

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1375 of 2023

IN THE MATTER OF:

Lloyds Metals and energy Ltd.

...Appellants

Versus

Shah Coal Pvt. Ltd.

...Respondents

Present:

For Appellant : Mr. Shrey Fatterpekar, Mr. Nirav Marjadi, Ms. Rebha Dogra, Ms. Srushti Mehta, Ms. Drashti Shah and Ms. Mithu Jain, Advocates.

For Respondents : Mr. Abhishek Bharti, Ms. Yasmin Bhansali, Ms. Nikita Bhansali, Ms. Palak Sangoi and Ms. Aarti Mahto, Advocates.

O R D E R
(Hybrid Mode)

11.07.2024: Heard counsel for the appellant. This appeal has been filed against the order passed by Adjudicating Authority dated 30.08.2023 by which order Adjudicating Authority has rejected Section 9 application filed by appellant as barred by time. The relevant dates has been noticed by Adjudicating Authority in paragraph-19 and 20 which as follows:-

“19. During the course of the arguments, the Counsel for the Operational Creditor has argued that though there was no specific contract between the parties with regard to payment of commission but as per the memorandum of understanding (MoU) executed amongst the Operational Creditor, the Corporate Debtor and OAKY North Coking Coal Pvt. Ltd., who supplied goods to the Corporate Debtor it is clear that the Operational Creditor was to act as intermediary between the Corporate Debtor and the supplier i.e. OAKY North Coking Coal Pvt. Ltd. Counsel for the Operational Creditor has further argued that in addition to this the Corporate Debtor itself deducted and paid TDS of Rs. 46,844/- on due amount of Rs. 46,84,474/- which

was payable to the Operational Creditor on account of commission. According to the Counsel for the Operational Creditor, this amounts to admission on the part of the Corporate Debtor that it was to pay commission to the tune of Rs. 46,84,474/-. Moreover, the Corporate Debtor paid a sum of Rs. 5,00,000/- to the Operational Creditor on 27.12.2014 as part payment out of the total payment of Rs. 46.84 Lakhs. Therefore, according to the Counsel for the Operational Creditor, the case stands established on record in as much as the existence of Operational Creditor debt and the default committed by the Corporate Debtor stands proved on record.

20. On the other hand, the Counsel for the Corporate Debtor has argued that the present Petition is palpably barred by time. According, to the Counsel for the Corporate Debtor, the invoice for the sum of Rs. 46.84 Lakhs was raised on 25.12.2014. The claim in respect of the said invoice could have been filed within a period of 3 years. The Counsel for the Corporate Debtor has further argued that even if the part payment of Rs. 5 Lakhs, which was made on 27.12.2014, is taken into consideration, even then the instant Petition is barred by time as it was filed on 08.02.2018 and is liable to be dismissed on this ground alone.”

2. The Adjudicating Authority has held that the application which was filed on 08.02.2018 was barred by time since the application could have been filed only till 26.12.2017 taking into consideration the part payment made by corporate debtor on 27.12.2014. Ld. Counsel for the appellant challenging the order contends that there is an admission by the corporate debtor in paragraph- 10 of the Reply that the debt was written off in 2017-18 hence the application could not have dismissed as barred by time and the appellant was entitled to the benefit of Section 18 of the ‘Limitation Act’. Ld. Counsel for the appellant has also referred to the judgement of Hon’ble Supreme Court in

“Asset Reconstruction Company V/s Bishal Jaiswal & Anr.” as referred in paragraph no.22 of the order of Adjudicating Authority.

3. We have considered the submissions of counsel for the appellant and perused the record. There cannot be any dispute to the proposition that Section 18 of the Limitation Act provides for the extension of limitation on there being an acknowledgement in writing as contemplated by Section 18.

4. In the present case no balance sheet or any ledger confirmation was brought on the record. Adjudicating Authority also in paragraph-24 has noticed that no balance sheet has been brought on record. The application which was filed under Section 9 by the appellant did not contain any pleading for extension of limitation under Section 18. The reliance of the appellant on paragraph-10 of the Reply cannot lead to any extension of limitation, no acknowledgement in writing having been brought on the record.

5. We thus are of view that there was no material on the record to extend the benefit of Section 18 of the ‘Limitation Act’ to the appellant hence we do not find any error in the order of the Adjudicating Authority dismissing the application as barred by time.

With aforesaid observations, appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

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