
(2023) 08 NCLT CK 0020

In the National Company Law Tribunal

Case No : IA No. 764/2020 In CP (IB) No. 382/Chd/Chd/2018

?Rana Polycot Limited Vs Superfine Packaging ?

Date of Decision : 18-08-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 3(11), 9
Income Tax Act, 1961 — Section 226(3)
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2023) 08 NCLT CK 0020

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

Bench : Division Bench

Advocate : Atul Sharma, Mehtab Khaira

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

IA No. 764/2020

1. The present application is being filed by, Rana Polycot Limited (herein referred to as Applicant/Corporate Debtor) against Superfine Packaging (herein referred to as Respondent/Operational Creditor) under Rule 11 of National Company Law Tribunal Rules, 2016 for the review/recall of the order dated 06.11.2020 passed by this Adjudicating Authority on account of there being 'no debt' in terms of Section 3 (11) of the Insolvency and Bankruptcy Code, 2016.

2. The brief facts of the case, as stated in the application are that the bill amount petitioner was of Rs. 37,05,851/-. During the pendency of the proceedings, the matter was compromised between the parties and application for withdrawal was filed before this Adjudicating Authority. Vide order dated 22.01.2020 of this Adjudicating Authority, the CP (IB) No. 382/Chd/Chd/2018 was dismissed as withdrawn with the liberty as aforesaid. Further, the petitioner filed an application number 262 of 2020 for restoration of the matter which was heard on 06.11.2020 through video conferencing, the counsel for corporate debtor placed facts regarding the force majeure which had allotted for not permitting the

respondent to comply with the terms of the payment. Thus as on date:

i The alleged outstanding amount of Rupees Rs.37,05,851.00 has been paid by the respondent- corporate debtor as per details submitted above.

ii. the above-mentioned amount has been duly credited to the account of the petitioner/operation creditor.

iii. no outstanding principal amount is pending payment inter-se between the parties from the day onwards when the last amount of Rs.24,55,851 was credited to the account of the petitioner operational creditor, as such.

iv. Nothing is now due which can be termed as "debt" in terms and provisions of Section 3(11) of the Insolvency and Bankruptcy Code, 2016.

Keeping with the law laid down on the issue, the main CP(B)No. 382of 2020 is no more maintainable on account of the payments made by the respondent-corporate debtor to the petitioner-operational creditor to the tune of Rs.37,05,851/-.

3. The respondent/corporate debtor has filed a reply by Diary No. 02188/101854/01 dated 27.02.2023 and was re-filed on 01.03.2023 wherein it is stated that it is admitted that an amount of Rs.37,05,851/- has been received by petitioner but it does not include the interest payable towards the petitioner since 12.11.2018. The parties entered into compromise on 21.01.2020 wherein the petitioner had agreed to settle the matter. However, the respondent cannot be allowed to take benefit of the compromise after they themselves have failed to fulfill its terms. This Adjudicating Authority permitted the petitioner company to withdraw the main petition on account of agreement and cheques were presented for the payment outstanding which were dishonored by the bank. After expiry of agreement, the respondent in the bank unilaterally deposited amount of Rs.24,55,851/- on 13.08.2020. The respondent company is now trying to suggest that main petition is infructuous on account of non-existence of any debt. The interest was legally due from 30.04.2018 on condition that timely payments were to be made. The terms of the agreement were violated by respondent company despite repeated requests. The total amount according to the main petition should be calculated.

4. We have heard learned counsel for the applicant as well as the respondent and have perused the record carefully.

5. In the present case, the Corporate Debtor has issued a demand draft No.048410 dated 21.01.2020 for Rs.10 Lakhs and 05 cheques dated 06.02.2020, 21.02.2020, 20.04.2020, 20.05.2020 and 20.06.2020 in lieu of the settlement agreement dated 21.01.2020. The cheques 21.02.2020, 20.04.2020, 20.05.2020 and 20.06.2020 could not be honored as on 05.02.2020, the office of Assistant Commissioner of Income Tax vide its notice under Section 226(3) of Income Tax Act, 1961 had ordered the branch Manager of the Bank for attachment of the accounts of respondent Company and just no transaction of credit or debit was

permitted. It is seen that the respondents have transferred the amount of the cheques in the bank account of the petitioner through Pay Order No.0385201800058 for Rs.2.5 Lakhs and NEFT No.920020009924533 for Rs.24,55,851/-. The amount which was agreed to be paid to the petitioner in the settlement has been duly transferred after dishonoring of the aforesaid cheques and no principal amount is outstanding as on date.

6. It is further contended by the counsel for the petitioner that there is no clause with regard to the payment of interest. The respondent has relied upon the judgement passed by the Hon'ble National Company Law Appellate Tribunal in the case of "Permail Wallace Pvt. Ltd. Versus Narbada Forest Industries Pvt. Ltd.; Company Appeal (AT) (Insolvency) No. 36 of 2023 dated 17.01.2023 wherein, it is held that 'when there is a dispute about the terms of the settlement agreement as far as calculator of interest amount is concerned it cannot be resolved before this Adjudicating Authority'. We have perused the settlement dated 21.01.2020 and it is noted that no agreement/clause has been added with regard to the payment of interest. Therefore, the petitioners are at liberty to approach the appropriate forum for their claim of interest which occurred due to the late payment as per the settlement.

7. In light of the discussions foregoing, the order dated 06.11.2020 passed by this Adjudicating Authority is reviewed accordingly. Thus, IA No. 764/2020 is allowed and stands disposed of accordingly.