

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 94 of 2023

&
I.A. No.380 of 2023

(Arising out of the Impugned Order dated 03.11.2022 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Indore Bench in TP No. 144 of 2019 [Company Petition (IB) No. 101 of 2018])

IN THE MATTER OF:

M/s Northbrook Jute Company Limited
CIN No. U17119WB1908PLC001801
Through its authorised representative
Mr. Aditya Agarwal
1, GT Road, Champdani
Baidyabati Hooghly, Kolkata
West Bungle – 712222

...Appellant

Versus

M/s Madhya Pradesh
State Civil Supplies Corporation Limited
CIN No. U15411MP1974SGC001268
Having its registered office at:
Block – 1, 3rd Floor, Paryavas Bhavan
Mother Teresa Marg, Bhopal
Madhya Pradesh – 462011

...Respondent

Present:

For Appellant : Mr. Ramesh Kumar Mishra, Advocate

For Respondent : None

J U D G M E N T

(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an appeal filed by the Operational Creditor (hereinafter referred to as “OC”) under Section 61 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) filed by the M/s Northbrook Jute Company Limited (hereinafter referred to as “NJCL”) against the impugned order dated

03.11.2022 passed by the National Company Law Tribunal, Indore Bench (hereinafter referred to as “Adjudicating Authority”) in TP No. 144 of 2019 [Company Petition (IB) No. 101 of 2018] filed under Section 9 of the IBC, wherein the Adjudicating Authority had rejected the petition.

Brief facts relevant for the case

2. M/s Northbrook Jute Company Limited, the Appellant in this case is a manufacturer of SBT Gunny Bags. They entered into an agreement dated 12.03.2012 with the CD namely M/s Madhya Pradesh State Civil Supplies Corporation Limited and supplied 20,010 bales of SBT Gunny Bags amounting to Rs.37,84,27,404/-. The CD paid Rs.36,10,11,651/- till 20.11.2013 and failed to pay the balance amount of Rs.1,74,15,753/-. It is claimed by the Operational Creditor that Respondent admitted / acknowledged its liability of Rs.1,13,85,026/- vide communication dated 07.04.2016.

3. The Appellant issued a demand notice under Section 8 of the IBC r/w Rule 5 of the Insolvency and Bankruptcy Regulations, 2016. The demand notice was not replied by the CD, disputing the debt in respect of the said unpaid Operational Debt. Thereafter, Appellant filed a petition under Section 9 of IBC. But the Adjudicating Authority rejected this claim on 03.11.2022, which is being impugned in this Appeal.

Grounds of Relief

4. The Adjudicating Authority rejected the claim on the ground that there is a dispute projected before it and required thorough inquiry before a proper forum and it could not have undertaken that exercise in its limited jurisdiction in hearing of application under Section 9 of IBC. The Adjudicating

Authority also failed to consider the letter dated 07.04.2016, which is an acknowledgment of the debt. Based on this letter of acknowledgment, the limitation period also gets extended. For further remaining balance payments, Appellant made representations, which were not considered or replied by the CD, hence the matter was taken up in Hon'ble High Court of Jabalpur vide Writ Petition No. 12892 of 2015, which was disposed of with the direction to the CD to consider and decide the representation of the Appellant herein expeditiously and in accordance with law. In compliance of the order of Hon'ble High Court of Jabalpur, the CD issued a letter dated 07.04.2016 addressing to the Appellant and accepted its liability of Rs.1,13,85,026/- towards the present Appellant. It is claimed by the Appellant that there is existence of debt and default, in view of the acknowledgement vide letter dated 07.04.2016 and therefore the petition under Section 9 of IBC should be admitted. It claims that the letter dated 07.04.2016 cannot be considered as a pre-existing dispute pertaining to the admitted outstanding and since this communication is issued admitting its liability within a period of limitation it extends the period of limitation. Therefore, the application under Section 9 of IBC should have been admitted

Analysis and Order

5. We have heard the Learned Counsel for the Appellant and also perused the records.

6. The CD is functioning under the department of Food and Civil Supplies in the State of Madhya Pradesh and works in tandem with Food Corporation of India for the purpose of civil supplies and food supplies within the State of Madhya Pradesh. In the Financial Year 2012-13, the Food Corporation of

India, with a view to supply and distribute food grains within the State of Madhya Pradesh, entered into an agreement with the CD for purchase of SBT Jute Bags from private players. The contract was a back to back contract, dependent wholly on the contract between the Food Corporation of India and the CD. The supply was to be carried out in a time bound manner within a span of one month from the date of issuance of the work order. Further, the supply of the jute bags was to be as per the quality prescribed, failing which the amount of penalty was to be recovered from the suppliers AS PER TENDER CONDITIONS.

7. In the year 2012, as required the supply was made by the OC. However, Food Corporation of India was not satisfied with the quality of the jute bags supplied and accordingly deducted some amounts from the payments made to the CD. Thereafter, the CD in turn proportionately deducted such amount from the payments made to the OC. Therefore, from a total payable amount of Rs.37,84,27,404/-, payment was made of Rs.36,10,11,651/-, deducting an amount of Rs.37,89,660/- towards penalty for delay Rs.3,84,000/- for non-supplied quantity of jute bags, Rs.57,573/- for torn jute bags and Rs.1,31,84,520/- for deduction made by the Food Corporation of India towards poor quality material supplied.

8. Later on, vide communication dated 12.10.2015, the Food Corporation of India directed the CD to not to reduce the amount of payments to be made to the Directorate General of Supplies and Disposals, Kolkata and to instead recover an additional amount of Rs.41,20,663/- from the private suppliers. Accordingly, proposed proportionate deduction of Rs.17,99,494/- was sought to be made against the OC.

9. Being aggrieved by the order of the CD the OC approached the Hon'ble High Court of Madhya Pradesh by way of Writ Petition No. 12892 of 2015. On 17.02.2016, Hon'ble High Court noted that:

"..Counsel for the respondents raised preliminary objection. According to him since there is express arbitration clause in the agreement executed between the parties, the petitioners should take recourse to the said remedy in respect of subject matter of this writ petition.

Counsel for the petitioners, in our view, justly contends that so long as the respondents do not reply to the several representations/demands submitted by the petitioners such as Annexure-P/5 and P/6, it is not possible to suggest that the dispute had arisen. The dispute will arise only if the respondents were to reject the demands or claims of the petitioners or adopt any counter claim against the petitioners.

Realizing this position, counsel for the respondents submits that the respondents will first give reply to the demands/claims submitted by the petitioners in the form of Annexure-P/5 and P/6.

That be done expeditiously preferably within two weeks from today. Thereafter petitioner will be free to take recourse to such remedy, as may be permissible in law. All questions are left open.

*Petition **disposed of** accordingly...."*

10. Accordingly, the Respondent issued a letter dated 07.04.2016, in which CD stated that for the reasons of delay, quality cut and cut and torn jute bags the amount for the same has been deducted as per the terms and conditions of the tender. Therefore, the abovementioned amount is able to be returned.

11. During the hearing by us many opportunities were given to the Respondent. The matter was heard on various dates. On 1.02.23, 3.02.23, 20.03.20, 24.04.23, 10.07.23, 19.07.23, 11.09.23, 30.10.23, 21.11.23 and

then finally 30.01.24 when in the absence of the Respondent the Appellant was heard in full and order was reserved and appellant was permitted to file notes of submissions. We have not received any notes of submissions neither did the Respondent attend any of the hearings.

Main issue before us

12. The main issue before us is whether the reply issued by the Corporate Debtor in pursuance to the Hon'ble High Court's order is acknowledgement of debt and default and whether this communication extends the limitation for the Operational Creditor and finally whether there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor.

13. The above questions get addressed in next few paragraphs.

14. As per the demand notice the date of default is claimed to be 13.07.2012 and then again on 07.04.2016. Appellant claims that total amount of debt is Rs. 11388056/- plus interest at applicable rate. It is difficult to accept the argument of the Appellant that the response of 07.04.2016 can be treated as an acknowledgement of default and debt. In fact, the communication dated 17.04.2016 issued by the CD is a reply in pursuance to the orders of the Hon'ble High Court, Jabalpur. The Appellant has tried to equate the reply of the Respondent to the acceptance of debt and accordingly issued the demand notice. It is rather, a reply of the CD informing the OC that the amount deducted was on account of poor quality of goods supplied by the OC. The CD had raised an issue with the OC regarding the quality of goods provided by the OC prior to the issuance of the demand notice. The supply of gunny bags was made in the year 2012-13 and a response to the representation, which was made by the CD on 07.04.2016,

cannot be presumed by acceptance of debt and default. This reply of the Corporate Debtor was not at all any acknowledgment of debt. Rather with that reply the Corporate Debtor has simply informed the Operational Creditor that the amount deducted was on account of poor quality of goods supplied by the Operational Creditor. As such the Limitation period cannot get extended on the strength of such a reply.

15. If the date of default cannot be 07.04.2016 as concluded in the previous paragraph, in that case the date of default will be that of 2012. In that case, then the claim is barred by limitation. Therefore, the claim can be rightly rejected on the grounds of limitation.

16. Apart from the claim getting rejected on the grounds of limitation, there are additional grounds which establish that there is a pre-existing dispute with respect to the quality of the supplied gunny bags. There is sufficient material on record, particularly evident from both the proceedings in the High Court as well as communication dated 07.04.2016, that there is a pre-existing dispute. In view of this ground also, Section 9 Application under IBC could not have been admitted and the Adjudicating Authority had accordingly rejected the claims by the OC.

Orders

17. The Adjudicating authority / NCLT, Indore Bench in the impugned order has rightly come to the conclusion the claim is barred by limitation and even if this Tribunal presumes the date of default to be 07.04.2016, which cannot be by any stretch of imagination on the basis the facts of the case, this is hit by a 'pre-existing dispute' on the 'outstanding dues' claimed by the 'Operational Creditor'.

18. This Appellate Tribunal, therefore, cannot find any error in the impugned order of the Adjudicating Authority / Tribunal. Accordingly, the Appeal is dismissed. No order as to costs.

19. The connected pending Interlocutory Applications, if any, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Mr. Arun Baroka]
Member (Technical)

15th February, 2024

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