
(2023) 08 NCLT CK 0017

In the National Company Law Tribunal

Case No : Company Appeal No.(IB)-683(ND)/2021

Lall Minerals Private Limited Vs Aryan Ispat And Power Private Limited ?

Date of Decision : 17-08-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 3(23), 5(20), 8, 9

Citation : (2023) 08 NCLT CK 0017

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J); Atul Chaturvedi, Member (T)

Bench : Division Bench

Advocate : Amrita Panda, Udbhav Gady, Gopinath Nayak, Rakesh Kumar, Ankit Sharma

Final Decision : Dismissed

Judgement

Atul Chaturvedi, Member, (Technical)

1. This is a Company Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Lall Minerals Private Limited ('Operational Creditor'), against the Corporate Debtor for the purpose of initiating Corporate Insolvency Resolution Process ('CIRP') against M/s. Aryan Ispat and Power Private Limited ('Corporate Debtor').

2. The Applicant namely M/s. Lall Minerals Private Limited (Operational Creditor) is a Company registered under the Companies Act, 1956 [CIN-U13100OR2005PTC008341], having its registered office at N4-320F, IRC Village, Nayapalli, Bhubaneswar-751015, Odisha. The Respondent Company namely M/s. Aryan Ispat and Power Private Limited (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN-U27102DL2003PTC259757], having its registered office at 198, SFS, Vasant Enclave, Rao Tula Ram Marg, South Delhi-110057. The Corporate Debtor has Authorised Capital of Rs.20,40,00,00,000/- and Paid-up Capital of Rs. 4,07,20,00,000/-.

3. The present Petition was filed on 09.06.2021 before this Adjudicating

Authority. The total amount due as on 30.11.2019 is Rs.3,67,89,756/-(Rupees Three Crore Sixty-Seven Lakh Eighty-Nine Thousand Seven Hundred and Fifty-Six Only) including an amount of Rs.1,00,01,099/- (Rupees One Crore One Thousand and Ninety-Nine Only) being Interest @28% Calculated from the due date till 30.11.2019.

Submissions of the Operational Creditor

4. That the Operational Creditor, M/s. Lall Minerals Private Limited was incorporated on 13.09.2005. The main object of the Operational Creditor is to carry on the business of prospecting, exploring, operating, and working on mines, quarries and to manufacture, process, excavate, dig, break and to deal in all sorts of present and future ores, minerals, deposits etc. and also to carry on the business to establish crusher unit for iron, manganese, chrome and other ores. The Corporate Debtor was desirous of procuring Iron Ore for which it had approached the Operational Creditor for supply of the same.

5. A Purchase Order for supply of Iron Ore dated 30.07.2019 bearing No. PI 19Y-00042 was issued by the Corporate Debtor for supply of 11550 MT of Iron Ore of value of Rs.5,29,65,750/-. Another Purchase Order for supply of Iron Ore dated 02.11.2019 bearing No. PI 19Y-00059 was issued by the Corporate Debtor for supply of 3850 MT of Iron Ore of value of Rs. 1,63,72,125/-.

6. Against the Purchase Order No. PI 19Y-00042 dated 30.07.2019 for supply of 11550 MT of Iron Ore, the Operational Creditor supplied a total of 11373.52MT of Iron Ore to the Corporate Debtor. After delivery of Iron Ore to the Corporate Debtor, the Operational Creditor raised three invoices as mentioned below:

a. LM/A/PL/37/2019-2020 dated 12/09/2019 of Rs. 1,80,58,997.25/- for supply of 3822.10 MT of Iron Ore @ Rs. 4,500.00/- per MT;

b. LM/A/PL/39/2019-20 dated 15/09/2019 of Rs. 1,67,86,905.45/-for supply of 3718.030 MT of Iron Ore @ Rs. 4,300.00/- per MT; and

c. LM/A/PL/40/2019-20 dated 17/09/2019 of Rs. 1,73,08,162.20/-for supply of 3833.480 MT of Iron Ore @ Rs. 4300.00/- per MT.

d. Against the Purchase Order No. p119Y-00059 dated 02.11.2019 for supply of 3850 MT of Iron Ore, the Operational Creditor supplied 3821.56 MT of Iron Ore to the Corporate Debtor. After delivery of Iron Ore to the Corporate Debtor, the Operational Creditor raised one invoice bearing Nos LM/A/PL/69/2019-20 dated 30/11/2019 of Rs. 1,70,53,711.50/- for supply of 3821.56 MT of Iron Ore @ Rs. 4250.00/- per MT.

7. That the Operational Creditor had raised following invoices:

Sl No.

Tax invoice No.

Invoice date

Quantity (MT)

Tax Invoice Amount (Rs)

1

LM/AIPL/37/2019-20

12-09-2019

3822.01

1,80,58,997.25

2

LM/AIPL/39/2019-20

15/09/019

3718.03

1,67,86,905.45

3

LM/AIPL/40/2019-20

17-09-2020

3833.48

1,73,08,162.20

4

LM/AIPL/69/2019-20

30-11-2019

3821.56

1,70,53,711.50

Total

6,92,07,776.40

8. The Corporate Debtor paid Rs 6,98,96,430.50/- towards the supply of Iron Ore and thereafter failed and neglected to make payment of the balance amount of Rs. 3,67,89,756/- (including interest @ 28% for 16 months).

9. Various reminder letters were issued by the Operational Creditor to the Corporate Debtor requesting the Corporate Debtor to release the outstanding dues on 13/02/2020, 27/02/2020, 28/01/2021 & 10/02/2021.

10. The Corporate Debtor did not pay any outstanding amount, the Operational

Creditor issued a Demand Notice dated 31.03.2021 under Section 8 of the Insolvency and Bankruptcy Code, 2016.

11. The Corporate Debtor did not respond to the Demand Notice and did not raise any objection regarding the debt.

Submission of the Corporate Debtor

12. The Corporate Debtor denies the amount of Rs. 3,67,89,756/- (Rupees Three Crore Sixty-Seven Lakhs Eighty-Nine Thousand Seven Hundred and Fifty-Six Only) as claimed by the Operational Creditor.

13. Reply affidavit has been filed by the Corporate Debtor on 19.09.2022.

14. That the Operational Creditor does not have the locus to initiate any sort of proceedings against the Corporate Debtor under the provisions of the I & B Code, as the so called Operational Creditor is not an "operational creditor" of the Corporate Debtor as per the definition provided under sub-section 20 of Section 5 read with sub-section 23 of section 3 of the Code.

15. That the amount claimed is based on the invoices. The demand notice was issued in Form-4 along with the copy of the invoices as prescribed under Rule-5 of the Insolvency and Bankruptcy (Applications to the Adjudicating Authority) Rules, 2016. The relevant portion of the Rule-5 of Insolvency and Bankruptcy (Applications to Adjudicating Authority) Rules, 2016 is reproduced herein below: -

"5. Demand notice by Operational Creditor-

(1) An Operational Creditor shall deliver to the Corporate Debtor, the following documents Z, namely:-

(a) A demand notice in Form 3; or

(b) A copy of an invoice attached with a notice in Form-4"

16. That it is technically defective on the ground that the demand notice annexed with the present petition is only in Form-3 and reliance is placed upon the invoices attached with it. It is a settled position of law that if the claim relied upon the invoices, the demand notice under Section-8 of the Insolvency and Bankruptcy Code, 2016 is to be served in Form-4.

17. That an amount of Rs. 3,67,89,756/- is claimed. The amount also includes an interest of Rs. 1,00,01,099 calculated @28%. In the absence of any agreement on the rate of interest between the parties, the interest element cannot be treated as the debt.

18. That the purchase order dated 30.07.2019 and 02.11.2019 stipulates that Iron Ore of 63% Fe strength required to be supplied with maximum tolerable limit of maximum 0.5%. As per the testing the Iron Ore supplied by the Operational Creditor was much below the tolerable limit The aforesaid fact was informed to Operational Creditor vide a letter dated 13.04.2020.

19. That the Corporate Debtor has sent its reply to the demand notice on 14.06.2021.

20. That it is a pre-existing dispute that can be established from the letter dated 13.04.2020.

Analysis and Findings

21. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record.

22. During the pendency of this proceedings, the principal amount of Rs. 2,67,88,657/- has been deposited in the account of the Operational Creditor on 20.02.2023. This fact was brought to the notice of the 'Adjudicating Authority' and the 'Adjudicating Authority' passed the following order on 31.03.2023:

"We have heard the submissions of Ms. Amrita Panda, Ld. Counsel appearing for the Operational Creditor and Mr. Rakesh Kumar, Ld. Counsel appearing for the Corporate Debtor. Ld. Counsel for the Corporate Debtor has submitted that an amount of Rs. 2,67,88,657/- has been deposited in the account of the Operational Creditor on 20.02.2023 and in support of that an affidavit has also been filed. Ms. Panda, Ld. Counsel appearing for the OC has submitted that the Operational Creditor has not accepted the amount transferred by the Corporate Debtor. Further, the interest amount is in dispute. Arguments concluded. Ld. Counsel for the Operational Creditor is directed to file written submissions alongwith case laws, if any, within three days."

23. It is observed that the principal amount of Rs. 2,67,88,657/- has been paid by the Corporate Debtor to the Operational Creditor. Corporate Debtor has filed affidavit on 21.02.2023 clearly indicating the proof of payment. Admittedly, there is no contract or agreement between the parties for payment of interest. The parties never agreed upon payment of any interest whatsoever. Not a single correspondence has been produced by the operational creditor to the effect that the corporate debtor had ever agreed to pay interest on any purportedly outstanding amount.

24. At this juncture, it is pertinent to refer to the order of Hon'ble NCLAT Principal Bench, New Delhi in the case of "Rohit Motawat v. Madhu Sharma", Comp. App.(AT) (Ins) No. 1152 of 2022, dated 03.02.2023, wherein it is held that "the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for recovery'."

25. Further, in view of the order of the Hon'ble NCLAT in Permal Wallance Pvt. Ltd. Vs Narabada Forest Industries Pvt. Ltd. in 'Company Appeal (AT) (Ins) No. 36 of 2023 decided on 17.01.2023' wherein it is observed that:

"5. Having heard Learned Counsel for the parties, we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. Vs. Union of India" (2019) 4 SCC 17), IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor. We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application filed by the Appellant. There is no merit in the Appeal, the Appeal is dismissed."

26. Further, from the records it is seen that the Operational Creditor has failed to bring forth any agreement between the parties that a default in payment would attract interest. Further, the interest of 28% is nowhere mentioned in any clause in the invoice and the Corporate Debtor never agreed or promised. Hence, in light of the above precedents C.P. (IB) No. 683/ND/2021 is dismissed.

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