

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 682 of 2018

IN THE MATTER OF:

AS Krishna Associates Pvt. Ltd.

...Appellant

Versus

B.L. Kashyap and Sons Ltd.

...Respondent

Present:

For Appellant : Mr. Ajay Kumar Jain, Mr. Sourit Arora, Advocates

For Respondents : Mr. Rakesh Kumar, Mr. Sahil Gupta, Mr. AashishKhattar, Advocates

ORDER

12.02.2019 The Appellant has preferred this appeal against the order dated 26.09.2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court III, whereby and whereunder, the application u/s 9 of the Insolvency and Bankruptcy Code, 2016 preferred by the Appellant has been rejected by passing following Speaking Order:

ORDER

Learned Counsel for the petitioner is present and moves this petition. Perusal of the typed set of documents filed along with the application, it shows that an Order has been passed as between the same parties on 12.6.2018 by the NCLT, Bench-II, New Delhi and upon a perusal of Paragraphs 15 & 16, which are reproduced below :

Order dated 12.6.2018 Paragraph 15 & 16.

15. It is seen that definition of Operational Debt has no provision for payment of interest. Since there are no such provisions to initiate CIRP on the ground of non-payment of interest on operational debt, the claim of interest when actual amount of claim as per invoices has already been paid cannot be a ground to trigger CIRP against the respondent under the Code. Id. Counsel for the respondent has placed on reliance various judgments in favour of the fact that non-payment

of interest cannot give rise to CIRP under the Code.

16. This is not a case of financial debt but this is an operational debt. Substantial amount of operational debt has already been paid and the balance amount is being tendered vide post-dates cheques dated 10.6.2018, 25.6.2018 to the applicant but the Operational Creditor has refused to accept the same on the grounds that they are entitled to interest, even though there is no such claim for payment of interest either in demand notice issued U/s. 8 or application filed in Form-IV.

On going through the said paragraphs, it is seen that Bench-II has already applied its mind in relation to the documents submitted by the parties as well and decided the case of merits. In case the petitioner was aggrieved by the said order dated 12.6.2018 of Court-II, New Delhi, the proper course should have been to move before the appropriate appellate authority and not file a fresh petition before this Tribunal based on the same cause of action claiming interest.

In the circumstances, we are not able to proceed with the matter and hence dismiss the petition.

On hearing the parties, we find that the earlier application was not entertained by the Adjudicating Authority and was rejected by Speaking

Order on 12.6.18. Therefore, second application u/s 9 for the same claim is not maintainable. The appeal is disposed of accordingly. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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