

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2105 of 2024
& I.A. No. 7838 of 2024

IN THE MATTER OF:

**K. Lakshmi Narayana,
Proprietor of Lalithaambica Enterprises**

...Appellant

Versus

Hindustan Unilever Ltd. (HUL)

...Respondent

Present:

For Appellant : Mr. Hitendra Nath Ruth, Ms. Laxmi, Advocates.

**For Respondent : Mr. Ativ Patel, Ms. Viloma Shah, Mr. Viraj Raiyani,
Advocates.**

ORDER
(Hybrid Mode)

27.01.2025: Heard learned counsel for the Appellant as well as learned counsel for the Respondent. This appeal has been filed against order dated 05.09.2024 passed by the Adjudicating Authority by which Section 9 application filed by the Appellant has been rejected. The Adjudicating Authority in the impugned order has returned finding that in the invoices which have been submitted only few invoices i.e. from 31.05.2017 to 05.08.2018 are within three years of limitation and aggregate of invoices falls much below the threshold limit of Rs.1 Crore, therefore, the application cannot be admitted. Further, the submission of the Corporate Debtor has been noted that there was pre-existing dispute, which is proved from the legal notice dated 17.01.2019.

2. Learned counsel for the Appellant challenging the order submits that there is running account between the parties and invoices relate to the period

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from 2008 to 2018. He submits that Appellant-Operational Creditor was entitled to charge 24% interest and in event, Principal Amount i.e. Rs.59 Lakhs is added to 24% interest amount, it will be more than One Crore. Learned counsel for the Appellant further submitted that the Operational Creditor is a MSME.

3. Learned counsel for the Respondent refuting the submissions of learned counsel for the Appellant submits that present is a case where in the tabular chart which have been filed along with the Section 9 application details of WON Number, Claim Amount, Submission Date, Settled Date, Settled Amount have been provided, which mentions the first invoice dated 15.04.2008 and last notice is dated 16.08.2018. Learned counsel for the Respondent submits that the legal notice given by the Operational Creditor on 17.01.2019 itself proves that there is pre-existing dispute.

4. We have considered the submission of learned counsel for the parties and perused the record.

5. The finding which has been returned by the Adjudicating Authority in Para 17 clearly provides that invoices which are within three years of limitation are much below the threshold of Rs.1 Crore. The submission of the Appellant that he is entitled for charging 24% interest is not supported by any Purchase Order or any other material on the record. The claim of the Appellant that it is a MSME, therefore, it is entitled to charge 24% interest cannot be accepted. He further submits that under the Creditor Terms, the Operational Creditor was entitled to charge 24% penalty in event of delayed

payment to the Operational Creditor. Learned counsel for the Respondent submits that in event the cheque are deposited and bounced then only penalty of 24% is to be imposed, which is provided in Clause (f) of the Credit Terms. Clause (f) is as follows:

“f. CHEQUE DISHONOUR:

In the event of any of your cheques being dishonoured by your bankers, we will charge you penalty at the rate of 24% per annum on the gross value of the invoice including taxes for the period when the cheque was deposited in the bank until the date of realization of the same amount from you by way of demand draft.

The charges for the bank draft in such a case will be borne by you.

This penalty will be charged to you through a debit note.”

6. We are of the view that the above clause in no manner could be read to claim 24% interest by Operational Creditor. The above submission of the Appellant cannot be accepted.

7. Now coming to the Legal Notice dated 17.01.2019, Para 3 of the notice provides as follows:

“3. It is informed that you are acting to monopolize your business activities, resorting to unethical commercial relations and by your acts of omissions caused extensive business loss in terms of profits, and as on today your company is liable to account for a sum of Rs. 3,95,58,217.67 ps to our client. You are called upon to pay the said amount together with interest at the

rate of 24% pa towards business losses and the amount payable to our client on its account. Since our client is averse to litigation, you are informed to communicate your willingness to refer the dispute to Arbitration or conciliation by mutually agreed Arbitrator/Mediator, preferably a Retired Judge or a Chartered Accountant, for amicable settlement, if you are not willing to pay the amount due as demanded by our client. You are further informed that the response is expected within two weeks from the time of receipt of this notice, failing which our client is constrained to approach the appropriate court of law, making your company liable for costs and damages.”

8. The above notice was issued prior to the Demand Notice which was issued by the Appellant on 13.09.2019. Thus, according to own showing of the Appellant dispute was raised and he asked in the notice to refer the matter for arbitration, which itself proves existence of dispute. Hence, the Adjudicating Authority has rightly rejected Section 9 application due to reasons as given in the impugned order. We do not find any merit in the Appeal. Appeal is dismissed. However, it shall be open for the Appellant to pursue other remedies as available in law.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

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