

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 36 of 2023

IN THE MATTER OF:

Permal Wallage Pvt. Ltd.

...Appellant

Versus

Narbada Forest Industries Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Ashutosh Ranjan, Ms. Savita Valecha, Advocates

For Respondent: Mr. Karan Valecha, Advocate

ORDER

17.01.2023: Heard Learned Counsel for the parties.

2. This is an Appeal filed against the Order dated 03.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench) by which Application filed under Section 9 of the IBC, 2016 by the Appellant has been rejected.

3. The Appellant had filed earlier an Application under Section 9 in the year 2017 which was withdrawn on settlement entered into between the parties for payment of certain principal amount and the interest. After the settlement between the parties, the Corporate Debtor had made a payment of operational debt of Rs. 1,74,16,527/- as per settlement amount of total principal amount and out of interest for Rs. 48 Lacs, amount of Rs. 16 Lacs was paid. There being some default in payment of the interest amount, Section 9 Application was filed which has been rejected by the Adjudicating Authority. The Adjudicating

Authority has made following observations in paragraphs 8,9 and 10 of the Impugned Order:

“8. At the outset, we note that this application is filed by the Operational Creditor for execution of terms of settlement agreement dated 07.11.2017. In our considered opinion, the amount arising out of some settlement agreement cannot be termed as operational debt within the meaning of Section 5(21) of the IBC, 2016.

9. Apart from above, it is not in dispute that the Corporate Debtor paid the Operational Creditor the entire operational debt (principal). The Corporate Debtor has also paid a sum of Rs. 16 Lakhs towards the interest on principal sum. It is a case of the Operational Creditor that the Corporate Debtor has to pay additional sum of Rs. 1,28,00,000/- towards the interest which amount is disputed by the Corporate Debtor. Earlier an application was disposed of on the ground of settlement. In pursuance to the settlement arrived at, the operational debt of Rs. 1,74,16,527/- (principal amount) and the interest to the extent of Rs. 16,00,000/- has already been paid. The balance amount of Rs. 32,00,000/- remained unpaid against Rs. 48,00,000/- towards interest as per settlement agreement. However, now the Operational Creditor is before us to claim a sum of Rs. 1,28,00,000/- (Rs. 1,44,82,040-Rs. 16,00,000/-) towards the interest. We sincerely feel that the Operational Creditor has been using the IBC proceeding for recovery of disputed amount and which is not object of the Insolvency and Bankruptcy Code, 2016. On this ground alone, this application is not maintainable.

10. Moreover, there appears to be a dispute about the terms of settlement agreement as far as calculation of interest amount is concerned. It cannot be resolved before this Adjudicating Authority.”

4. Learned Counsel for the Appellant challenging the order contends that liberty was granted in the consent terms/settlement agreement that in event any breach is committed, the Application be revived. He further submits that post dated cheques were bounced and Appellant filed Application under Section 9 was for recovery of the balance interest amount which was unpaid.

5. Having heard Learned Counsel for the parties, we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon’ble Supreme Court in “**Swiss Ribbon Pvt. Ltd. Vs. Union of India**” ((2019) 4 SCC 17), IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor. We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application filed by the Appellant. There is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Basant/nn