

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1881 of 2024
& I.A. No. 6938 of 2024

IN THE MATTER OF:

Rishabh Infra Through Hari Mohan Gupta

...Appellant

Versus

Sadbhav Engineering Ltd.

...Respondent

Present:

For Appellant : Mr. Vishwanathan Iyer, Advocate.

For Respondent : Mr. Navin Kr. Pawa, Sr. Advocate with Mr. Mahesh Agarwal, Mr. Rohan Talwar, Mr. Naman Agarwal, Advocates for R-1.

O R D E R
(Hybrid Mode)

04.11.2024: Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This Appeal has been filed against order of the Adjudicating Authority dated 12.07.2024 by which Section 9 application filed by the Operational Creditor has been rejected.

2. The Section 9 application was filed by the Operational Creditor claiming an amount of Rs.2,61,24,020/- including interest of Rs.72,72,659/-. Part IV, Item No.2. of the application under Section 9 is as follows:

2.	<i>Amount claimed to be in default and the date on which E the default occurred (Attach the workings for computation of amount</i>	<u><i>Amount claimed to be in default:</i></u> <i>Rs. 2.61.24.020/- (including Interest of Rs. 72,72,659/- calculated @ 24% p.a.)</i> <u><i>Date on which the default occurred:</i></u>
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	<i>and dates of default in tabular form)</i>	<i>The invoices were due against the Corporate Debtor within 30 days from the date of Invoice. Therefore, the date of default is 31 Day from the date of respective invoice as stated (and annexed) in para 1 of Part IV of this application. Due dates are represented in the computation annexed as ANNEXURE 1.</i>
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3. The Adjudicating Authority in the order has noticed that amount of Rs.1,88,51,361/- has been paid to the Operational Creditor which was towards the Principal Amount, hence, Section 9 application was rejected.

4. Learned counsel for the Appellant contends that there was no settlement between the parties since offer made by the Corporate Debtor to settle was not accepted by the Operational Creditor and further, the Work Order clearly mentions that monthly payment was to be made and invoices contain the amount of interest @ 24% which is reflected in the invoices which were Tax Invoices sent to the Corporate Debtor.

5. Learned counsel for the Respondent submits that there is no agreement between the parties for payment of interest and the Work Order given by the Operational Creditor does not contain any provision for interest.

6. We have heard learned counsel for the parties and perused the record.

7. The Work Order which has been brought by the Appellant on record dated 11.12.2018 in Clause 9, which has been referred to by the Appellant, provides as follows:

“9) Monthly Billing & Payment: Monthly bills/invoice shall be raised for the previous month by the day of the following month and the payment will be released within 10 days from the date of certification. The bills/invoice shall be duly certified by Sadbhav Engineering Ltd. Authorized representative. Jointly signed log sheets to be submitted along with Bills for processing the payment.”

8. The said Clause 9 cannot be read as any obligation for payment of interest by the Corporate Debtor. It is true that the Operational Creditor did not accept the offer for settlement but entire Principal Amount being already paid, as claimed in Part IV, nothing survives to be decided in Section 9 application.

9. We are of the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.

10. There is nothing to substantiate that the Corporate Debtor has accepted the obligation to pay the interest @24% per month, as claimed by the

Operational Creditor. The entire Principal Amount having been paid, the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Operational Creditor. There is no merit in the Appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn