
(2023) 06 NCLT CK 0052

In the National Company Law Tribunal

Case No : IA No. 685/2020 & IA No. 1551/2022 In CP (IB) No.391/Chd/Pb/2018

Punjab National Bank Vs M/s. Vallabh Textiles Company Limited ?

Date of Decision : 12-06-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 25, 60(5), 231, 238
National Company Law Tribunals, 2016 — Rule 11, 55
Companies Act 2013 — Section 424(1)

Citation : (2023) 06 NCLT CK 0052

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Kunal Godhwani, Shivam Grover

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No. 685/2020

1. This application has been filed by the applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, seeking direction to the respondent to pay the corporate debtor an amount of Rs. 22,30,093/- along with interest @ 15% P.A. of Rs. 10,62,930/- upto the date of payment.

2. The brief facts of the application are as under:

2.1 The CIRP was initiated by order of this Adjudicating Authority dated 12.04.2019 when the petition under Section 7 was admitted at the instance of the Punjab National Bank. It is stated that the respondent company was buying the goods from the corporate debtor and stopped purchasing goods from 31.03.2019. However, subsequent to the initiation of CIRP, the transaction audit was carried out, and it emerges an amount of Rs. 22,30,093/- remained outstanding with regard to the respondent, a copy of the ledger account of the corporate debtor as on 31.03.2019 attached as Annexure A-6 and the relevant pages of the transaction report dated 14.11.2019 is attached as Annexure A-7 to

the application along with a copy of the audited balance sheet of the corporate debtor as on 31.03.2018 and as on 31.03.2019 attached as Annexures A-8 & 9 respectively.

2.2 It is further stated that as per the record of the corporate debtor, the respondent has also not returned goods purchased by them from the corporate debtor and apparently utilized the goods. It is also stated that the respondent is liable to pay the interest to the corporate debtor @ 15% p.a. The reliance has been placed on the decision of the co-ordinate Bench of NCLT Chennai in MA/309/2018 in CP/229/IB)/CB/2018, wherein the NCLT has held that the right to reject is lost if the customer keeps the goods after discovering the defect in them and further sells the same.

2.3 It is also stated that in view of Section 238 of IBC, this Authority has complete jurisdiction to deal with all the issues pertaining to the insolvency process and the mode and manner of disposal of assets. It is further submitted that Section 231 of IBC appears to the jurisdiction of Civil Courts in respect of any matter in which the Adjudicating Authority is empowered by the Code to pass an order.

3. In the present case, notice was served on the respondent, and an affidavit of service was filed vide Diary No. 00353/2 dated 22.12.2022, despite the service of notice and also the reminders emailed in compliance of our directions in the orders dated 25.08.2022, 05.12.2022 no reply has been filed.

4. After going through the records, it is seen that the Resolution Professional has produced sufficient documentary evidence in favour of his claim that the amount of Rs. 22,30,093/- was outstanding against the respondent as on the date of the CIRP. We have, however, not been able to find any evidence with regard to the charging of interest on such outstanding in any of the documents before us.

5. Considering the facts discussed above, we hold that the impugned amount of Rs. 22,30,093/- is an asset of a corporate debtor as on the date of initiation of CIRP and is to be taken into custody and control of the Resolution Professional as per the provisions of Section 25 of the Code. Hence, we direct the respondent to pay the amount of Rs. 22,30,093/-standing against the name of the corporate debtor.

6. We, however, do not accede to the prayers of the Resolution Professional that interest of the said amount be allowed to be paid to the corporate debtor as no evidence was placed before us during the proceedings to justify the charging of interest on the amounts outstanding for the supply of goods by the corporate debtor.

7. In the result, IA No. 685/2020 is allowed with the aforesaid directions.

IA No. 1551/2022

8. This application has been filed by the applicant under Section 60(5) of the

Insolvency and Bankruptcy Code, 2016, read with Rule 11 and Rule 55 of the NCLT Rules seeking clarification of order dated 24.05.2022 in IA No. 194/2022 passed by this Bench.

9. In the present application, it is stated that this Authority, by its order dated 04.05.2022, has dismissed the application moved by the present applicant with some observations. It is further stated that after the issuance of this order, the applicant approached the Resolution Professional, but its claim is not accepted. The present application is moved seeking clarification from this Authority to define the competent judicial authority before whom the applicant can move the application for seeking relief which was originally sought before this Bench.

10. It is also submitted that because of the moratorium period under Section 14 is continuing in the present case, the applicant cannot approach any judicial authority for relief.

11. A short note on behalf of the applicant and respondents regarding the maintainability of this application has been filed by Diary Nos. 02535/2 dated 29.12.2022 and 02535/01 dated 22.12.2022, respectively.

12. In its note, the applicant has stated that this Tribunal failed to consider the amount due to the applicant is part of the CIRP cost, and the purpose of the IBC is defeated if the IRP is allowed to unilaterally raise issues after the initiation of the CIRP proceedings. The reliance has been placed on the decision of the Hon'ble Apex Court in the case of Honda Siel Power Products Ltd. v. CIT [2007] 295 ITR 466/165 Taxman 307. In Honda Siel Power Products Ltd. v. CIT [2007] 295 IT wherein, it was held by the Hon'ble Supreme Court that no party appearing before the Tribunal, be it an assessee or the department, should suffer on account of any mistake committed by the Tribunal. This fundamental principle has nothing to do with the inherent powers of the Tribunal. The Supreme Court further held that one of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. When prejudice results from an order, then it is the duty of the Tribunal to set it right.

13. Further reliance is placed on the decision of the Hon'ble Apex Court in Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd [2008] 305 ITR 227/ 173 Taxman 322 (SC), it was held that the rectification of order stems from the fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality. It was further held that non-consideration of a decision of the jurisdictional Court or of the Supreme Court can be said to be a mistake apparent from the record. It is stated that In S. Nagaraj v. State of Karnataka [1993] Suppl 4 SCC 595, the Hon'ble Supreme Court has held that justice is a virtue which transcends all barriers. Neither the rules of the procedure nor the technicalities of law can stand its way. The order could not be prejudicial to anyone. The rule of stare decisis is adhered for consistency, but it is not as

inflexible in Administrative Law as in Public Law. Even the law bends before justice. The entire concept of writ jurisdiction exercised by the higher Courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption, which in fact did not exist and its perpetration shall result in a miscarriage of justice, then it cannot on any principle be precluded from rectifying the error. The difference lies in the nature of the mistake and the scope of rectification, depending on if it is of fact or law. But the root from which power flows is the anxiety to avoid injustice. Thus, the applicant submits that the refusal of the Respondent to reconsider the claim of the Applicant is wholly illegal and arbitrary. In the case of *Sunil Kumar Jain and Others vs. Sundaresh Bhatt and Others*, 2022 (7) SCC 540, when there were disputed questions related to CIRP costs involved, the Hon'ble Apex Court was pleased to direct the Liquidator to determine the issue at hand as per the provisions of law. The applicant has averred that he cannot be left without a remedy. Section 424(1) of the Companies Act 2013 provides that the Tribunal and the Appellate Tribunal shall not while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice.

14. We have heard the learned counsels for the parties and have gone through the relevant records.

15. For the sake of clarity, the relevant part of the order, which requires clarification as per the applicant, is extracted below:

"9. In view of the aforementioned facts and judicial decisions, this Bench is of the view that the prayers made by the applicant cannot be acceded to. The applicant, however, is at liberty to take up this dispute before the competent Judicial Authority for relief, if any. It is further clarified that this Bench does not express any opinion on the merits of claims made by either party in this application."

16. The aforementioned decisions are mainly with regard to such cases where mistakes have been committed by judicial authorities and need to be subsequently rectified. In this connection, we point out that there was no mistake in the impugned order, which has been sought to be clarified. In the said order, this authority clearly stated that the issue under litigation is beyond the ambit of this Authority while giving liberty to the applicant to approach appropriate authority, if any. This means that this authority has only a summary jurisdiction and is not a court of equity, and therefore cannot adjudicate on the commercial disputes between the parties in this case. If the applicant's interests were compromised or prejudiced by the impugned order, it was open for the applicant to go in appeal against the said order. As there is no mistake or ambiguity in the impugned order, we are of the view that no clarification in this regard is called for. e summary jurisdiction

17. In the result, IA No. 1551/2022 is dismissed being not maintainable and disposed of accordingly.