

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**Principal Bench, New Delhi****Comp. App. (AT) (Ins) No. 1152 of 2022****IN THE MATTER OF:****Rohit Motawat****...Appellant****Vs.****Madhu Sharma****....Respondents****Proprietor Hind Chem Corporation & Anr.****For Appellant:****Mr. Prateek Gupta, Mr. Nikhil Saini, Advocate****For Respondent:****Mr. Mitul Jain and Mr. Ravindra Chaingale, Advocate
for R-1****O R D E R****Per : Justice Rakesh Kumar Jain: (Oral)**

03.02.2023: This appeal is directed against the order dated 31.08.2022, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Jaipur Bench), by which an application bearing No. CP No.(IB)-149/9/JPR/2019 filed by 'Madhu Sharma, Proprietor M/s. Hind Chem Corporation' (Operational Creditor), under Section 9 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code'), has been admitted and 'Corporate Insolvency Resolution Process' (CIRP) against ' Shubh Aluminium Pvt. Ltd.' (Corporate Debtor), has been initiated.

2. Shorn of unnecessary details, the application, under Section 9 of the Code was filed by the Operational Creditor in form-5 as prescribed under Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, in which the following averments have been made in Part-IV:

| Particulars of Operational Debt | | | | | | | | | | | |
|--|---|--|-------------|-------|--------|-----|----------|-----------|-----|----------|-----------|
| 1. | TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FALLS DUE AND THE DATE FROM WHICH SUCH DEBT FALLS DUE | <p><u>Total amount of Debt</u> Rs. 9,97,122 (Rupees Nine Lac, Ninety Seven Thousand, One Hundred and Twenty two only)</p> <p>Against the supply of material. The details of Transactions are as under</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: left;">Invoice No.</td> <td style="text-align: left;">dated</td> <td style="text-align: left;">amount</td> </tr> <tr> <td>401</td> <td>10/12/16</td> <td>21,96,744</td> </tr> <tr> <td>468</td> <td>16/01/17</td> <td>16,62,250</td> </tr> </table> <p>Total Amount – 3858994 Less total receipts- 28,61,872</p> <p>Balance Debit – 9,97,122</p> <p>Date from which such debt fell due 16.02.2017</p> | Invoice No. | dated | amount | 401 | 10/12/16 | 21,96,744 | 468 | 16/01/17 | 16,62,250 |
| Invoice No. | dated | amount | | | | | | | | | |
| 401 | 10/12/16 | 21,96,744 | | | | | | | | | |
| 468 | 16/01/17 | 16,62,250 | | | | | | | | | |
| 2. | AMOUNT CLAIMED TO BE.IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS, FOR COMPUTATION OF DEFAULTIN TABULAR FORM) | <p>Total amount of default - Rs. 15,10,151</p> <p>Principal amount – Rs. 9,97,122</p> <p>Interest amount – Rs. 5,13,029</p> <p>Total – Rs. 15,10,151</p> <p>Date on which the default occurred: 16.02.2017</p> | | | | | | | | | |

3. During the pendency of this proceedings, the principal amount of Rs. 9,97,122/- was paid by the Appellant by way of 'Cheque' and 'Demand Draft' dated 06.01.2021. This fact was brought to the notice of the 'Adjudicating Authority' and the 'Adjudicating Authority' passed the following order on 15.07.2021:

"It is brought to our notice that after completion of the pleadings in the CP a certain amount has been paid by the Respondent Corporate Debtor to the Applicant. According, the Respondent counsel submits that they will pay the entire amount and CP is liable to be dismissed. However, the same is disputed by the Petitioner's counsel. In the circumstances, the Petitioner's counsel shall the affidavit placing all the facts within two weeks. The Respondent's counsel may also file

*response to the said affidavit within three weeks thereafter.
List the matter on 26.10.2021.”*

4. The Respondent then filed an affidavit dated 13.08.2021 in which the followings averments were made:

“That, it is worth mentioning that the Corporate Debtor has from the very beginning of the proceedings have denied any amount in default and later when the pleadings had completed and when the sword of the insolvency and moratorium was hanging on their head and in these compelling circumstances and in a way to escape from any liability has paid a sum of Rs. 9,97,172/- paid in the year 2021.”

5. Thus the fact borne out from the record is that the Respondent has categorically admitted having received the principal amount of Rs. 9,97,172/- from the Appellant. However, there is no reference of this payment by the Appellant to the Respondent in the impugned order. Be that as it may, the Respondent continued to pursue the application for the purpose of recovery of interest, litigation charges, courts fee, Resolution Professional fee etc. amounting to Rs. 5,13,029/-.

6. Counsel for the Appellant has submitted that the Respondent has claimed the amount on the basis of two invoices i.e. Invoice No.401 dated 10/12/16 issued for an amount of Rs. 21,96,744 and Invoice No. 468 dated 16/01/17 issued for an amount of Rs.16,62,250, total amounting to Rs. 38,58,994/-. It is submitted that in the purchase order there is no reference of payment of interest in case of delay. However, the interest has been claimed by the Respondent on the basis of the said invoices in which it is mentioned that if the amount is not paid within the due date then 21% interest shall be charged. The Legal issue

raised by Counsel for the Appellant is as to whether the interest, to be charged in the invoice, not signed by the Appellant, is a 'unilateral document' and cannot be recovered? In this regard, he has relied upon the decision rendered by 'this Tribunal' in case of 'S.S.Polymers Vs. Kanodia Technoplast Limited' in 'Company Appeal (AT) (Ins) No. 1227 of 2019 decided on 13.11.2019' in which a similar controversy was involved and the following observations have been made which read thus:

"3.The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by 'Corporate Debtor' to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.

5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code.

6. We find no merit in this Appeal and it is accordingly dismissed."

7. Further he has relied upon another decision of 'this Tribunal' in the case of 'Permal Wallace Pvt. Ltd. Vs. Narbada Forest Industries Pvt. Ltd'. in 'Company

Appeal (AT) (Ins) No. 36 of 2023 decided on 17.01.2023' in which it is observed that:

“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.”

8. He has also referred to a decision of ‘Hon’ble High Court of Karnataka’ in ‘Jyothi Limited Vs. Boving Fouress Limited’ in ‘Company Petition No. 48 of 1998 decided on 01.12.2000’ pertaining to winding up of the company in which the ‘Hon’ble Karnataka High Court’ has observed in regard to the invoice that it is a unilateral document and interest cannot be claimed until and unless it is signed by the parties.

9. On the other hand, Counsel for the Respondent has submitted that the goods were supplied on the basis of two orders placed by the Appellant. The first order was placed on the basis of Invoice No. 401 dated 10/12/17 about which there is no dispute but the second order was placed orally (telephonically). The amount which is in question pertains to the said transaction on which the interest has been imposed.

10. We have heard counsel for the parties and after perusal of record, are of the considered opinion that the impugned order is patently illegal and deserves to be set aside. The question which has been raised by the Appellant, is hereby

answered in favour of the Appellant in view of the decision taken by this Court in case of 'S.S.Polymers' (Supra), 'Permal Wallace Pvt. Ltd.' (Supra) as well as the decision of the 'Hon'ble Karnataka High Court' in the case of 'Jyothi Limited' (Supra). Before parting, we are constrained to observe that the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'.

11. No other point has been raised.

12. In view of the aforesaid facts and circumstances of the case, the appeal is allowed and the impugned order is set aside. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Raushan/RR