

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT)(Insolvency) No. 526 of 2019

IN THE MATTER OF:

Devmata Exim Pvt. Ltd.

...Appellant

Vs

**Ms. Kavitha Surana,
RP of Shri Veerganapathi Steels Pvt. Ltd.**

....Respondent

Present:

For Appellant: Mr. Aashish Jain Lunia, and Mr. R. Soundara Rajan, Advocates

For Respondent: Mr. Goutham Shivshankar, Mr. Shantanu Singh, Advocates

ORDER

06.09.2019 In the Corporate Insolvency Resolution Process initiated against M/s Veerganapathi Steels Pvt. Ltd., the Resolution Professional filed Misc. Application against the Appellant- Devmata Exim Pvt. Ltd. through its Direction Mr. Vimal Nayan Bothra with following prayer:

- “i. To pass order to receive the amount Rs. 10,36,91,319/- (Rupees Ten Crores, Thirty Six Lakhs, Ninety One Thousand, Three Hundred and Nineteen only) which is pending from the Respondent to the Corporate Debtor – Shrei Veerganapathi Steels Pvt. Ltd.*
- ii. Pass such other necessary orders to enable the Resolution Professional to carry on the Corporate Insolvency Resolution Process in a smooth manner.”*

2. The Adjudicating Authority, taking into consideration the List of Debtors available with the Corporate Debtor, financial report provided by the statutory auditor of the Company, the bills & invoices and the entries of the last three years that the Respondent M/s Devmata Exim Pvt. Ltd, one of the debtor of the Corporate Debtor had purchased the materials from the Corporate Debtor during regular course of business held that the outstanding balance as on 31.03.2018 stands at Rs. 10,36,91,319/- which is receivable from M/s Devmata Exim Pvt. Ltd.

3. The case of the Appellant before the Adjudicating Authority was that a Purchase Order dated 05.09.2016 was issued by the Appellant to the Corporate Debtor for supply of steel. The Purchase Order prescribed the terms of payment. According to Appellant, as per one of the condition of the Purchase Order, if the supply is not made in time, payment will not be released. Referring to Clause – 4 of the Purchase Order, learned Counsel for the Appellant took plea that due to non-execution of complete order and variances of quality & quantity in fact certain amount to be debited from the account of Shri Veerganapathi Steels Pvt. Ltd. (Corporate Debtor).

4. On behalf of the Appellant it was also submitted that immediately after receipt of the part consignment, Corporate Debtor was informed by letter dated 27.09.2016 that the materials received were not as per the specification mentioned in the Purchase Order with request to lift and take back the materials delivered and replace the goods by standard material as per the specification. Reliance has been placed on subsequent correspondence between the Corporate

Debtor and the Appellant to suggest that no amount is payable in terms of the agreement.

5. The Adjudicating Authority noticed that the goods which were supplied by the Corporate Debtor were accepted by the Appellant and subsequently the goods, which were alleged to be sub-standard, were also sold by the Appellant and collected the amount on sale. Taking into consideration the aforesaid fact, the Adjudicating Authority held that the Respondent was liable to pay a sum of Rs. 10,36,91,319/- to the Corporate Debtor and thereby directed the Appellant to pay the amount within two weeks and on failure to pay 12% interest per annum for delayed payment.

6. This Appellate Tribunal, while issuing notice to Respondent on 16.05.2019 for determination of issue as to whether the Resolution Professional can pray for recovery of any amount of Corporate Debtor, and by interim order, directed the Appellant to keep the amount in a separate Escrow Account.

7. On 05.08.2019, the learned Counsel for the Liquidator appeared and submitted that in spite of interim order passed by this Appellate Tribunal, the Appellant has not deposited the amount in a separate Escrow Account. It is also informed that against the interim order dated 16.05.2019 passed by this Tribunal, the Appellant moved before the Hon'ble Supreme Court but the Hon'ble Supreme Court rejected the Special Leave to Appeal.

8. Apart from the fact that the Appellant has not complied with the interim direction of this Appellate Tribunal by depositing the amount in a separate Escrow Account, we find that the Adjudicating Authority has already heard the

matter, recorded the submissions made by both the parties and taking into consideration, the terms of the agreement has held that the Appellant is liable to pay a sum of Rs. 10,36,91,319/- as the Appellant had received and accepted the goods and not returned the same to the Corporate Debtor and sold the goods and realized the cost.

9. Having heard the parties, as we find that the Appellant has sold the goods supplied by Corporate Debtor, the ground taken by the Appellant that the goods were sub-standard, cannot be accepted.

From the reason aforesaid, in absence of any merit and as the Appellant has not complied with the interim direction of this Appellate Tribunal, no relief can be granted. The Appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Sk