(2022) 01 NCLT CK 0045

In the National Company Law Tribunal

Case No : C.P. (IB) No. 1446/KB/2020

NLB Steels Pvt Ltd APPELLANT

Vs

Betterman Engineers Private Limited RESPONDENT

Date of Decision : 11-01-2022

Acts Referred:

Insolvency & Bankruptcy Code, 2016 — Section 4, 7(5), 9

Citation : (2022) 01 NCLT CK 0045

Hon'ble Judges : Rohit Kapoor, Member J;Harish Chander Suri, Member T

Bench : Division Bench

Advocate : Ankan Rai, Udit Agarwal

Final Decision : Dismissed

Judgement

Rohit Kapoor, Member (Judicial):

1. This Court convened through video conferencing.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) byN LB Steel Private Limited

(Operational Creditor), represented by the director of the Operational Creditor, Mr. Ramesh Kumar Bihani, seeking to initiate Corporate Insolvency

Resolution Process (â??CIRPâ??) against Betterman Engineers Private Limited (â??Corporate Debtorâ??).

3. The present petition was filed on 27.12.2019, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of

a sum of Rs.70,75,060/- (Rupees Seventy Lakh Seventy-Five Thousand and sixty only), due to the Operational Creditor for the supply of goods to the

Corporate Debtor.

4. Submission of the learned Counsel for the Operational Creditor

4.1.1 The case of the Operational Creditor is that as per thr orders place by the Corporate Debtor, by purchase order dated on 08.10.2015, the

Operational Creditor supplied quantities of G. C. Sheets and other steel products to the Corporate debtor during the Financial Years 2014-15 and

2015-16, at a rate agreed upon between the parties.

4.1.2 That the Operational Creditor accordingly raised Bills and Tax Invoices against the aforesaid supplies made to the corporate debtor, who has

made late payments of some of the Bills in full and some, in part. The Corporate Debtor made last payment of Rs. 4,19,999 in 25.10.2019 and as such

a principal amount of Rs. 70,75,060/- is still outstanding as on date. The Operational creditor is also entitled to the interest of 2% for the late payments

made by the Corporate debtor. 4.1.3 That the Operational Creditor served a demand notice upon the Corporate Debtor, which was received by the

Corporate Debtor on 05.11.2019, but the Corporate Debtor chose not to reply to it.

4.1.4 The total amount claimed by the Operational Creditor is Rs.2,35,09,353/- (Rupees Two Crore Thirty-Five Lakh Nine Thousand Three Hundred

and Fifty-Three only) consisting of Principal amount of Rs. 70,75,060/- and interest Rs. 1,64,34,293/- @2% per annum.

5. Submission of the learned Counsel for the Corporate Debtor

5.1.1 The Corporate Debtor submits that during the pendency of the instant Petition, the Corporate Debtor has paid the entire principal sum to the

Operational Creditor. The only dispute remaining is regarding the payment of interest sum.[SM1]

5.1.2 That the Purchase Order issued by the Corporate Debtor at page 21 of the Application contains the clause â?? L.P charge @ 2% will be

applicable extra over 60 daysâ? and that nowhere it is mentioned whether the same is per month or per annum. In Form 3 at page no. 47 of the

application, the Operational Creditor states that the interest is @2% per annum which is also evident from page 10 of the application i.e Form 5.

5.1.3 That the Operational Creditor has pleaded interest @2% per annum whereas the interest of Rs. 1,64,34,293/- has been calculated @2% per

month. Its is submitted that interest amount @2% per annum will be Rs.13,69,521/- only. Since the alleged claim amount is less than Rupees One

Crore, the application is not maintainable and should be dismissed.

5.1.4 The Corporate debtor has handed over a cheque of Rs. 13,69,521/- date 24.12.2021 towards payment of interest calculated @2% per annum.

But the Operational Creditor changed their mind and submitted that the Corporate Debtor is liable to pay interest @2% per month.

5.1.5 That the operational Creditor was required to deliver demand notice along a copy of invoice. But the Operational Creditor failed to issue any

invoice in respect of the payment of interest. Further, no date of default has been set out by the Operational Creditor in the Application.

6. Rejoinder to the reply of the Corporate Debtor

6.1 The interest in the calculated as 2% per month but due to typographical error, it is inadvertently written as 2% per annum in the petition.

6.2 That even if the interest is calculated @2% per annum, the amount exceeds rupees one lakh. The application is thus maintainable as the

Amendement in section 4 of the Insolvency and Bankruptcy Code, 2016 came into force with effect from 24.03.2020 and will not be applicable to this

matter.

Heard the learned Counsel for the Operational Creditor and the Corporate Debtor and perused the record.

Analysis and findings:

i. The Applicant has, in Form 5, Part I V, column 2 at page 10 , under the heading of amount to be claimed in default has mentioned rate of Interest @

2% p.a. The Applicant again in the synopsis of the Petition has mentioned the rate of interest to be 2%. However, in the calculation sheet an interest

at the rate of 2% per month has been claimed. On the last date when the matter was heard, this Tribunal specifically asked whether it is 2% per

month or per annum. The Ld. Then Counsel stated it to be 2% per annum. However, today when the matter was called, new counsel appeared and

claimed the interest to be @ 2% per month. It is also admitted that the Corporate Debtor is ready to pay Rs.13,00,000/- on account of interest @ 2%

per annum. The Operational Creditor, in Paragraph (7) of his rejoinder has stated that the interest mentioned of 2% per annum was a typographical

error. In the written note, the Operational Creditor has further stated that keeping in view of the rate of interest awarded by various courts in the

Country and under the Interest Act, 1978, 24% per annum is reasonable.

ii. Whether 2% per annum is genuine or not, the Adjudicating Authority cannot adjudicate on this issue. Except for the calculation sheet, there is

nothing to suggest that the rate of interest was 2% per month. In order to resolve this minor issue, it is pertinent to refer to the law laid down by the

Honâ??ble Delhi High Court in Anant Construction (P) Ltd. vs Ram Niwas[1], wherein the Honâ??ble Delhi High Court held that â??A plea

inconsistent with the pleas taken in original pleadings cannot be permitted to be taken in subsequent pleadings.â??

ii. Further, the Operational Creditor has insisted upon initiating Corporate Insolvency Resolution Process against the Corporate Debtor for non-

payment of the balance interest. The Operational Creditor has not denied the payment of the principal amount during the pendency of the Petition.

iii. We are aware of the decision taken by the Honâ??ble Supreme Court in E S Krishnamurthy & Ors v. M/s Bharath Hi Tech Builders Pvt. Ltd[2],

, wherein the following was held:

â??The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision,

the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the

Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a

dispute.â??

In the present case, the parties of their own volition themselves agreed to settlement.

iv. Since the principal amount has been paid and the interest thereupon at the rate of 2% per annum has been accepted by the Operational Creditor

and in the absence of any agreement to the contrary, we feel that nothing survives in this Petition.

Therefore, in our opinion, there is no reason to keep the Petition pending and therefore we dispose of this petition as settled in view of the payment of

principal amount along with 2% interest at per annum.If the interest is already not paid, the Corporate Debtor shall make payment within one week

from today.

14. C.P.(IB) No. 1446/KB/2020 is hereby dismissed.

15. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary

steps.

16. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

