

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 600 of 2022 & I.A. No. 1621, 1622,
1623 of 2022

IN THE MATTER OF:

Inteco Melting and Casting Technologies ...Appellant
GMBH

Versus

Inteco Special Melting Techonolgies (India)
Pvt. Ltd. & Ors **...Respondents**

Present:

For Appellants : Mr. K. Datta, Sr. Adv. with Mr. Parul Kashyap, Anuj P. Agarwala, Niharika Kashyap, Adv.

For Respondent : Mr. Anjuman Tripathy, Mr. Saurabh Arora, Mr. Chandra Vardhan, Ms. Arohi Chandra, Adv.

ORDER

05.07.2024: This appeal is directed against the order dated 20.05.2022 by which an application filed under Section 7 of the Code by Respondent No. 2 and 3 against Respondent No. 1 for the resolution of their debt has been admitted.

2. At the time of preliminary hearing on 26.05.2022, this Court passed the following order:-

“Learned Counsel for the Appellant submits that by impugned order the Corporate Debtor has been sent to Insolvency on an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 of the debt of Rs.29,36,840/-. It is submitted that the Corporate Insolvency Resolution Process has been initiated by Ex-Director of the Corporate Debtor. He submits that the Appellant is ready to deposit the entire amount in this Tribunal.

2. Let the amount be deposited in the form of Demand Draft in favour of "The Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi" within a week.

3. Issue Notice. Let a copy of the Appeal be served to the Counsel for the Respondent Nos.2 and 3 who accepts notice on behalf of Respondent Nos.2 and 3. Reply be filed within two weeks. Rejoinder, if any, may be filed within two weeks thereafter.

4. List the Appeal on 12.07.2022. Subject to deposit as directed above, the impugned order dated 20.05.2022 shall remain stayed."

3. It is submitted that the draft of Rs. 29,36,840/- was deposited in terms of the aforesaid order.

4. Thereafter, on 06.11.2023 the following order was passed:-

"This Appeal is filed against the order of admission of an application filed under Section 7 of the Code. At the time of issuance of notice, the Appellant stated to have deposited Rs. 29 Lakhs by way of demand draft. The Impugned Order was thus stayed.

During the course of hearing, the Learned Counsel for Appellant submitted that he has instruction to state that in order to bury the hatchet the amount which is shown in the balance sheet of Rs. 19,36,840/- shall be paid to the Respondent without prejudice to their rights in other proceedings which may be pending and then the Appeal may be allowed and the Impugned Order may be set aside.

However, Counsel for Respondent has submitted that the amount involved is Rs. 29,36,840/-.

In this regard, Counsel for Appellant, after seeking instructions submitted that a sum of Rs. 10 Lakhs has separately been paid on 06.03.2019.

Counsel for the Respondent prays for short accommodation to seek instruction.

List this matter on 22nd November, 2023.

Interim Order, if any, shall continue till the next date of hearing.”

5. The Appellant was canvassing that the amount to be paid is only Rs. 19,36,840/- whereas the Respondent was alleging that it is 29,36,840/-.

6. Be that as it may, the Appellant has submitted that the matter has now been settled at Rs. 25 Lac with Respondent No. 2 and 3.

7. Counsel for the Appellant has further submitted that the amount which has been deposited by the Appellant pursuant to the order dated 26.05.2022, by way of demand draft, in favour of the Pay & Account Officer, Ministry of Corporate Affairs, New Delhi is to be used by the Appellant for payment of Rs. 25 Lac to Respondent No. 2 and 3. He has thus, prayed that an order may be passed directing the Pay & Account Officer, Ministry of Corporate Affairs, New Delhi with whom the demand draft of Rs. 29,36,840/- was deposited pursuant to the order dated 26.05.2022 to return the same, on an application alongwith an order passed by this Court, within a period of 15 days. We order accordingly.

8. The Pay and Account Officer, Ministry of Corporate Affairs, New Delhi with whom the demand draft of Rs. 29,36,840/- has been deposited by the Appellant pursuant to the order dated

26.05.2022 be returned to the Appellant on an application filed by the Appellant alongwith this order passed by this court within a period of 15 days from the date of filing of the application.

9. The Appellant undertakes that as soon as the aforesaid amount is returned, the Appellant shall pay Rs. 25 lac, as settled, to Respondent No. 2 within a period of 7 days by way of cheque.

10. In view of the aforesaid facts and circumstances, we allow this appeal and set aside the impugned order by which the application under Section 7 was admitted, moratorium was imposed and IRP was appointed.

11. In case of any failure on the part of the Appellant in making the payment as directed, Respondent No. 2 and 3 shall be at liberty to file an application before this Court for revival of this appeal.

12. It is however made clear that this arrangement has been made in this case without touching the merits.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sheetal/Ravi