

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 83 of 2023 &
I.A. No. 345 of 2023

IN THE MATTER OF:

Bhotika Trade & Services Pvt. Ltd.

....Appellant

Vs.

Avinash EM Projects Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Anup Kumar D. Sayare, Advocate

For Respondent: Ms. Prakriti Joshi, Advocate

O R D E R

24.04.2023: Heard Learned Counsel for the appellant. This appeal has been filed against the order dated 14.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court-II) by which Section 9 application filed by the appellant has been rejected on the ground that it is less than the threshold prescribed under Section 4. The appellant has filed the application under Section 9 claiming total amount of Rs.1,61,12,474.86 which included the interest amount.

2. Adjudicating Authority took the view that there is no agreement filed by the appellant where parties have agreed to interest, hence, the interest cannot be included in the claim and the principle amount being less than 1 crore, application is rejected.

3. Learned Counsel for the appellant challenging the order submits that there were several letters on the record including the letters dated 15.03.2017 & 20.02.2020 which are at page 76 & 77 of the paper book where the Corporate Debtor has confirmation of debit balance which included also the amount of the interest. In letter dated 15.03.2017 following was stated:

“As requested by you vide your letter dated 10.03.2017, we hereby confirm and admit that Debit balance as per our record for Bhotika Trade & Serv. Pvt. Ltd. is Rs. 51,90,882/- and interest of Rs. 48,45,033.46.”

4. Learned Counsel for the respondent fairly submitted that the letters were not denied they were issued in the normal practice of the business.

5. Be that as it may there being material on record to indicate that Corporate Debtor has issued the debit balance which include the interest, the application filed by the appellant could not have been rejected on the ground i.e. less than threshold.

6. Adjudicating Authority itself has noticed the Judgment of this Tribunal in *Prashant Agarwal vs. Vikash Parasrampuriah & Anr.* in paragraph 15 which clearly support the case of the appellant.

7. We thus are of the view that the order of Adjudicating authority rejecting the application cannot be sustained, we set aside the order impugned dated

14.11.2022, revive the application before the Adjudicating Authority to be heard afresh in accordance with law.

8. Learned Counsel for the parties may appear before the Adjudicating Authority on 15.05.2023, before that copy of this order may also be filed along with an application.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

sa/nn