

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 477 of 2019

[Arising out of Order dated 25th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in CP (IB)-1544(MB)/2017]

IN THE MATTER OF:

M/s B.E. Billimoria and Company Ltd.

....Appellant

Vs

M/s Vikram Ispat Udyog

....Respondent

Present:

Mr. Dhaval Deshpande, Advocate for Appellant.

Mr. Iswar Mohapatra, Advocate.

J U D G M E N T

[11th February, 2020]

JARAT KUMAR JAIN, J.

Appellant – ‘B.E. Billimoria and Company Ltd.’ filed an appeal against the order passed by the Adjudicating Authority dated 25.01.2019 in CP (IB)-1544(MB)/2017.

2. Respondent had supplied Tiscon TMT Steel Coil/ Bar to the Appellant during period of 25.08.2015 to 19.12.2015 worth Rs. 2,16,73,188/- against which the Appellant had made payment of Rs. 1,17,93,537/- leaving an amount of Rs. 98,79,591/-. On 19.08.2017 Respondent through its Advocate sent a Demand Notice purportedly in Form 4 under Rule 5 of I&B Code. The Appellant

replied the Demand Notice. Respondent being dissatisfied with the reply of the appellant, filed an application under Section 9 of I&B to initiate Corporate Insolvency Resolution Process. Appellant appeared before the Adjudicating Authority. At the request of parties, Adjudicating Authority granted some adjournments for settlement.

3. On 25.01.2019 both the parties informed the Adjudicating Authority about the settlement and payment schedule has been accepted by the Respondent. At that time a question was raised by the Respondent that the Appellant had not made any provision for the payment of interest for the period of delay. Then both the parties agreed that whatever rate of interest decided by the Adjudicating Authority shall be agreeable to them. It is also informed that there is a clause of payment of 24% interest in case of delay.

4. The Adjudicating Authority after taking into consideration the facts of this case directed the Appellant to pay interest @ 12% for the period of delay in payment. Adjudicating Authority has also given liberty to the Respondent that in case of default or defiance on the part of the Appellant in payment of balance amount as per the terms of schedule agreed upon, Respondent can inform the Adjudicating Authority for taking requisite action against the Appellant as prescribed under I&B Code.

5. Being aggrieved with this order, Appellant has filed this appeal.

6. Learned counsel for the appellant drawn our attention towards the order sheets and submitted that the Adjudicating Authority has constantly monitored

the progress of the recovery of amount and also about the settlement between the parties.

7. Learned counsel for the appellant further submitted that the I&B code is not a code for the Adjudicating Authority to monitored settlement between the parties and grant interest on outstanding amount and furthermore, the proceedings under the I&B code are not recovery proceedings. It is not the intention of legislature under the code that the Adjudicating Authority should determine the rate of interest and grant time to the Corporate Debtor to pay the amount as per the directions.

8. It is also submitted that the Adjudicating Authority may within the period of 14 days of the receipt of the application under Section 9 of the I&B code, either admit or reject the application. Therefore, the order passed by the Adjudicating Authority for granting interest @ 12% per annum for delayed payment is beyond the jurisdiction hence it be set aside.

9. On the other hand, learned counsel for the Respondent supports the Impugned Order.

10. We have considered the submissions.

11. It is admitted fact that the parties amicably settled their dispute and as per the Terms of the Settlement the parties have filed payment schedule before the Adjudicating Authority. We are agree that proceedings under the I&B Code are not recovery proceedings.

12. However, when the parties have amicably settled their dispute and both the parties were agreeable and communicated the Adjudicating Authority to decide the rate of interest. It was also informed that there was a clause of payment of 24% interest in case of delay. Hence, the Adjudicating Authority exercising the power under Rule 11 of National Company Law Tribunal rules, 2016 which empowers the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal, directed the Appellant to pay interest @ 12% only for the period of delay in payment. Thus, the order is justifiable and agreeable.

13. With the above discussion, we are of the view that the Impugned Order passed by the Adjudicating Authority is well within the jurisdiction and we find no ground to interfere with this order, thus, the appeal is dismissed. However, no orders as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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