(2020) 02 NCLT CK 0002

In the National Company Law Tribunal

Case No : CP (IB) No. 165/9/HDB/2019

Enexio Power Cooling Solutions India Private Limited — APPELLANT

Vs

MSR Mega Bio Power Limited — RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 8, 9
Insolvency And Bankruptcy (Application To The Adjudicating Authority) Rules, 2016 — Rule 6

Citation : (2020) 02 NCLT CK 0002

Hon'ble Judges : Ratakonda Murali, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Y. Suryanarayana, Mano Ranjani, Priya Iyengar, Harish Kumar Villadath, Sheila Villadath, Leela Prasad Mallela

Final Decision : Dismissed

Judgement

iii. It is averred that subsequent to the receipt of advances, Operational Creditor started the supplies from 14.09.2011 and received adhoc payments

against the dispatches till 16.06.2012 and later on Corporate Debtor failed to make further payments but Operational Creditor continuously mad

supplies and completed the supply and erection by 29.07.2012. The details of the unpaid invoices and the interest amount due as on 29.10.2018 are

described hereunder:",,,,,

Date,Invoice No.,Amount due,Due date,No. of days,Interest Rs.

17.05.2012,GCTX/1243/Serv/007,"27,05,605",16.06.2012,2326,"41,38,019

22.06.2012,GCTX/1243/2012/230,"1,93,098",22.07.2012,2290,"2,90,758

28.06.2012,GCTX/1243/Serv/016,"3,12,198",28.07.2012,2284,"4,68,862

30.06.2012,GCTX/1243/2012/249,"2,04,593",30.07.2012,2282,"3,06,990

20.07.2012,GCTX/1243/Serv/021,"87,006",19.08.2012,2262,"1,29,408

,,"35,02,500",,,"53,34,037

(in Rupees),,,,,

Particulars,Supply,Erection,Total,,

Basic Value,"3,44,00,000","31,00,000","3,75,00,000",,

,,,,,

,,,,,

Excise duty,"25,71,775",,"25,71,775",,

Cess,"77,154",,"77,154",,

CST,"6,06,530",,"6,06,530",,

VAT,"23,780",,"23,780",,

Service Tax,--,"3,83,159","3,83,159",,

TOTAL,"3,76,79,341",,"4,11,62,500",,

Amount paid by the Corporate Debtor,,,"(3,76,60,000)",,

Balance Amount payable by the Corporate Debtor,,,"35,02,500",,

Debtor to the Operational Creditor. Surprisingly, there is no reply by the Corporate Debtor through E-mail acknowledging the balance payable, to E-",,,,,

mail correspondence. Even otherwise, E-mail correspondence ended in February 2015. However, the application is filed on 16.11.2018. Thus, the",,,,,

application is beyond three years from the date of last E-mail correspondence with the Corporate Debtor. Thus, the application is barred by limitation.",,,,,

13. The Operational Creditor has relied on letter dated 03.06.2014. This letter is shown as Exhibit â??Fâ??, at page 46 of the Paper Booklet filed on",,,,,

behalf of the Operational Creditor. The case of the Corporate Debtor is that the Operational Creditor was yet to complete the remaining part of the,,,,,

contract work. This was brought to the notice of the Operational Creditor by the Corporate Debtor through letter dated 03.06.2014 and payment will,,,,,

be released after completion of the remaining work. On the other hand it is the contention of the learned counsel for the Operational Creditor that in,,,,,

the same letter the Corporate Debtor had clearly admitted that the project could not be commissioned due to its own difficulties and gave assurance to,,,,, release the payment after overcoming the financial difficulties faced by it. It is true that in the letter the Corporate Debtor has categorically admitted,,,,,

that the project is not yet commissioned due to power evacuation problem and shortage of funds. In the same letter the Corporate Debtor appreciated,,,,,

the work of the Operational Creditor either in the matter of supply of material and erection. However, in the same letter it was also brought to the",,,,,

notice of the Operational Creditor to complete the pending works, balance amount will be credited to the account of the Operational Creditor after",,,,,

commissioning of the plant. Thereafter, there was no reply to this letter by the Operational Creditor denying that there was any pending work.",,,,,

14. Even if the said letter is taken into account as an acknowledgement of liability, yet the application is filed beyond three years. This letter is dated",,,,,

03.06.2014, whereas the application is filed on 16.11.2018, which is beyond three years. As such this letter also does not save the limitation.",,,,,

15. The other contention raised by the learned counsel for the Operational Creditor is that the amount due to the Operational Creditor should have,,,,,

been reflected in the Books of Accounts of the company. In any event, it is written off, then the Corporate Debtor ought to have shown it as income",,,,,

in the relevant year in which this debt was written off and should have paid income tax. There is no material placed by the Corporate Debtor that the,,,,,

amount was written off. Therefore, it can be presumed that the debt stands appearing in the account of the Corporate Debtor and as such it saves",,,,,

limitation. There is no material placed by the Operational Creditor that the Corporate Debtor was showing any amount due to the Corporate Debtor.,,,,,

One of the contentions raised by the Corporate Debtor is that it had paid in excess of the contract price. On the other hand the contention of the,,,,,

learned counsel for the Operational Creditor is that the Corporate Debtor is yet to pay taxes as per the contract, which is not paid. No balance sheet",,,,,

of the Corporate Debtor is filed by the Operational Creditor. Burden lies on the Operational Creditor to prove the debt alleged is appearing in the,,,,,

Books of Accounts of the Corporate Debtor. No such material is placed for the Tribunal to come to conclusion that the alleged debt is appearing in the,,,,,

Books of Accounts of the Corporate Debtor. In absence of any such evidence, conclusion cannot be arrived at basing on the material available before",,,,,

the Tribunal. It is very clear that the application is barred by limitation under Article 137 of the Limitation Act.,,,,,

16. Even otherwise, there was no reply to the Demand Notice by the Corporate Debtor. Had it been true that pending works were yet to be attended",,,,,

to by the Operational Creditor, then the Corporate Debtor would have given appropriate reply to the Demand Notice issued under section 8 of the",,,,,

I&B Code. Surprisingly, there was no reply alleging that pending work is yet to be completed. Therefore, it cannot be said that there was any pre-",,,,,

existing dispute and work was incomplete. Even though there was no prior dispute, yet the application is patently barred by limitation and as such the",,,,,

application cannot be admitted and is liable to be rejected. In the result, the application is rejected.",,,,,

