

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1166 of 2022

[Arising out of Order dated 7th June, 2022 passed by the
Adjudicating Authority (National Company Law Tribunal,
New Delhi) in C.A. No. 1682 of 2019 in CP (IB) No.
452/ND/2017]

IN THE MATTER OF:

Technico Industries Ltd.
Registered Office
103, Pratap Bhawan
Near Indian Express Building
Bahadur Shah Zafar Marg
New Delhi – 110 002

...Appellant

Versus

1. Debashis Nanda
Liquidator of J.V. Strips Limited
In the matter of J.V. Strips Limited
(In Liquidation)
S-7, Manish Plaza, Plot No. 2
I.P. Extension, Patparganj
Delhi – 110 092
Email: dnanda.cma@gmail.com
Mobile : (+91) 9717000163

...Respondent No.1

2. Ashwani and Sons
Through Authorized Representative
1246/2, Meerut Road
Ghaziabad – 201 003

...Proforma
Respondent No. 2

3. Ilaakaa Steel Limited
Through Authorized Representative
Z-222, Loha Mandi
Naraina Vihar, New Delhi – 110 028

...Proforma
Respondent No. 3

4. Jindal Buildsys Ltd.
Through Authorized Representative
Plot No. 197, Sector – 4
Phase – II, Indl. Area

- | | | |
|------------|---|--|
| | Growth Center Bawal
Rewari (Haryana) – 123 501 | ...Proforma
Respondent No. 4 |
| 5. | Bharti Engineering Co.
Through Authorized Representative
1531/24, Daultabad Road
Gurugram – 122 006 | ...Proforma
Respondent No. 5 |
| 6. | Design O Creations
Through Authorized Representative
175, HIS IDC Industrial Estate
Barhi, Ganaur Sonapat
Harayana – 131 101 | ...Proforma
Respondent No. 6 |
| 7. | GSD Components Pvt. Ltd.
Through Authorized Representative
A-28, Dabua Extn., Debua Pali Road
NIT Faridabad, Haryana – 121 001 | ...Proforma
Respondent No. 7 |
| 8. | Jaity Steel Strips
Through Authorized Representative
Basai, Near Basai Flyover
Basai Road, Gurugram
Haryana – 122 001 | ...Proforma
Respondent No. 8 |
| 9. | Muk San Steels Pvt. Ltd.
Through Authorized Representative
17/3, Mathura Road
Faridabad – 281 001 | ...Proforma
Respondent No. 9 |
| 10. | DRT Steels
Through Authorized Representative
Plot No. 86, Sector – 7
IMT Manesar, Gurugram – 122 051 | ...Proforma
Respondent No. 10 |

Present:

For Appellant : Ms. Ritika Gambhir Kohli, Ms. Akshaya Ganpath, Advocates.

**For Respondents : Mr. Mohak Sharma, Mr. Sajal Jain,
and Mr. Supriyo Banerjee, Advocates.**

J U D G M E N T

(Date: 19.07.2023)

[Per.: Dr. Alok Srivastava, Member (Technical)]

The Present Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short “IBC”) assailing the order dated 07.06.2022 (in short “Impugned Order”) passed by the Adjudicating Authority (NCLT, New Delhi) in Company Application C.A. No. 1682/2019 filed by Shri Debashis Nanda, Liquidator of J.V. Strips Limited in C.P. (IB) No. 452/ND/2017.

2. The Appellant is aggrieved by the Impugned Order in that certain transactions of the Appellant with the Corporate Debtor J.V. Strips Limited have been held as undervalued transactions by the Impugned Order and further that the Appellant has been directed to make payment of an amount of Rs. 31,00,475.00 which is shown against its name in the table included in paragraph 26 of the Impugned Order.

3. Shorn of unnecessary detail, the Appellant’s case is that it supplied certain raw materials to the Corporate Debtor starting from September, 2017 and had a running account of payments being made to the Corporate Debtor against these supplies.

4. According to the Appellant, it had supplied certain raw materials to the Corporate Debtor for which an amount of

Rs.31,00,474.60 was the balance remaining to be paid to the Corporate Debtor as on 31.03.2018. After an RTGS payment of Rs. 16,36,223.40 made by the Appellant to the Corporate Debtor on 29.01.2018.

5. The Appellant has further submitted that there were issues of poor quality of raw material supplied by the Corporate Debtor and certain other matters relating to processing cost and rate difference (discounts) which were discussed between the Appellant and the Corporate Debtor in a meeting on 03.04.2018, whereafter, after certain discounts, a total amount of Rs.30,92,710.00 was to be credited to the Appellant's account, and consequently only an amount of Rs. 7,764.60 was required to be paid by the Appellant to the Corporate Debtor.

6. The Appellant has further submitted that the amount relating to poor quality, processing costs, rate difference and discounts thereof were all decided to be given in the ordinary course of business, and therefore the adjudication in the Impugned Order that these amounts relate to undervaluing of the transaction between Corporate Debtor and the Appellant is not correct, and on this account the Impugned Order should be set aside and only a direction be issued for an amount of Rs.7,764.60

which remains as outstanding, to be payable to the Corporate Debtor by the Appellant.

7. We heard the oral arguments advanced by the Learned Counsels for the Appellant and the Liquidator / Respondent and also perused the record with their able assistance.

8. The Learned Counsel for Appellant has argued that the ledger account maintained by the Appellant regarding transactions with the Corporate Debtor show very clearly that an RTGS payment of Rs. 16,36,223.40 was made to the Corporate Debtor on 29.01.2018 whereafter an amount of Rs. 31,00,474.60 remained to be paid to the Corporate Debtor. She has further argued that as on 31.03.2018 an amount of Rs. 31,00,474.60 remained to be paid to the Corporate Debtor by the Appellant, which appears in the ledger account submitted by the Appellant (attached at pp. 163 to 164 of appeal paper book). She has further argued that after the meeting dated 03.04.2018, wherein certain discounts were allowed due to quality problem, labour and other charges and rate difference amounting to Rs. 13,76,320.00, Rs.10,00,960.00 and Rs. 7,15,430.00 respectively, these discounts were entered in the ledger account on 05.04.2018. She has, thus, contended that only an amount of Rs. 7,764.60 remains to be paid by the Appellant to the Corporate Debtor.

9. The Learned Counsel for Appellant has also referred to minutes of another meeting held on the same day in which total amount of Rs. 30,92,710.00 has been shown as the amount for which debit notes were issued. The minutes of both the meetings are attached by the Appellant at pp. 153 - 154 of the appeal paper book. On the basis of the decisions taken in both these meetings, the learned Counsel for Appellant has argued that a total amount of Rs. 30,92,710.00 was decided to be recovered by the Appellant from the Corporate Debtor. The Learned Counsel has also argued that the two meetings and the decisions taken therein were done in the ordinary course of business and discussion of issues and decision about poor quality of raw material and discounts due to processing cost and rate difference were also done in connection with the ordinary course of business. Therefore, the order passed by the Adjudicating Authority whereby the Appellant has been asked to refund an amount of Rs. 31,00,475.00 in the bank account of the Corporate Debtor is not correct and should be set aside.

10. The Learned Counsel for Respondent / Liquidator has argued that the Corporate Insolvency Resolution Process (in short "CIRP") against the Corporate Debtor commenced on 13.04.2018 and later order for liquidation of the Corporate Debtor was passed on 18.02.2019. He has argued that in ledger

account maintained by the Corporate Debtor and available to the Liquidator as part of record of the Corporate Debtor shows that after a payment through RTGS of an amount Rs. 16,36,223.40 a net amount of Rs. 31,00,474.60 remained to be paid by the Appellant to the Corporate Debtor, and this figure appears clearly in the ledger account maintained by the Corporate Debtor (attached at pg. 206 of appeal paper book). He has further pointed out that on 31.03.2018 a discount of Rs. 6,19,273.00 has been allowed @ 5% of C/Y sale and further deduction of an amount Rs. 13,76,320.00 has been allowed due to quality problem, discount of Rs.10,00,960.00 has been allowed due to labour and other charges and discount of Rs. 7,15,430.00 has been allowed as rate difference. He has clarified that among these deductions, the last three deductions relating to poor quality of raw material, labour and other charges and rate difference were entered in the ledger account on 05.04.2018 after the purported meeting of 03.04.2018.

11. The Learned Counsel for Liquidation has argued that the CIRP of the Corporate Debtor was initiated on 13.04.2018 and therefore these deductions regarding discount @ 5% C/Y sale, poor quality issues, labour and other charges and due to rate difference were allowed during the period of one year immediately preceding the date of commencement of CIRP. Therefore, in

accordance with Section 46(1)(i) of the IBC, these transactions are 'avoidable transactions' and further as per Section 45(2)(b) they are hugely undervalued and have not taken place in the ordinary course of business of the Corporate Debtor but to provide undue benefit to the Appellant and to the detriment of the Corporate Debtor.

12. Regarding the argument that the above mentioned transactions were not done in the ordinary course of business, the Learned Counsel for Liquidator has pointed out that the supplies of raw material was made starting from September 2017 and the Appellant made payments in the running account of the Corporate Debtor for raw material supplies, with the last payment of Rs. 16,36,223.40 made through RTGS on 29.01.2018, while the application for initiation of CIRP was under consideration of the Adjudicating Authority. He has further argued that even when the raw material was received and before making any payments on account of such supply, the Corporate Debtor never raised any objection or demur regarding the poor quality of the raw material and any other deductions/discounts that were desired by him, but when the final order for initiation of CIRP was imminent, the Corporate Debtor and the Appellant decided on the above stated discounts in meetings held on 03.04.2018, which was just ten days before the commencement

of CIRP. He has argued that in these circumstances, the discounts allowed to the Appellant amounting to a total of Rs.30,92,710.00 cannot be considered to be given in the ordinary course of business. Moreover, when the raw material was received by the Appellant, there is no contemporaneous document presented by the Appellant to show that he had objected to the poor quality of the raw material or of any other charges, and claimed any discount at that time. Therefore, the decisions taken in the meeting held on 03.04.2018 arouse suspicion which in the absence of cogent and reasonable explanation, are clearly meant to provide unreasonable and illegal benefit to the Appellant.

13. We first look at the ledger account of the Appellant submitted by the Liquidator (attached at pg. 206 of the appeal paper book). Appearing in this ledger account, the following entries are relevant for this case:

“Ledger Account of J.V. Strips Limited

<u>J.V. Strips Limited</u>							
<u>E8/1, 8th Floor, Kings Mall, Sector 10, Rohini, Delhi-85 (2017-18)-F</u>							
Date	From	VR. No.	Particulars	Debit (Rs.)	Credit (Rs.)	Dr / Cr	Balance (Rs.)
29.01.18	B4	12901	RTGS No. IDIBR52018012915641581		16,36,223.40	Dr	31,00,474.60
31.03.18	J	33170	Discount allowed @ 5% of C/Y Sale		6,19,273.00	Dr	24,81,201.60

05.04.18	J	40503	Amt. Allowed due to quality problem		13,76,320.00		
05.04.18	J	40503	Amt. Allowed due to labour and other charges for material problem		10,00,960.00		
05.04.18	J	40506	Rate Diff. allowed to Technico Industries Ltd.		7,15,430.00	Cr	6,11,508.40

14. As against the ledger account submitted by the Liquidator attached at pg. 206 of the appeal paper book, the Appellant has also attached a ledger account maintained by the Corporate Debtor (attached at pg. 163-164 of the appeal paper book), wherein the following entries are recorded:

<u>"J.V. Srips Limited</u>							
<u>E8/1, 8th Floor, Kings Mall, Sector 10, Rohini, Delhi-85 (2017-18)-F</u>							
Date	From	VR. No.	Particulars	Debit (Rs.)	Credit (Rs.)	Dr / Cr	Balance (Rs.)
29.01.18	B4	12901	RTGS No. IDIBR52018012915641581		16,36,223.40	Dr	31,00,474.60
05.04.18	J	40503	Amt. Allowed due to quality problem		13,76,320.00		
05.04.18	J	40503	Amt. Allowed due to labour and other charges for material problem		10,00,960.00		
05.04.18	J	40506	Rate Diff. allowed to Technico Industries Ltd.		7,15,430.00	Dr	7,764.00"

15. From a perusal of the ledger account submitted by the Liquidator, who has access to the records of the Corporate Debtor, the Corporate Debtor appears to have given a discount of

Rs.6,19,273.00 for C/Y sale, Rs. 13,76,320.00 for poor quality of raw material, Rs. 10,00,960.00 for labour and other charges due to material problem and Rs. 7,15,430.00 for rate difference.

16. We are of the view that the ledger account maintained by the Corporate Debtor correctly depicts that amounts of discounts given to the Appellant and the amount due and payable by the Appellant to the Corporate Debtor, since the Corporate Debtor would not have any ostensible reason not to record the entries relating to Appellant incorrectly and further no reason has been given by the Appellant why this Corporate Debtor's Ledger Account should not be relied on. We therefore, place reliance on the ledger account produced by the Liquidator which is attached at pg. 206 of the appeal paper book.

17. The main issue in contention is whether the abovementioned discounts were given by the Corporate Debtor for the benefit of the Appellant in the ordinary course of business. In this regard, we look at the recording of the reply of the Appellant in paragraph 5 of the Impugned Order wherein the Appellant has claimed that such discounts were mutually decided between the Appellant and the Corporate Debtor that the Appellant shall not pay a sum of Rs. 30,92,710.00 owing to factors such as poor quality, processing cost and rate difference

of the raw material. Further, the Appellant has not produced any document apart from the minutes of meetings dated 03.04.2018 to show that he had raised issue about poor quality and other issues for claiming discount with the Corporate Debtor at the time of supply of the raw material, but he is now claiming these discounts on the basis of meeting held on 03.04.2018 which took place barely ten days before the passing of the CIRP initiation order.

18. We have also noticed that the Appellant has not produced any other document apart from the minutes of the meeting dated 3.4.2018 to buttress his claim that the said discounts were given in the ordinary course of business and why these discounts were admitted after a lapse of many months after the supply of raw material. Moreover, we find that such benefit of discounts were given to the Appellant within the look-back period of one year, and therefore in the absence of cogent explanation regarding these discounts it clearly infringes Section 45(2)(b) and fall in the relevant period for 'avoidable transactions' as laid down stipulated in Section 46(1)(i) of the IBC.

19. In the above mentioned situation and as per detailed discussion in previous paragraphs, we are of the clear view that the Adjudicating Authority has not committed any error in

holding that the balance as on 31.03.2018 (before discount) in respect of material supply to Technico Industries Ltd. (Appellant) is Rs. 31,00,475.00, which is the balance shown in paragraph 26 of the Impugned Order. We thus hold the unambiguous view that the Adjudicating Authority has not committed any error in passing the Impugned Order.

20. We, therefore, find that the Appeal is devoid of merit and consequently dismiss it.

21. No order as to costs.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
19th July, 2023

pks