
(2024) 05 NCLT CK 0009

In the National Company Law Tribunal

Case No : I.A. No. 777/2023, I.A. No. 892/2023 & C.P. (IB) No. 174/Chd/Hry/2021

Smt. Manorma Aggarwal (Proprietor), M A Sales Corporation **APPELLANT**

Vs

M/s Vishal Mega Mart Private Limited **RESPONDENT**

Date of Decision : 10-05-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 8, 9
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2024) 05 NCLT CK 0009

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

Bench : Division Bench

Advocate : Abhishek Aggarwal, Ashutosh Gupta, Ashim Aggarwal

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial); Subrata Kumar Dash, Member (Technical)

I.A. 892 of 2023

1. The present application has been filed by M/s Vishal Mega Mart Private Limited, (hereinafter referred to as Applicant/Corporate Debtor) under Rule 11 of the NCLT Rules, seeking dismissal/rejection of the petitioner filed by Smt. Manorma Aggarwal (Proprietor), M A Sales Corporation (hereinafter referred to as Non-Applicant/ Operational Creditor), under Section 9 of the Code, on the ground that the principal amount of Rs. 2,04,24,503/- (Rupees Two Crore Four Lakhs Twenty Four Thousand Five Hundred Three only) has been paid by the Applicant/Corporate Debtor to the Non-Applicant/Operational Creditor on 31.03.2023. However, the interest claimed at the rate of 18% per annum remains unpaid, as there is neither a clause of interest on the invoices nor is there any agreement between the parties regarding any interest on delayed payments.

2. The Non-applicant/Operational Creditor in its reply dated 20.07.2023, filed vide diary no. 01136/01 stated that no objection to the composition of the interest was raised by the Applicant/Corporate Debtor in its reply to the demand notice dated 16.03.2021. The Non-applicant/Operational Creditor further submitted that the Applicant/Corporate Debtor in its purchase order, had elaborated certain terms and conditions, imposing a penalty of 2% per 7 days (per week) depending upon the situation, amounting to a total interest of 96% per annum. If the Applicant/Corporate Debtor is imposing an interest and penal clause on the Non-applicant/Operational Creditor, then they are liable to pay the same penalty interest. However, the Non-applicant/Operational Creditor had only claimed 1.5% monthly interest starting from the date of default.

3. The Applicant/Corporate Debtor in its rejoinder dated 17.08.2023 filed vide diary no. 00836/7 stated that the Non-applicant/Operational Creditor cannot unilaterally charge interest merely on the ground that the corporate debtor could charge demurrage of 2% per week as allegedly mentioned in the purchase orders.

4. The Applicant/Corporate Debtor filed its written submissions dated 20.11.2023 vide diary no. 01136/2 and the Non-Applicant/Operational Creditor filed its written submissions dated 20.11.2023 vide diary no. 00836/8.

5. During the course of final arguments, the Ld. Counsel for the Non-Applicant/Operational Creditor contended that the main petition was reserved for order on 23.03.2023 and with the intention of avoiding the admission of the petition, the Corporate Debtor deposited the principal amount of Rs. 2,04,24,503/- in the bank account of the operational creditor and filed the present application seeking dismissal of the main petition. The Ld. Counsel for the Non-Applicant/Operational Creditor referred to the Hon'ble NCLAT's judgment in the matter of Loramitra Rath vs. JM Financial Asset Reconstruction Limited, Company Appeal (AT) (Insolvency) No. 1359 & 1360 of 2023,

13. It is a well settled proposition of law that the two stages of reserving of judgment and pronouncement of judgment are in a continuum with no hiatus or gap as such in the two stages. That being the well accepted and time-tested practice in court proceedings, subsequent pleadings filed by way of an I.A. after the judgement is reserved is normally not entertained for reasons of procedural propriety. The Adjudicating Authority while dismissing the I.A. has applied the same settled position of law that when a matter is reserved for orders, there is no scope for entertaining application from parties to re-hear the matter. The Adjudicating Authority has relied on the judgment of the Hon'ble Supreme Court in Arjun Singh v. Mohindra Kumar & Ors. 1964 5 SCR 946, and Hon'ble Rajasthan High Court in Rajasthan Financial Corporation v. Pukhraj Jain & Ors. in AIR 2001 Raj 71 to hold that no application could be moved after the final arguments were heard and the case was closed for judgment. Hence, we find that the Adjudicating Authority had committed no error in not entertaining the I.A. particularly so when the I.A. contained facts which were already in existence at the time of filing of reply and at the time of making pleadings in the main

company petition. Neither do we find any cogent grounds having been cited to explain what had impeded the Appellant from flagging these issues during the hearing of the main company petition. It also does not stand to any logical reasoning as to why the issues raised in the I.A. could not have been raised in the main company petition. Raising such technical issues and that too after detailed hearing in the main petition was concluded clearly shows that the Appellant was merely trying to raise feeble grounds in the I.A. to somehow delay and derail the admission of CIRP.

6. The Non-Applicant/Operational Creditor has relied upon the Hon'ble Supreme Court's judgment in the matter of Mobilox Innovations Pvt. Ltd. vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353 and M/s Engineers vs. Hindustan Petroleum Corporation Limited, 2022 SCC Online SC 1385, Civil Appeal No. 4583, to assert that if the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence. Reference is also made to the Hon'ble NCLAT's judgment in the matter of M/s Clicbrics Technologies Private Limited vs. Ansal Housing Limited, Company Appeal (AT) (Insolvency) No. 1268 of 2022.

7. On the other hand, the Ld. Counsel for the Applicant/Corporate Debtor, while rebutting the contentions made by the Ld. Counsel for the Non-applicant/Operational Creditor for non-maintainability of the application, referred to the Hon'ble Supreme Court's judgment in the matter of K.K. Velusamy vs. N. Palanisamy, Civil Appeal Nos. 2795-2796 of 2011, 11 SCC 275, wherein it was held that if in the interest of justice, the Court is required to do something or take note of something, the discretion does not disappear merely because the arguments are heard, either fully or partly. The relevant paragraph of the said judgment is reproduced hereunder :

The learned counsel for respondent contended that once arguments are commenced, there could be no re-opening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

8. The Ld. Counsel for the Applicant/Corporate Debtor while asserting that CIRP cannot be initiated where the principal amount stands paid and only interest component is disputed, relied upon the Hon'ble NCLAT's judgment in the matter of Rohit Motawat v. Madhu Sharma Proprietor of Hind Chem Corporation & Anr., Comp. Appeal (AT) (Ins.). No. 1152 of 2022, wherein it was held that an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') for initiation of Corporate Insolvency Resolution Process ('CIRP') being pursued only for the interest component, where the principal amount had already been paid in full, is not maintainable as the spirit of the legislation of the IBC is for 'resolution of debt' and not for 'recovery'.

9. The Applicant/Corporate Debtor also referred to the judgments of this Bench in the matters of

i. Atul Arya v. Rana Polycot Ltd., C.A. No. 44/2020 in CP (IB) No. 353/Chd/Chd/2018, wherein it was held that mere claims based upon alleged oral agreements cannot be adjudicated by the Tribunal and in absence of any document signed by both parties acknowledging payment of interest for delayed payments, the interest so claimed on basis of alleged oral agreement cannot be allowed by this Tribunal.

ii. M/s Oswal Cable Products Limited vs. M/s Jindal Speciality Textiles Limited in CP(IB) No. 187/Chd/Pb/2019 and Craftsman Automation Ltd. vs. Inox Wind Ltd. CP (IB) No. 190/Chd/Hp/2019, wherein the applications for initiation of the CIRP of the Corporate Debtors were dismissed on the ground that the principal amount was paid by the Corporate Debtor to the Operational Creditor and only the interest component was disputed. The judgment in M/s Oswal Cable Products Limited vs. M/s Jindal Speciality Textiles Limited (supra), was also challenged before the Hon'ble NCLAT and was upheld vide order dated 10. The present interlocutory application, being inter-linked with the main company petition filed under Section 9 of the Code, would be taken up for adjudication with the main petition.

I.A. 777 of 2023

11. The present application is filed in main CP (IB) No.174/Chd/Hry/2021, under Rule 11 of the National Company Law Tribunal Rules, 2016, by Smt. Manorama Agarwal, Proprietor of M A Sales Corporation (Operational Creditor/Petitioner), seeking a proposal for the appointment of Sh. Prashant Gupta bearing Registration No. IBBI/PA-001/IP-P-02471/2021-22/13868, E-mail: pgupta.rp@gmail.com, Mobile No. 9815993315 as an Interim Resolution Professional. The applicant has submitted Form-2 dated 23.03.2023, Form-B wherein Authorisation For Assignment (AFA) is valid upto 06.11.2023 and a certificate of registration issued by the Insolvency and Bankruptcy Board of India.

C.P. (IB) No. 174/Chd/Hry/2021

12. The instant petition has been filed by Smt. Manorma Agarwal, Proprietor, M A

Sales Corporation, (hereinafter referred to as "Petitioner/Operational Creditor") against M/s Vishal Mega Mart Private Limited (hereinafter referred to as "Respondent/Corporate Debtor") under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code"), seeking initiation of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

13. The Operational Creditor has claimed an amount of Rs.2,58,85,226.35/- (Rupees Two Crore Fifty Eight Lakhs Eighty Five Thousand Two Hundred twenty Six and Thirty Five Paise only), principal amount being Rs. 2,04,24,503/- and Rs. 54,60,723.35/- (Rupees Fifty Four Lakhs Sixty Thousand Seven Hundred Twenty Three and Thirty Five Paise) as interest @ 18 % per annum on the basis of supply of goods to the Corporate Debtor. Since the Corporate Debtor defaulted in the repayments of the debt, and no payment was received since August 2019, and the first default commenced in September 2019, the Operational Creditor issued a statutory demand notice in Form-4 dated 16.03.2021 affidavit of service filed vide diary no. 00836/1, under Section 8 of the Code by speed post and email,. The Corporate Debtor replied to the said demand notice via email on 16.04.2021 stating that the amount is disputed. The Petitioner has further stated that there is no ongoing litigation pertaining to the amount claimed.

14. A notice was issued to the Corporate Debtor as to why the petition should not be admitted. The Corporate Debtor filed its reply dated 03.06.2022, vide diary no.00836/3, wherein it was stated that the Petitioner, along with her son, Mr. Rohit Agarwal, an employee of the Corporate Debtor had played fraud on it by concealing their relationship.

15. The Corporate Debtor further submitted that the Petitioner in collusion with her son, provided inferior quality goods at inflated rates to the Corporate Debtor and has caused a loss of approximately Rs. 4.7 crore to it. On confronting Mr. Rohit Agarwal about his relationship with the Petitioner, he resigned from the service of the Respondent Company on 04.09.2019. The Corporate Debtor filed a police complaint against the Petitioner and her son for cheating, fraud, breach of trust for causing wrongful loss to the Respondent Company for an amount of Rs. 4.7 crore. The said complaint is under enquiry. The Corporate Debtor, also, in its reply dated 16.03.2021 to the demand notice mentioned about the pre-existing dispute between the parties.

16. The Operational Creditor in its written submissions dated 16.12.2022, filed vide diary no. 00836/4 stated that the Corporate Debtor had filed the said police complaint on 19.04.2022, after seeking time from this Bench on 12.04.2022 to file a reply. The Police Officials in their closure report dated 11.05.2022 (attached with the brief submissions submitted on 06.12.2022 vide diary no. 00836/4), recorded that the matter between the parties was already pending before this Bench and the bills submitted by the parties are genuine in nature and no fraud subsist on the part of the Operational Creditor.

17. The Corporate Debtor in its short written submissions dated 27.12.2022, filed

vide diary no. 00836/5 stated that the police report itself recorded that a civil dispute existed between the parties and the enquiry is still pending.

18. On rival contentions of the Ld. Counsel for the parties, the following issues arise in the case in hand:-

18.1. Whether the petition is filed within the period of limitation?

As stated in Part IV of the petition, payment against invoices from July 2019, is due, payable, and defaulted by the Corporate Debtor. In the checklist dated 27.03.2022 filed vide diary no. 00836/6, the date of default mentioned is 30.09.2019. Thus, we find the present petition well within the period of limitation.

18.2. Whether there is any pre-existing dispute between the parties?

It is alleged by the Corporate Debtor that a pre-existing dispute existed inter-se the parties, much prior to the issuance of a demand notice dated 16.03.2021. However, the police complaint dated 19.04.2022 filed by the Corporate Debtor against the Petitioner and her son, follows after the issuance of the demand notice. Thus, this contention of pre-existing dispute by the Corporate Debtor lacks merit and is unsustainable.

18.3. The next issue is whether any interest is payable by the Corporate Debtor.

As it can be seen that no clause qua interest is stipulated in the purchase orders or invoices issued by the Corporate Debtor to the Petitioner and neither there has been any agreement inter-se parties regarding the imposition of penalty interest on delayed payments. Hence, in the absence of any interest clause and agreement to same, this contention of the Operational Creditor is not maintainable.

18.4. The next issue is whether this Tribunal can entertain the I.A. filed after the main petition was reserved for judgment.

As it can be seen that the main petition was reserved for orders on 23.03.2023, but was subsequently re-listed on 13.06.2023. Thus, the argument of the Petitioner that no application could be moved after the final arguments were heard and the case was reserved for judgment, finds no substance in the case in hand as the matter, once reserved on 28.03.2023, was subsequently re-listed on 13.06.2023. Hence, the authorities relied upon by the Ld. Counsel for the Operational Creditor, i.e., Loramitra Rath vs. JM Financial Asset Reconstruction Limited and Arjun Singh v. Mohindra Kumar & Ors. (supra), are not applicable to the facts and circumstances of the present case.

19. After hearing both parties and a careful perusal of records, this Bench is of the view that the present petition is not maintainable as the principal amount admittedly stands paid and CIRP cannot be initiated on the interest component, which otherwise finds no mention either in the purchase orders or in the invoices. The authorities relied upon by the Ld. Counsel for the Operational Creditor, Mobilox Innovations Pvt. Ltd. vs. Kirusa Software, M/s Engineers vs. Hindustan

Petroleum Corporation Limited, and M/s Clicbrics Technologies Private Limited vs. Ansal Housing Limited (supra), are not applicable to the facts and circumstances of the present case.

20. This Bench in the case of M/s Oswal Cable Products Limited vs. M/s Jindal Speciality Textiles Limited and Craftsman Automation Ltd. vs. Inox Wind Ltd., (supra) has dismissed the said petitions where principal amount stood paid and only interest component was disputed. In the recent case of J.V. Textpro Private Limited vs. Rana Polycot Limited, C.P. (IB) No. 171/Chd/Chd/2020, this Bench has also dismissed the said petition on same grounds vide order dated 23.04.2024.

21. Thus, the present petition, C.P. (IB) No. 174/Chd/Hry/2021 stands dismissed and disposed of accordingly. As a result, I.A. No. 892 of 2023 stands allowed, and I.A. No. 777 of 2023 is rendered infructuous and disposed off accordingly.