Chd/2023 and the claim filed by the Appellant of Rs. 1,59,47,262/- has been admitted by the IRP only to the extent of Rs. 74,97,097/- i.e. only principal amount and not the interest.

24. Thus, in view of the aforesaid facts and circumstances, since the Appellant has failed to cross the threshold for maintaining the petition under Section 9, we need not go into the issue of limitation and are of the view that the present appeal is without any substance and hence, the same is hereby dismissed. No costs.

I.As, if any, are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi
04th April, 2025
Sheetal