

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 927 of 2020

[Arising out of order dated 08.10.2020 in IB-1790/ND/2019 IA/2295/2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-V.]

IN THE MATTER OF:

Himalayan Crest Power Pvt. Limited
Village Manal, P O Sataun
Poanta Sahib, District- Sirmour (H.P).

..... Appellant.

Versus

Pankaj Khaitan
Resolution Professional, M/s. Sasi Power Pvt. Limited
H-38, LGF, Jangpura Extension,
Near Eros Complex, New Delhi-110014

Also at:

K-37/A, Basement, Kailash Colony,
Near Kailash Colony Metro Station
Delhi-110048.

..... Respondent.

Present:

For Appellant: Ms. Purti Gupta and Ms. Heena George, Advocates.

For Respondents: Mr. Neeraj Kumar Gupta, Advocate for R-1.

J U D G M E N T

(04th February, 2022)

Justice Anant Bijay Singh;

This Appeal has been preferred by the Appellant –Himalayan Crest Power Pvt. Limited being aggrieved and dissatisfied by the order dated 08.10.2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-V in IB-1790/ND/2019 IA/2295/2020 whereby

and where under the Petition filed by the Appellant herein under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (**for short IBC**) with a prayer to direct the 'Interim Resolution Professional (**for short IRP**) to admit the claim of the applicant company to the tune of Rs. 5,63,67,620/- towards the interest component' was rejected and further directed to the Resolution Professional to re-examine the principle of law on the point of limitation and reconsider the claim of the petitioner on the point of principal amount.

2. The facts giving rise to this Appeal are as follows:

i) The Appellant has provided a loan facility to the Corporate Debtor vide agreement dated 06.07.2010. The Corporate Debtor was unable to discharge its liability, Corporate Insolvency Resolution Process proceedings were initiated against it, vide order dated 29.01.2020 passed by the Ld. Adjudicating Authority and Mr. Pankaj Khaitan was appointed as the IRP of the Corporate Debtor.

ii) The Appellant herein filed its claim dated 12.02.2020 to the tune of Rs. 10,46,64,5558/- (Rs. 4,82,93,938/- as Principal Amount and Rs. 5,63,67,620/- as Interest Component), as Financial Creditor before the Resolution Professional.

iii) The Resolution Professional vide its communication dated 22.02.2020 only admitted the claim towards Principal amount to the tune of Rs. 4,82,93,938/- and without any cogent basis, rejected the interest component to the tune of Rs. 5,63,67,620/-.

iv) The Resolution Professional vide communication dated 24.02.2020, thereby stating that while reconciling the claims it was found that the interest amount claimed by the Appellant was not booked by the Corporate debtor in

its books of accounts and no TDS was deducted by the Corporate debtor and thus, the interest element sought by the Appellant was rejected. Thereafter, the Appellant has filed Application before the Ld. Adjudicating Authority and the same was rejected. Hence this Appeal.

Submissions on behalf of the Appellant

3. The Learned Counsel for the Appellant during the course of argument and in his memo of Appeal along with Written Submissions submitted that the Appellant is a Financial Creditor of the Corporate Debtor/Company to which loan facility was provided by the Appellant in terms of the Loan Agreement dated 06.07.2010 (Annexure-B at page 42 of the Appeal) in the nature of Inter-Corporate Deposits. In terms of the same a running account was being maintained and the amounts were being remitted on regular basis and interest @ 18% was thus accruable as per the Loan Agreement which was never disputed or denied by the Corporate Debtor. The said loan was provided to the Corporate Debtor on the basis of the Special Resolution as per the provisions of Companies Act.

4. It is further submitted that pursuant to the initiation of CIRP against the Corporate debtor, the Appellant as a Financial Creditor filed its claim dated 12.02.2020 before the Resolution Professional to the tune of Rs. 10,46,64,558/- (Rs. 4,82,93,938/- as principal and Rs. 5,63,67,620/- as interest) (Annexure-C at page 44 of the Appeal).

5. It is further submitted that the Resolution Professional admitted the claim of the Appellant towards the Principal amount however rejected the

claim raised by the Appellant towards the interest component on the premise that the interest amount due to the Appellant was not booked by the Corporate Debtor in its books of accounts and no TDS was deducted by the Corporate Debtor. The Appellant thereafter preferred I.A. No. 2295/2020 before the Ld. Adjudicating Authority seeking directions to the Resolution Professional to admit the claim of the Appellant towards the interest (Annexure-H at page 76 of the Appeal). However, the Ld. Adjudicating Authority not only rejected the interest component of the Appellant as barred by Limitation but also erroneously directed the Resolution Professional to reconsider the claim of the Appellant towards the principal component also being barred by limitation (which was duly admitted by the Resolution Professional).

6. It is further submitted that in view of the judgment passed by this Appellate Tribunal in the case of ***“Hussan Kadri Vs. Edelweiss Asset Reconstruction Co. Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 1073 of 2019”*** wherein it has been held that part payment extends the limitation period. Thus in view of the same, admittedly the last payment was made by the Corporate Debtor on 22.03.2019 (at page 53 of the Appeal) which clearly proves that the claim dated 12.02.2020 (both principal and interest components) were within limitation.

7. It is further submitted that the liability has been duly acknowledged by the Corporate Debtor in its Balance Sheet as on 31.03.2019 (at page 107, 107A, 108, 108B of the Appeal). Thus as per the law laid down by the Hon'ble Supreme Court in the case of ***“S. Natarajan Vs. Sama Dharman & Anr.”*** that

if the amount borrowed is shown in the balance sheet, it amounts to acknowledgement and the creditor shall have a fresh period of limitation from the date on which the acknowledgement was made. Furthermore, as per the law laid down by this Appellate Tribunal in the case of **“Vivek Jha Vs. Daimler Financial Services India Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 756 of 2018”** wherein it has been observed that *“In Law, an ‘Acknowledgment’ in writing within expiration of prescribed period will mark a new commencement period for limitation to base a claim and the same will not create a new contract. In fact, it only extends the limitation period”* the claim filed by the Appellant is within limitation.

8. It is further submitted that the claim is within limitation in terms of the latest judgment of the Hon’ble Supreme Court in the case of **“Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr., 2021 SCC OnLine SC 321”**.

9. It is further submitted that it is settled law that part payment made prior to the expiry of limitation period of three years, extends the limitation period the same is evident from the ledger account that the payments were made by the Corporate Debtor on various dates, thus the limitation period stood extended.

10. It is further submitted that it is evident from the fact that prior to expiry of three years’ time period from 21.12.2010(at page 47 of the Appeal) i.e. before 21.12.2013, the payment was made on 17.12.2013 (at page 49 of the Appeal) thereby further extending the limitation period by three years. The next payment was made on 05.07.2016 (at page 51 of the Appeal) prior to the

expiry of three years from the last payment (i.e. within three years from 17.10.2013) which again extended the limitation till 05.07.2019. The last payment was made on 22.03.2019 (at page 53 of the Appeal) within the extended limitation period and further extending the limitation by three years. Thus, in view of the same, the claim raised by the Appellant on 12.02.2020 for principal and interest components was within limitation and therefore, the Ld. Adjudicating Authority erred in declining the interest component and re-examine the principal component due to the Appellant is contrary to the provisions of law.

11. It is further submitted that the Ld. Adjudicating Authority has not considered these aspects of the matter and rejected the Application filed by the Appellant. Based on these submissions the impugned order is fit to be set aside and the Appeal be allowed.

Submissions on behalf of the Respondent

12. The Learned Counsel for the Respondent during the course of argument and in his Reply Affidavit along with Written Submissions submitted that as to whether the interest for the period from 01st August 2010 to 29th January 2019 (being CIRP commencement date) can be recognised as a liability of the Corporate Debtor and corresponding claim of interest can be admitted by the Resolution Professional, despite the fact that:

- i) The interest for the said period is nowhere reflected in the Audited Financial statements of the Corporate Debtor or the Appellant;
- ii) The data provided by the ex-management of the Corporate Debtor to the Resolution Professional, also nowhere match the amount of claim for interest;

- iii) The interest was never booked as an expense by the Corporate Debtor (at page 25 of the Reply Affidavit) and never recognised as income by the Appellant (at page 17 of the Reply Affidavit);
- iv) The TDS was never deducted by Corporate Debtor and never availed by the Appellant;
- v) The loan agreement is ex-facie bogus, as it bears the rubber stamp of CIN of the Corporate Debtor and is neither Notarised nor registered, no stamp duty paid thereon. There was no requirement of mentioning CIN on the letterhead of the companies at the time of the purported date of the agreement and no subsequent requirement to mention the same on documents executed prior to enforcement of new Companies Act, 2013. This makes it clear that the said document at Annexure B of the Appeal is a fabricated document by *antedating* the same.
- vi) The statement of accounts annexed as Annexure –C at page 63 of the Appeal, purporting to be the ledger account of Appellant in the books of Corporate Debtor is also bogus as the same does not match with the audited account nor does it match with the tally data provided by the Ex- Management of the Corporate Debtor.

13. It is further submitted that the effect of inordinate delay of 9 years in recognising of interest income by the Appellant in its Balance Sheet and also of no corresponding booking of interest in its accounts by the Corporate Debtor. The Hon'ble Supreme Court in the case of **“Urvashi Aggarwal (Since Dead) Vs. Kushagr Ansal (Successor in interest of erstwhile Defendant No. 1 Mrs. Suraj Kumari) & Ors., Civil Appeal No. 2525 of 2019** held as follows:

“ 12. The silence maintained by the Plaintiffs for about 12 years amounted to abandonment of the Agreement and we approve the finding in this regard made by the Trial Court.”

14. It is further submitted that the instant case also there has been no action by either party to recognise the interest in the books of accounts which are essentially governed by the provisions of the Companies Act, 1956 and subsequently by the Companies Act, 2013. Section 209(3) of the Companies Act, 1956 reads as hereunder:

“ (3) for the purpose of sub sections (1) and (2) proper books of accounts shall not be deemed to be kept with respect to matters specified therein-

(a) if there are not kept such books as necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and

(b) if such books are not kept on accrual basis and according to the double entry system of accounting.”

15. It is further submitted that the loan agreement dated 19.07.2010, in para 2 reads as hereunder:

“2. Interest- the Principal balance shall bear interest at the rate of 18% per annum, accruing daily.”

The alleged agreement as well as the law as mentioned above required that the interest must be charged in accounts on “Accrual” basis and there is a complete absence of any compliance of law as well as alleged contractual terms, therefore, without prejudice to the plea that the agreement itself is bogus document, it can be seen that there was a complete disregard of law for Company Appeal (AT) (Insolvency) No. 927 of 2020

continuous 9 years, leading to an inference that there never existed any agreement for payment of interest.

16. It is further submitted that the accounting standard for revenue recognition is AS-9 for the purpose of accounting as applicable to Appellant is relevant as the interest claimed by the Appellant constitute revenue for the Appellant. The relevant paragraphs of AS-9 read as hereunder:

“13. Revenue arising from the use by others of enterprise resources yielding interest, royalties and dividends should only be recognised when no significant uncertainty as to measurability or collectability exists. These revenues are recognised on the following bases:

(i) Interest : On a time proportion basis taking into account the amount outstanding and the rate applicable.

(ii) Royalties : On an accrual basis in accordance with the terms of the relevant agreement.

(iii) Dividends from investments in shares : When the owner’s right to receive payment is established.

Disclosure

14. In addition to the disclosures required by Accounting Standard 1 on ‘Disclosure of Accounting Policies’ (AS 1), an enterprise should also disclose the circumstances in which revenue recognition has been postponed pending the resolution of significant uncertainties.”

17. It is further submitted that even accounting standard require the Appellant to recognise interest on annual basis and disclose the same in its audited accounts which admittedly has not been done, giving rise to an inference that the interest was never intended to be paid or received or at least was never given effect to for a long as 9 years and thus cannot be enforced by way of claim now, therefore, the Ld. Adjudicating Authority has rightly passed the impugned order. Based on these submissions the instant Appeal is fit to be dismissed.

FINDINGS

18. After hearing the parties and having gone through the pleadings made on behalf of the parties, we are of the considered view that the following facts are admitted in the instant Appeal.

- The Appellant has provided a loan facility to the Corporate Debtor vide agreement dated 06.07.2010. The Corporate Debtor was unable to discharge its liability, Corporate Insolvency Resolution Process proceedings were initiated against it, vide order dated 29.01.2020 passed by the Ld. Adjudicating Authority and Mr. Pankaj Khaitan was appointed as the IRP of the Corporate Debtor.
- The Appellant herein filed its claim dated 12.02.2020 to the tune of Rs. 10,46,64,5558/- (Rs. 4,82,93,938/- as Principal Amount and Rs. 5,63,67,620/- as Interest Component), as Financial Creditor before the Resolution Professional.
- The Resolution Professional vide its communication dated 22.02.2020 only admitted the claim towards Principal amount to the tune of Rs.

4,82,93,938/- and without any cogent basis, rejected the interest component to the tune of Rs. 5,63,67,620/-.

- The interest for the period from 01st August 2010 to 29th January 2019 (being CIRP commencement date) can be recognised as a liability of the Corporate Debtor and corresponding claim of interest can be admitted by the Resolution Professional, despite the fact that - i) The interest for the said period is nowhere reflected in the Audited Financial statements of the Corporate Debtor or the Appellant. ii) The data provided by the ex-management of the Corporate Debtor to the Resolution Professional, also nowhere match the amount of claim for interest. iii) The interest was never booked as an expense by the Corporate Debtor (at page 25 of the Reply Affidavit) and never recognised as income by the Appellant (at page 17 of the Reply Affidavit). iv) The TDS was never deducted by Corporate Debtor and never availed by the Appellant. v) The loan agreement is ex-facie bogus, as it bears the rubber stamp of CIN of the Corporate Debtor and is neither Notarised nor registered, no stamp duty paid thereon. There was no requirement of mentioning CIN on the letterhead of the companies at the time of the purported date of the agreement and no subsequent requirement to mention the same on documents executed prior to enforcement of new Companies Act, 2013. This makes it clear that the said document at Annexure B of the Appeal is a fabricated document by *ante-dating* the same. vi) The statement of accounts annexed as Annexure –C at page 63 of the Appeal, purporting to be the ledger account of Appellant in the books of Corporate Debtor is also bogus as the same does not match with the audited account nor

does it match with the tally data provided by the Ex- Management of the Corporate Debtor.

- It is also an admitted fact that the inordinate delay of 9 years in recognising of interest income by the Appellant in its Balance Sheet and also of no corresponding booking of interest in its accounts by the Corporate Debtor.
- The Hon'ble Supreme Court in the case of **“Urvashi Aggarwal (Since Dead) Vs. Kushagr Ansal (Successor in interest of erstwhile Defendant No. 1 Mrs. Suraj Kumari) & Ors., Civil Appeal No. 2525 of 2019** held that the silence maintained by the Plaintiffs for about 12 years amounted to abandonment of the Agreement and we approve the finding in this regard made by the Trial Court.

ORDER

19. Taking all these facts and on the basis of the judgment passed by the Hon'ble Supreme Court in the case of **“Urvashi Aggarwal (Since Dead) Vs. Kushagr Ansal (Successor in interest of erstwhile Defendant No. 1 Mrs. Suraj Kumari) & Ors., Civil Appeal No. 2525 of 2019”**, we are of the considered view that the aforementioned judgment is applicable in this case and the Ld. Adjudicating Authority has rightly rejected the Application. Thus, there is no illegality committed by the Ld. Adjudicating Authority while passing the impugned order, therefore, we do not need to interfere in the impugned order. The impugned order dated 08.10.2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-V in IB-

1790/ND/2019 IA/2295/2020 is hereby affirmed. There is no merit in the Appeal. The Appeal is hereby dismissed. No order as to costs.

20. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi

04th February, 2022

R. Nath.