NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1045 of 2023 & I.A. No. 3577, 3578 of 2023, 3403, 4010 of 2024

IN THE MATTER OF:

Ajay Rana
Director of Erstwhile Company
Sarika Industries Pvt. Ltd. **...Appellant**

Versus

Sanjay Kumar Goel & Ors. **...Respondents**

Present:

For Appellant : **Mr. Gaurav Mitra, Ms. Udita Singh & Ms. Arushi, Advocates.**

For Respondents : **Mr. Vinit Trehan & Mr. Yash Srivastava, for R-1. Mr. Nitesh Kr. Sinha & Mr. Vivek Sharma, for R2/IRP.**

Mr. Adit Khorana & Ms. Simran Khorana, for R-3.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the suspended director of the CD, namely, M/s Sarika Industries Pvt. Ltd. against the order dated 25.07.2023, passed in CP (IB) No. 582/ND/2021, by the NCLT, New Delhi Bench, on an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short ' the Code') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short ' theRules') by M/s Redamancy World/Operational Creditor for resolution of the amount of Rs.

1,24,95,015/- has been admitted and Mr. Vivek Sharma was appointed as the Interim Resolution Professional (IRP).

2. At the time of issuance of notice in this appeal on 07.08.2023, this court had passed the following order:-

> "1. Learned Counsel for the Appellant is permitted to implead the GST Department as Respondent No.3. Amended memo be filed within three days.
>
> 2. Learned Senior Counsel for the Appellant submits that the principal amount for which the application was filed for Rs.79,82,857/- was the amount which the Appellant has not disputed in reply to demand notice. However, Appellant's case is that the GST Department has written to the Appellant not to make the payment to the Operational Creditor. It is submitted that the proceedings having initiated against the Appellant, the Appellant has to reverse the entire input tax credit.
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> 3. Learned Counsel for the Respondent has relied upon the order passed by the Delhi High Court in W.P.(C) 6208/2019- "Redamancy World vs. Additional Director General Goods and Services Tax Intelligence, Gurugram Zonal Unit & Anr."
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> 4. In the facts of the present case, we are of the view that the ends of justice be served in directing the Appellant to deposit the amount of Rs.79,82,857/- within two weeks by a Fixed Deposit in favour of the "Registrar, National Company Law Appellate Tribunal, New Delhi".
>
> 5. Counsel for Respondent No.1 accepts notice. Counsel for Respondent No.2 also accepts notice. Issue notice to the newly impleaded Respondent. Reply be filed within two weeks. Rejoinder, if any, may be filed within one week thereafter.
>
> 6. List the Appeal on 15.09.2023.
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> In the meantime, the order impugned dated 25.07.2023 shall remain stayed."

3. Pursuant to the aforesaid order, the Appellant deposited Rs. 40,00,000/- by way of fixed deposit number 701591 and Rs. 39,82,857 vide

fixed deposit number 701594, total amounting to Rs. 79,82,857/-, in the name of the Registrar, NCLAT New Delhi.

4. Directorate General of GST Intelligence was also impleaded as Respondent No. 3 and notice was issued to it which was accepted in court by the Counsel appearing on its behalf.

5. Brief facts of this case are that the CD is engaged in the business of manufacturing and supply of non-ferrous metal used for the purposes of manufacturing batteries whereas the Operational Creditor supplied the lead used for manufacturing of batteries .

6. Case set up by the Operational Creditor is that the CD has not made the payment of 38 invoices. The total outstanding amount is of Rs. 1,24,95,015/- as on 16.03.2018, out of which Rs. 79,82,857/- is the principal amount and Rs. 45,12,158/- is the amount claimed towards interest.

7. The OC served demand notice dated 19.09.2020, under Section 8 of the Code which was duly replied by the CD on 22.10.2020. It is alleged that the CD, in its reply dated 22.10.2020 sent to the demand notice dated 19.09.2020, admitted the outstanding amount of Rs. 79,82,857/- which it was ready to pay subject to issuance of NOC from GST Department because GST Department had directed the CD to stop payment of any pending dues to the OC vide its letter dated 14.05.2025 because of an investigation being conducted against the OC owing to its fake invoicing and wrongful tax credit. It was also the stand taken by the CD that the OC cannot claim the interest of Rs. 14,12,857/-unilaterally as there was no agreement between the parties

for payment of interest on delayed payments and thus, the application filed for the outstanding amount of Rs. 79,82,857/-, under Section 9 of the Code was not crossing the threshold of Rs 1 Cr. as provided in Section 4 of the Code. However, the Tribunal admitted the application, inter alia, holding that Directorate General of GST intelligence (Chandigarh Unit), vide reply dated 24.12.2020, had confirmed that they had issued letter dated 03.05.2019 to the CD and directed it to pay the dues directly to the bank account of Sh. Sanjay Goel, Proprietor of M/s Redamancy World/OC, therefore, non-payment of Rs. 79,82,857/- was unwarranted.

8. In so far as the component of interest of Rs. 45,12,158/- is concerned, the Tribunal has relied upon a decision of this Court in the case of Prashant Aggarwal Vs. Vikash Parasrampuria & Anr., CA (AT) (Ins) No. 690 of 2022 to hold that the interest on delayed payment is clearly stipulated in the invoice, therefore, it forms part of the debt.

9. Counsel for the Appellant has submitted that the CD had never admitted or acknowledged the liability of interest either in the reply to the notice issued under Section 8 nor in the reply to the application filed under Section 9 rather it was disputed, contending that there is no agreement in respect of the interest and the same cannot be claimed unilaterally in the invoice. In support of its contention, the Appellant has relied upon a decision of this Court in the case of Rishabh Infra Vs. Sadbhav Engineering ltd., CA (AT) (Ins) No. 1881 of 2024 in which it has been held that the Operational Creditor cannot add interest with the principal amount on the basis of unilaterally raised invoices in the absence of any agreement for interest or

admission of interest by the CD or any other document. He has further submitted that the decision in the case of Prashant Agarwal (Supra), solely relied upon by the Tribunal is also not applicable because the decision in the case of Prashant Agarwal (Supra) has been noticed by this Court in the case of Shitanshu Bipin Vora Vs. Sh. Haree Yarns Pvt. Ltd., CA (AT) (Ins) No. 2204 of 2024 and it has been held that without there being any agreement for interest, obligation of payment of interest on the basis of the condition in the invoice cannot be accepted. Counsel for the Appellant has further submitted that the OC had supplied the goods to the CD between the period from 23.10.2017 to 07.02.2019. It is alleged that the CD made the payment of goods supplied but withheld the amount of GST payable on the said goods. It is further submitted that GST Department vide letter dated 14.05.2025 directed the Appellant not to pay the said amount because of the reason that the department was making investigation in the alleged fake invoicing and wrongful tax credit claimed by the OC. It is further submitted that the Tribunal had taken note of the letter dated 14.05.2018 in its order but on the basis of letter dated 03.05.2019 has held that the CD failed to make the payment but the said letter was never addressed to the CD as the same was addressed to Chandigarh Zone of the GST Department. It is submitted that the CD had never received the letter dated 03.05.2019. Counsel for the Appellant has also submitted that the Respondent No. 3 issued summons to the CD to furnish details of the purchases made from the OC and also directed the CD to reverse the wrongful tax credit availed against the invoices raised by the OC. It is further submitted that CD was constrained to make the payment of the entire alleged outstanding due of Rs. 79,82,857/-

to the GST Department. It is also submitted that there was pre-existing dispute between the parties for non-payment of service tax dues by the OC and has relied upon a decision of this Court in the case of Feng Ji Vs. Giesecke & Devrient MS India Pvt. Ltd., CA (AT) (INS) No. 213 of 2023. Counsel for the Appellant has also argued that the case of the OC is based upon the order of the Hon'ble High Court in WP (C) No. 6208 of 2019 but the said order was passed after the impugned order was passed and cannot form the basis to contend that the CD defaulted in making payment of the dues at the time of issuance of demand notice dated 19.09.2020.

10. On the other hand, Counsel for Respondent No. 1 (OC) has submitted that the CD, in its reply dated 22.10.2020, issued under Section 8 of the Code, admitted the principal outstanding liability of Rs. 79,82,857/- and since there is a clause of payment of interest at the rate of 18% p.a in the invoice on account of delayed payment, the same has rightly been charged by the OC which comes to Rs. 45,12,857/- and thus the total amount comes to Rs. 1,24,95,015/-which crosses the threshold of Rs. 1 Cr. as provided under Section 4 of the Code. He has reiterated the decision of this Court in the case of Prashant Agarwal (Supra) and submitted that the decision in the case of Rishabh Infra (Supra) is not applicable because the principal amount was paid by the CD in that case which is not the case in the present appeal.

11. As regards the issue of pre-existing dispute, it is submitted that the Respondent No. 3, vide letter dated 03.05.2019, issued direction to the CD to deposit entire pending amount and hence, no pre-existing dispute on the

date of issuance of notice dated 19.09.2020 was existing. He has also referred to the decision of the Hon'ble Delhi High Court in W.P. (C) No. 6208 of 2019 in which the Hon'ble Delhi High Court has held that "the communication issued to the petitioner's customers restraining them from making any payment against supplies made by the petitioner is also without authority of law"

12. Counsel for Respondent No. 3 has submitted that it has no role to play in the present proceedings, therefore, it is neither a necessary nor a proper party, however, it is alleged that it had initiated investigation against the OC in 2017-18 since its backward supply chain of traders appeared to be dubious and not genuine and the scrutiny of the OC's invoices indicated that the same were fabricated. Accordingly, on 11.05.2018 the Respondent No. 3 asked the DGGI, Chandigarh to direct the CD not to release payments in favour of the OC. It is alleged that Respondent No. 3 vide its letter dated 03.05.2019 requested DGGI, Chandigarh to direct the CD to make such balance payment to the bank account of the OC. It is also submitted that based on the investigation it was revealed that the OC's supply chain was fake/ non-existent and based on the fabricated invoices. The CD had also wrongly availed input tax Credit (ITC) amounting to Rs. 1,56,17,780/-, therefore, on 24.02.2021 the OC's bank account was provisionally attached under Section 83 of the CGST Act. The CD wrote to Respondent No. 3 on 17.06.2021 and undertook to reverse Rs. 80 lakhs of ITC availed on account of the OC by August, 2021. Thereafter, in terms of Section 83(2) of the CGST

Act, the provisional attachment ceased to have effect after a period of one year i.e. from February, 2022 and the CD's account was no longer attached.

13. We have heard Counsel for the parties and perused the record with their able assistance.

14. The first and foremost issue in this appeal is as to whether the application filed under Section 9 was maintainable without including the interest in the total amount of claim, on the ground that interest is being charged on the basis of unilateral entry in the invoice without any other evidence on record of an agreement between the parties for payment of interest as claimed in the invoice on account of delay?

15. In this regard, there is no dispute that the principal amount of Rs. 79,82,857/- is less than the threshold of Rs. 1 Cr. and the interest component is of Rs. 45,12,857/- which is claimed by the OC on the basis of the entry in the invoice for charging interest at the rate of 18% p.a. on delayed payment. There is also no dispute that there is no other evidence on record which may suggest or indicate that the parties had agreed to pay 18% interest p.a. on the delayed payment of the invoice. Thus, the only evidence possessed by the OC is the invoice regarding which this Court, in the case of Rishabh Infra (Supra) and Shitanshu Bipin Vora (Supra), after taking into consideration the decision in the case of Prashant Agarwal (Supra), relied upon by the OC, has categorically held that mere unilateral entry of interest in the invoice, in the absence of an agreement for interest or any other document showing that the CD had accepted the obligation to pay the interest, is not sufficient to claim the same. Thus, in our considered opinion,

the Tribunal has committed an error in relying solely upon the unilateral entry in the invoice regarding the interest.

16. In so far as the issue of pre-existing dispute is concerned, the categoric stand of the CD is that it had admitted the supply of goods and outstanding amount of Rs. 79,82,857/- but it has also alleged that the said amount was not released because of the letter dated 14.05.2018 which was addressed by DG of GST to the CD. The text of the said letter dated 14.05.2018 is reproduced as under:-

माल और सेवाकर आसूचना
महानिदेशालय,
चंडीगढ़ आंचलिक ईकाई,
केंद्रीय राजस्व भवन प्लाट नं. 19,
सेक्टर 17 -सी , चंडीगढ़-160 017.

Directorate General of Goods & Services Tax Intelligence,
Chandigarh Zonal Unit:
Central Revenue Building, Plot No. 19,
Sector-17C, Chandigarh-160 017.
Tel. No. 0172-2971410
0172-2727519

F.No. IV(6)GSTI/CdZU/Inv/12/2018/ 836 Date: 14.05.2018

To

M/s Sarika Industries Pvt. Ltd.,
Plot No. 111, HPSIDC Industrial Area,
Baddi, Solan(HP)

Sirs,

Subject: **Investigations against M/s Redamancy World, 2592, Nai Basti, Naya Bazar, Delhi- 110006 (earlier at Fist Floor, 2656, Naya Bazar, Delhi) reg.**

Investigations conducted at premises of subject firm have revealed some discrepancies in its backward supply chain. You have been purchasing raw material from the subject firm. It is advised that payments to the subject firm may not be released till verification of its backward supply chain.

Yours Sincerely,

14/05/18

[MANOJ NAYYAR]
SENIOR INTELLIGENCE OFFICER

17. Whereas the letter dated 03.05.2019 was issued by the DG of GST Intelligence, Gurugram Zonal Unit to the Joint Director, DG of GST Intelligence, Chandigarh Zonal Unit and was not addressed to the CD. The said letter is also reproduced as under:-

DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE
गुरुग्राम आंचलिक इकाई /GURUGRAM ZONAL UNIT
५ वाँ प्लाट २४, मुदित स्क्वायर, सैक्टर ३२, गुरुग्राम १२२००१
5th Floor, Plot 24, Mudit Square, Sector 32, Gurugram, Haryana 122001
Telefax : 0124 – 2384023

F.NO: DGGI/GZU/INT/GR-E/REDAMANCY/2018-19/725 Dated: 03.05.2019

To
The Joint Director,
Directorate General of Goods and Services Tax Intelligence,
Chandigarh Zonal Unit, CR Building,
Sector-17C, Plot No. 19,
Chandigarh-160017

Subject :- Release of payment in favour of M/s Redamancy World- Reg

Please refer to this office letter no. Nil dated 11.05.2018 and your letter ref C.NO. IV(6)GSTI/CdZU/INV/12/2018/2932 dated 19.03.2019 on the above mentioned subject

2. In this regard, it is to inform that one of the supplier namely M/s Redamancy World, 2592, Nai Basti, Naya Bazar, Delhi-110006 (former address was First Floor, 2656, Naya Bazar, Delhi-110006) was engaged in supplying "Lead Ingots" to various manufacturing units on the strength of fake invoices, thus, without discharging proper liability of GST.

3. It is requested to that direct M/s Gravita Metal Inc., Plot No. 25-26, SICOP Industrial Estate, Kathua, J & K – 184104 M/s Radha Kishan Industries, Village Mirpur, Gurudwara, District- Sirmour, Kala Amb (H.P.) and M/s Sarika Industries Pvt Ltd, Plot no. 111, HPSIDC Industrial Area, Baddi, District- Solan, H.P to deposit the entire payment in bank account no. :- 2413214000087, Canara Bank, 30-31 Commercial Complex Wazirpur Industrial Area, Delhi-52 of Sh Sanjay Goel, Prop of M/s. Redamancy World, Delhi which is pending on account of sales made to the above mentioned parties.

(Gurusharan Singh)
Additional Director General
Gurugram Zonal Unit

18. It is further submitted that the OC has relied upon a letter of the DG of GST, Chandigarh dated 24.12.2020 which is a reply to the OC's legal notice dated 22.12.2020 in which it has been mentioned that in March, 2019, the CD was directed to make payment to the OC but there is no reference of any letter of May, 2019. It is submitted that the Tribunal lost sight of this fact that the letter dated 03.05.2019 was never received by the

CD and there was no deliberate attempt on the part of the CD to stop the payment of the principal amount of the OC.

19. Thus, in view of the aforesaid discussion, we are also of the opinion that the finding recorded by the Tribunal in this regard are erroneous and deserves to be set aside, holding that even the principal amount was withheld by the CD because of an issue been raised by Respondent No. 3 on account of fake invoicing at the instance of the OC.

20. Thus, looking from any angle, the present appeal has been found meritorious and the decision of the Tribunal to be erroneous, hence, the present appeal is hereby allowed and the impugned order is set aside though without any order as to costs. I.As, if any, pending are hereby closed.

21. Before parting with this order, the amount deposited by the CD by virtue of two FDs which have been noticed in the earlier part of this order is hereby directed to be refunded to the Appellant or his counsel after verification within a period of 30 days.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
29th August, 2025
SC