

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1185 of 2023

IN THE MATTER OF:

Anant Gupta (Suspended Director) Indure Pvt. Ltd

...Appellant

Versus

**Nilesh Vasantrao Bhorkar-Proprietor
NB Equipment & Engineering Services**

...Respondent

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Ankit Shah, Mr. Parshant Mehta, Mr. Varun Gupta, Ms. Simran Wason and Mr. Karan Sardana, Advocates

For Respondent : Mr. Sanjay Kumar Ruia, Advocate for R-1

O R D E R

(Hybrid Mode)

05.01.2024 Heard Learned Counsel for the Appellant as well as Chartered Accountant Mr. Sanjay Kumar Ruia appearing on behalf of the Respondent. This Appeal has been filed against the order dated 05.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in C.P. (IB) No. 342/(PB)/2021, by which Adjudicating Authority admitted Section 9 Application filed by the Operational Creditor and initiated CIRP. This Tribunal passed the following order on 12.09.2023:

“12.09.2023: Learned counsel for the Appellant submits that the Section 9 Application was filed for Principal Amount of Rs.1,59,31,124/- with claim of interest under MSME Act. It is submitted that order was reserved by the Adjudicating Authority on 12.04.2023. The Appellants case is that on 21.08.2023 they made payment of Rs.1,59,31,124/- through RTGS and an application was filed bringing this fact in the notice of the Adjudicating Authority. However, the Court pronounced the order on 05.09.2023, admitting Section 9 application. The Respondent appear through CA who submits

that reply to I.A. was also filed. He further submits that there are further Principal Amount due on the Corporate Debtor. Learned counsel for the Appellant submits that MSME certificate was obtained on 07.12.2020 and invoices which were claimed were prior to that date. Submission needs scrutiny.

Issue notice. Reply be filed by the Respondent within three weeks. Rejoinder be filed within two weeks thereafter.

List this Appeal on 07.11.2023. In the meantime, impugned order dated 05.09.2023 shall remain stayed.”

2. Notice have been issued. Reply has been filed by the Operational Creditor to which Rejoinder has also been filed. The Submission of the Learned Counsel for the Appellant is that in Section 9 proceeding the Principal amount claimed was Rs.1,59,31,124/- along with interest under the MSME Act, Rs.55,10,004/-. Although, Reply was filed under Section 9 Application, but on 21.08.2023 Appellant made payment of entire operational debt, principal amount Rs.1,59,31,124/- and has also filed an application before the Adjudicating Authority bringing the aforesaid payment on the record being I.A. No.4450 of 2023. It is submitted that the Adjudicating Authority by the impugned order admitted Section 9 Application and in I.A. No.4450 of 2023 order was passed also on 05.09.2023 rejecting the application after noticing the submission of the Operational Creditor that the operational creditor disputes that they have received the full payment.

3. Learned Counsel for the Appellant submits that proceedings have already been initiated by Operational Creditor under the MSME Act for recovering the interest, notices have already been issued by the Corporate
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Debtor, which proceedings are pending. It is submitted that the entitlement of claim remaining any interest under MSME Act is being contested by the Appellant in the said proceeding. Mr. Ruia, Chartered Accountant appearing for the Respondent submits that the Appellant has admitted an emails about their liability for the principal amount as well as another amount of Rs. 38,82,800/-. It is submitted that this amount was till time the cranes were returned to the Operational Creditor.

4. Mr. Ruia, submits that full payments having not been made, Adjudicating Authority has rightly rejected the I.A. which was filed by the Appellant.

5. We have considered the submissions of counsel for the parties and perused the record.

6. Part IV of the application, which has been filed by the Operational Creditor contains details of total debt. Part – IV of the application is as follows:

“ ...

Part – IV		
PARTICULARS OF OPERATIONAL DEBT		
1.	Total amount of debt, details of transaction on account of which debt fell due, and the date from which such debt fell due	Total Debt (Invoices raised): Rs. 4,78,46,637/- (Rupees Four Crore Seventy Eight Lakh Forty Six Thousand Six Hundred Thirty Seven Only). Total Payments received / TDS Credits: Rs.3,19,15,513/- (Rupees Three Crore Nineteen Lakh Fifteen Thousand Five Hundred Thirteen Only)

		<p>including TDS Credits of Rs.6,000/- deducted and deposited by the Corporate Debtor.</p> <p>Details of Transaction: Supply of two (2) numbers of Mobile Crawler Cranes on Rental Basis at site Muzaffarpur Thermal Power Station.</p> <p>Date of first Billing: 24.05.2016</p> <p>Date from which debt fell due: 03.12.2018</p>
2.	Amount Claimed to be in Default and the date on which the default occurred	<p>Principal Outstanding: Rs.1,59,31,124/- (Rupees One Crore Fifty Nine Lakh Thirty One Thousand One Hundred Twenty Four Only)</p> <p>Interest under MSME act: Rs. 65,10,004/- (Rupees Sixty Five Lakh Ten Thousand Four Only). As per Interest Calculation Chart).</p> <p>Total Amount Claimed: Rs. 2,24,41,128/- (Rupees Two Crore Twenty Four Lakh Forty One Thousand One Hundred Twenty Eight Only)</p> <p>Date on which default occurred: 18.12.2018 (15 days of credit period)</p> <p>Date of Last Payment: 22.10.2020”</p>

6. There is no dispute between the parties that around of Rs.1,59,31,124/- has been deposited by the Appellant on 21.08.2023 with regard to which application was also filed before the Adjudicating Authority. It is submitted that Mr. Ruia, Chartered Accountant has also pointed out that

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the amount was deposited only on 21.08.2023 before date was fixed for pronouncement of the order. Part-IV of the application claims the principal debt of Rs.1,59,31,124/- + MSME interest as we have noticed that for MSME interest, the Operational Creditor has already initiated proceedings, the notice has been issued by the Operational Creditor dated 01.12.2022 which have been brought on record at page 190 of the appeal paper book.

7. We are of the view that as far as the claim of the Operational Creditor under the MSME Act of the interest, proceedings have already been initiated. Hence, it is not necessary for this Tribunal to enter into the issue as to whether the claim of interest as claimed under Para IV is to be allowed. We make it clear that we are not expressing any opinion with regard to entitlement of claim of either of the parties on the said proceedings under the MSME Act. The authority under MSME Act to consider claim of the interest of the Operational Creditor and take an appropriate decision.

8. We however, are of the view that the principal amounts have been liquidated on 21.08.2023 before admission of Section 9 Application. Section 9 Application need not be continued any further. In so far as the submission of the Respondent that the amount of Rs. 38,82,800/- which was payable to another entity NB Equipment & Engineering Private Limited should also be paid by the Appellant, the said claim being not part of Section 9 Application as is clear from Part – IV as stated above, for the said payment it cannot be set as precondition in Section 9 Application due to non-payment of the amount of Rs. 38,82,800/- Section 9 proceeding can be allowed to continue.

In event, continuance of Section 9 proceedings for recovery of Rs.38,82,800/- it will be nothing but recovery of some amount which is not Part – IV of the Section 9 Application and not permissible.

9. We thus, are of the view that submissions of the Operational Creditor that amount of Rs. 38,82,800/- also to be paid, cannot be accepted and the principal amount having been liquidated on 21.08.2023 before admission of Section 9 Application and for MSME interest proceedings have already been initiated by Operational Creditor, we are of the view that Section 9 proceedings be closed with liberty to Operational Creditor to proceed under MSME Act to recover interest, if any. The Appellant may also make payment of Rs.2,00,000/- alongwith GST as was fixed by the Adjudicating Authority by the impugned order for payment of fee and expenses to the IRP. Let the said amount be paid within two weeks from today by the Bank Draft.

10. In view of our discussion and conclusion we allow the appeal and set aside the impugned order, close the CIRP with liberty as aforesaid.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

[Mr. Arun Baroka]
Member (Technical)

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