

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1927 of 2024

(Arising out of Order dated 06.08.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No.II, Kolkata in I.A.(IB) No.1033/KB/2023 in CP (IB) No.56/KB/2019)

IN THE MATTER OF:

M/s Vedic Projects Pvt. Ltd.
having registered office At:
95 Taimoor Nagar, New Delhi-1100651
Through Director/AR
Sh. Gaurav Chaudhary

...Appellant

Versus

Shri Sutanu Sinha
Resolution Professional for
M/s Simplex Projects Ltd.
Duckback House 4th Floor
41,Shakespeare Sarani Kolkata,
West Bengal- 700017.

...Respondent

Present:

For Appellant : Ms. Suruchi Aggarwal, Sr. Advocate with Mr. Gurmeet Singh, Mr. Ashish Garg, Advocates.

For Respondent : Ms. Ichccha Kalas, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Operational Creditor has been filed challenging order dated 06.08.2024 passed by National Company Law Tribunal, Division Bench, Court No.II, Kolkata in I.A.(IB) No.1033/KB/2023 in CP(IB) No.56/KB/2019.

2. Brief facts necessary to be noticed for deciding the Appeal are :

- (i) The Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor – M/s Simplex Projects Ltd. commenced

by order dated 27.04.2022, on an application filed by the State Bank of India. The Interim Resolution Professional (“**IRP**”) made a public announcement on 29.04.2022. The Appellant filed its claim before the RP to the tune of Rs.23,42,42,554/-.

- (ii) The case of the Appellant was that the Appellant and Corporate Debtor had entered into a Sub-contract Agreement dated 16.06.2010 whereby the Corporate Debtor assigned the Applicant for the construction work of Kabrai Feeder Channel starting from Arjun Reservoir, which the Corporate Debtor availed from the Irrigation Department, Govt. of U.P. The Appellant claimed to have raised bill from 30.06.2010 to 27.09.2014 for an amount of Rs.41,53,95,348/-, against which an amount of Rs.10,36,47,148/- was yet to be paid by the Corporate Debtor to the Appellant. The RP initially admitted claim of only Rs.2,76,67,940/-.
- (iii) On 18.01.2023, an application was filed by the Appellant before the Adjudicating Authority, objecting to the amount of claim admitted. The Adjudicating Authority vide order dated 05.03.2024 directed the Appellant to sit with the IRP regarding the claim, pursuant to which joint meeting was convened on 16.05.2022.
- (iv) The IRP filed a supplementary affidavit, whereby IRP stated that claim of the Appellant has been admitted to the tune of

Rs.10,36,30,064/- . The IRP rejected the entire amount due and payable with respect to interest.

(v) The Appellant filed IA No.1033/KB/2023, where the Appellant has prayed for a direction to learned RP to admit the claim of the Appellant to the tune of Rs.23,42,42,554/-. The RP has filed affidavit in reply opposing the same. The RP has also filed reply to the Supplementary Affidavit, which was filed by the Appellant, with regard to interest, it was pleaded in the reply that there is no clause of payment of interest on delayed payment in the Sub-contract Agreement entered in 16.06.2010.

(vi) The Adjudicating Authority by the impugned order rejected IA 1033/KB/2023. The Adjudicating Authority in paragraph 99, 100 and 101, observed following:

“99. The Learned Counsel for the RP would submit that the interest component as claimed by the applicant has been rejected as there is no clause in the sub-contract agreement dated 16.06.2010 for the payment of interest on delayed payment.

100. In counter, the Learned Counsel for Vedic would submit that Vedic is a registered MSME and as per Section 16 of the MSMED Act, Vedic is entitled to receive principal amount along with interest calculated at compound inters at three time of the bank rate notified by the RBI. Further, the amount was payable since 2016 and for eight years the same is being illegally withheld and the same amount is due. Further, the corporate debtor had deposited TDS amount in 2016 itself

but has failed to pay the same amount though admittedly due and payable since 2015- 16.

101. We find that the claim of the applicant Vedic is an Operational Debt. As per Section 5(21) of the I&B Code, an "Operational Debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government, or any local authority. It is apparent that definition under Section 5(21) does not include any provision of 'interest' with the 'debt'. The Hon'ble NCLAT in Krishna Enterprises v. Gammon India Ltd. reported at 2018 SCC OnLine NCLAT 360 held that:

"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor."

(Emphasis Added)"

- (vii) The order of the RP was upheld by the Adjudicating Authority and in paragraph 105 to 106, following was held:

"105. However, concerning the Section 16 of MSMED Act, which caters to that where any buyer fails to make payment of the amount to the supplier, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at **three times** of the bank rate notified by the Reserve Bank

of India. We are of the view this is not the appropriate forum to consider the issue pertaining to the interest as claimed by the Applicant under MSMED Act. 106. In terms of the view above, we are of the considered opinion that the RP, having an administrative and facilitative role under the I&B Code and its Regulations, has not committed any error by rejecting the interest amount from the principal amount as nowhere in the agreement or work order mentions the clause of payment of interest.”

(viii) Aggrieved by which order, this Appeal has been filed.

3. Learned Counsel for the Appellant in support of the Appeal submits that Adjudicating Authority failed to consider the fact that Appellant is a MSME, to whom money was due and payable by the Corporate Debtor (“**CD**”) since 2016, which was withheld by the CD. The Adjudicating Authority failed to consider the fact that Section 16 of the MSMED Act specifically provides interest to the MSME unit for any outstanding amount.

4. Learned Counsel for the Respondent refuting the submissions of learned Counsel for the Appellant submits that in the Sub-contract Agreement entered between Corporate Debtor and the Appellant, there was no Clause for any payment of interest. The sub-contractor was only entitled for payment of his bills and sub-contractor was not entitled for any interest on the amount of the invoice. It is submitted that RP, who only exercise administrative functions, as a facilitator, could not have admitted the claim of interest as filed by the Operational Creditor and entire principal amount having been admitted by the RP, no error has been

committed by the Adjudicating Authority in rejective the claim of the Appellant to accept the entire claim of Rs.23,42,42,554/-.

5. We have considered the submissions of learned Counsel for the parties and have perused the records.

6. Sub-contract Agreement was entered on 16.06.2010 between the Corporate Debtor and the Appellant. Under Clause 5 of the Agreement, under the heading 'Payment of Bills', following has been contracted between the parties:

"5. Payment of Bills

BPL shall make payment to VPPL after deducting:

- a. Its margin of 18% of the gross value of each bill to be passed and paid by the client.
- b. Security deposit @ 10% of the value worked out s above subject to a maximum of 10% of the contract price of VPPL to be reckoned as SPL's Contract price less 18%. Which shall be refunded after clearance of Defect Liability period of the contract.
- c. Any further sum as may be recovered by client towards cost of cement. Steel supplied for the work in terms of the Contract Agreement as also any other account except taxes and;.
- d. Applicable taxes under statuette for VPPL.
- e. The Client namely SPL is free to with hold money in case if the contractor namely VPPL fail to fulfill the documentation as per the requirement of SPL, e.g. The original levels, the competition levels maintained records etc.

VPPL shall execute the items of work as detailed in the drawings, specifications and other information furnished in the “Contract Agreement”, including extra items, deviations and substitutions of the work.

VPPL agrees and confirms that if any additional work(s) is required to be done by the Client in connection with the execution of the said project, then they shall undertake to take-up and complete the same and adhere to and comply with the rules and conditions of the contract mentioned in the Contract documents.”

7. The copy of the Sub-contract Agreement between the parties dated 16.06.2010 has been filed Annexure A-3 by the Appellant. We have looked into the relevant clauses of the Sub-contract Agreement. The Sub-contract Agreement does not contemplate payment of any interest to the Sub-contractor in event of any delayed payment. Whereas, under the Sub-contract Agreement, the Corporate Debtor is free to withhold money in case if the contractor namely VPPL fail to fulfill the documentation as per the requirement of SPL of the CD. Clause 7 deals with ‘Penalties’, which provides that penalties, damages and other demands, if any, imposed by the CD as per the Contract Agreement in respect of any defaults, committed in connection with execution of works etc. shall be borne by the Appellant. The RP in its affidavit filed before the Adjudicating Authority, in reply to the Application has categorically stated that claim of interest was rejected in view of the absence of any clause for payment of interest on delayed payment. In paragraph 8 of the reply filed by the RP to the supplementary affidavit, following has been pleaded:

“8. As far as the interest component claimed by Applicant of Rs.13,05,95,406/- is concerned, the Answering Respondent submits that the same has been rejected in view of the absence of any clause for payment of interest on delayed payment under the Sub-Contract Agreement dated 16.06.2010.”

8. The RP has pleaded that the RP is bound to verify every claim in terms of Regulations 13 and 14 of the CIRP Regulations, 2016, hence, the Appellant’s claim for principal amount was admitted fully and interest component was not admitted due to absence of any binding Agreement. The RP has further pleaded that no Agreement of interest has been reflected in financial statements of the CD. In paragraph 10 of the reply to the supplementary affidavit, following has been pleaded:

“10. The Hon'ble National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No. 144 of 2018 in *Krishna Enterprises Vs Gammon India Ltd.* has held that:

4. It is submitted that the ‘debt’ includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.

5. In the present appeals, as we find that the principle amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of

Corporate Insolvency Resolution Process is not the answer.”

9. The submission which has been pressed by learned Counsel for the Appellant is that the claim of the Appellant is based on the entitlement of the interest, the Appellant being MSME. The learned Counsel for the Appellant has relied on Section 16 of the MSMED Act. Section 16 of the MSMED Act provides as follows:

“16. Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall notwithstanding anything contained in any agreement between the buyer and the and the supplier or any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.”

10. With regard to claim under the MSME, the Adjudicating Authority has observed that NCLT is not appropriate Forum to consider the issue pertaining to the interest, claimed by the Appellant under Section 16 of the MSMED Act. The RP has admitted the entire principal amount, which was due to the Corporate Debtor and admission of principal amount of Rs.10,36,47,148/- is not under dispute. The RP has to consider the claim and verify the claim as per the claim submitted by an Operational Creditor. The Sub-contract Agreement and other materials, which have been submitted by Appellant, were examined and RP could admit the claim only to the principal amount. There being no clause in the Agreement to include the interest on the delayed payment, we do not find any error in the order of the Adjudicating Authority, refusing to accept the claim of the Appellant

towards interest on the operational debt, which was claimed by the Appellant.

11. We, thus, do not find any error in the order of the Adjudicating Authority, not allowing IA No.1033/KB/2023 filed by the Appellant for admission of entire claim of Rs.23,42,42,544/-, which included the principal amount of Rs.10,36,47,148/- and rest towards interest. We, thus, affirm the decision of the RP, admitting the claim towards the principal amount and rejecting the claim for interest. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

12th November, 2024

Ashwani