(2022) 05 NCLT CK 0056

In the National Company Law Tribunal

Case No : REST. A. (IB) No.7/KB/2022 In CP (IB) No.1751/KB/2019

Adhunik Niryat Ispat Limited — APPELLANT

Vs

Truvolt Engineering Company Private Limited — RESPONDENT

Date of Decision : 24-05-2022

Acts Referred:

Citation : (2022) 05 NCLT CK 0056

Hon'ble Judges : Rajasekhar V.K., Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Anshumala Bansal, Vijay Nath Jha

Final Decision : Disposed Of

Judgement

Rajasekhar V.K, Member (Judicial)

1. This Court convened via hybrid mode.

2. This is a Restoration Petition filed by Mr. Rakesh Kumar Singhal Board Resolution dated 10 May, 2019., Managing Director of Adhunik Niryat Ispat Limited (‘Operational Creditor’) against Truvolt Engineering Company Private Limited (‘Corporate Debtor’) on its failure to adhere to the Settlement Agreement dated 16 August, 2021 Annexure – P- 2 of the Restoration Application., entered between the parties

3. The Operational Creditor had filed a petition under section 9 of the Insolvency and Bankruptcy Code, 2016 (‘Code’) against the Corporate Debtor for a default of Rs.1,14,88,897/- (Rupees One Crore Fourteen Lakh Eighty Eight Thousand Eight Hundred Ninety Seven only) [Principal – Rs.98,91,729/- and Interest – Rs15,97,168/-]. The Interest was calculated @18% per annum as on 25 August, 2019.

4. However, when the matter was listed for admission, the parties entered into a settlement agreement dated 16 August, 2021. As per the terms of settlement, the Corporate Debtor had agreed to pay the principal amount i.e., Rs.98,91,729/-

(Rupees Ninety Eight Lakh Ninety One Thousand Seven Hundred Twenty Nine only) in ten instalments. It was also agreed between the parties that the Operational Creditor would withdraw the petition under section 9 filed before this Adjudicating Authority.

5. Thereafter, this Adjudicating Authority vide its order dated 29 October, 2021 dismissed the petition as withdrawn.

6. Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor

6.1 The Corporate Debtor has failed to adhere to the agreed terms of agreement between the parties and defaulted in payments of some of the instalments. The Corporate Debtor till 31 December, 2021 has paid only five instalments. On 18 January, 2022 the Corporate Debtor issued a notice by email to the Operational Creditor stating the allegations made by the Operational Creditor as frivolous and false.

6.2 In pursuance of such notice by the Corporate Debtor, the Operational Creditor vide its letter dated 20 January, 2022 refuted the allegations raised and also requested the Corporate debtor to honor its commitment. Subsequently, a cheque dated 20 January, 2022 against the sixth instalment was issued by the Corporate Debtor.

6.3 However, after presentation the said cheque was returned back to the Operational Creditor with an endorsement as 'payment stopped' on 05 February, 2022. This act of the Corporate Debtor clearly reflects that they chose not to honor their commitment or the mutual settlement arrived between the parties.

Orders

7. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and perused the record.

8. It is pertinent to mention that the as per the Company Petition the default was of Rs.1,14,88,897/- (Rupees One Crore Fourteen Lakh Eighty Eight Thousand Eight Hundred Ninety Seven only) but as per the settlement agreement between the parties the Corporate Debtor was to pay the principal amount of Rs.98,91,729/-(Rupees Ninety Eight Lakh Ninety One Thousand Seven Hundred Twenty Nine only) in ten installments. Further, upon perusal of the record at page 26 of the Restoration Application it is apparent that the Corporate Debtor has paid the first five instalments i.e., a sum of Rs. 49,35,868/- (Rupees Forty Nine Lakh Thirty Five Thousand Eight Hundred Sixty Eight only).

9. Further, in order dated 29 October, 2021 by this Adjudicating Authority no liberty was granted to the Operational Creditor on the revival of the Petition. However, be that as it may, even if the Operational Creditor is given a chance to revive or restore the Company Petition in the event of default, by not adhering to the terms of settlement agreement by the Corporate Debtor ICICI Bank Limited v. OPTO Circuits (India) Limited [Company Appeal (AT) (CH) (Insolvency) No.

146 of 2021], decided on 28 April, 2022, then also it would not fulfil the threshold limit of Rupees One Crore because five out of ten installments (i.e., a sum of Rs. 49,35,868/-) has been paid by the Corporate Debtor.

10. Hence, the Restoration Application being REST. A. (IB) No.7/KB/2022 is dismissed as not maintainable. This is in terms of the Judgment dated 06 May, 2022 by the Hon'ble NCLAT in Comp. App. (AT) (Ins.) No. 498 of 2022 in the matter of Prafulla Purushottamrao Gadge v. Narayan Mangal & Anr. The applicant is, however, at liberty to pursue other available means under the law for recovery

11. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

