

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No. 147 of 2021

(Under Section 61 of Insolvency and Bankruptcy Code, 2016)

**(Arising out of the Order dated 31.05.2021 passed in IBA/155/2020 in
passed by the Adjudicating Authority [Hon'ble National Company Law
Tribunal, Division Bench-I, Chennai Bench])**

In the matter of:

Karaipudur Common Effluent Treatment Plant Private Limited

[A Private Limited Non-Government Company,

Limited by Shares registered under the Provisions of the

Companies Act, 1956 bearing CIN:U09000TZ2003PTC010743]

Having its registered Office at:

SF No:10/1, 13/1, Moolakkattu Thottam,

Karaipudur Village, Arulpuram Post,

Tirupur, TN 641 605, IN.

...Appellant

V

Eco Pure Technologies (P) Ltd.,

[A Private Limited Non-Government Company,

Limited by Shares registered under the Provisions of the

Companies Act, 1956 bearing CIN:U90000TZ2011PTC017025]

Having its registered Office at:

No.12, MLP Buildings, Near Kumar Gas Service,

Mangalam Road, Tiruppur, TN 641 604, IN.

...Respondent

Present:

For Appellant

: Mr. Rajesh Ramanathan, Advocate

JUDGMENT

(VIRTUAL MODE)

The 'Appellant'/Corporate Debtor has filed the instant 'Appeal' being aggrieved against the order dated 31.05.2021 in IBA/155/2020 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – I, Chennai).

2. The ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – I, Chennai) while passing the impugned order in IBA/155/2020 (in an application filed under Section 9 of the I & B Code by the Respondent/Applicant/Operational Creditor) at paragraphs 12 to 17 had observed the following:

“12 – A perusal of Section 8(2)(a) of IBC, 2016 manifests the fact that upon the receipt of the Demand notice, the Corporate Debtor is required to bring to the notice of the Operational Creditor, the existence of any dispute before the receipt of the Demand Notice. In the present case, the Demand Notice was sent to the Corporate Debtor on 24.10.2019 and the same was received by the Corporate Debtor on 26.10.2019 and in their reply letter dated 18.11.2019, the Corporate Debtor has not brought to the notice of the Operational Creditor as to any dispute between the parties which has been raised, before the issuance of the Demand Notice. Only after the issuance of the Demand Notice on 24.10.2019, the Corporate Debtor for the first time has sought to refute the dues which is payable to the Operational Creditor.

13. Further, as per the Memorandum of Understanding dated 22.08.2019 entered into between the parties, whereby the dues of the Operational Creditor had been crystallized and in pursuance of the same the Corporate Debtor has also released an amount of Rs. 50 lakhs to the Operational Creditor. Thus, in order to defeat the claim of the Operational Creditor for the remaining sum of Rs. 80 lakhs, the Corporate Debtor for the first time sought to attribute certain allegations towards the Operational Creditor, which cannot be considered as ‘dispute’ in terms of Section 8(2)(a) of IBC, 2016.

14. Thus, from the discussion made supra and from the documents placed in support of the claim being made in Part IV of the Application, it is seen that the Corporate Debtor is liable to pay the said sum of Rs. 80 lakhs to the Operational

Creditor as per the Memorandum of Understanding dated 22.08.2019 and has committed a default in payment of the same.

15. Further, the said debt has fallen due on the last date of invoice being 05.11.2019 and the present Application is being filed before the Tribunal on 10.01.2020 and hence the present Application falls well within the period of limitation.

16. Thus, the Operational Creditor has proved the existence of an 'Operational Debt' and the 'Corporate Debtor' has committed 'default' in the repayment of the said 'Operational debt' to the 'Operational Creditor' and in the said circumstances we are constrained to initiate the 'Corporate Insolvency Resolution Process' in relation to the 'Corporate Debtor'.

17. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs. 1 crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the present Application has been filed on 10.01.2020 which is well before the Notification effected in increasing the threshold limited from Rs. 1 lakh to Rs. 1 crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, this Tribunal is left with no other option that to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor"

and finally admitted the Application filed by the Operational Creditor and issued necessary directions.

3. Challenging the 'Impugned Order of admission' dated 31.05.2021 in respect of an application filed under Section 9 application of the I & B Code, 2016 the Learned Counsel for the Appellant submits that the Respondent taking

advantage of the Memorandum of Understanding as an ‘Operational Creditor’ filed IBA/155/2020 (under Section 9 (5) of the Code) before the ‘Adjudicating Authority’ on the basis that the Appellant/Corporate Debtor is liable to pay the outstanding sum of Rs. 80 lakh and that the Appellant made an endeavor to reconcile the disputes with the Respondent during the pendency of the proceedings before the ‘Adjudicating Authority’ in an amicable manner, which was brought to the notice of the ‘Adjudicating Authority’ who recorded the same by an order 12.02.2021 granting time to parties to report settlement or make submissions on merits. However, because of the partial lockdown conditions in various parts of Tamil Nadu, the parties found it difficult to establish face to face meetings to further talks of settlement and no fruitful result could be achieved with the available time period.

4. The Learned Counsel for the Appellant contends that on 04.03.2021 after explaining the Appellant’s stand a request for short accommodation was sought for the purpose of arriving at a mutually conducive terms of settlement in regard to the full and final settlement of all its dues. However, the ‘Adjudicating Authority’ had not granted any further time and directed the parties to put forward their submission based on the facts averred in the counter affidavit. Later, the ‘Adjudicating Authority’ had recorded that the orders would be reserved ‘subject to clarification’ vide order dated 04.03.2021.

5. The Learned Counsel for the Appellant proceeds to point out that to avoid adverse orders against the Appellant, the Appellant decided to make the payment of entire sum of Rs. 80 lakhs in numerous instalments and filed an application as per Rules 11 and 32 of the National Company Law Tribunal Rules, 2016 seeking to reopen the proceedings in which the orders were reserved by the ‘Adjudicating Authority’.

6. The Learned Counsel of the Appellant bring its to the notice of This Tribunal that the reopen petition was filed by the Appellant on 11.03.2021 and that the 'Adjudicating Authority' had not granted permission to the Appellant and further mentioned that the prerogative to file a reopen application vests only with the Respondent/Operational Creditor and not with the 'Corporate Debtor'.

7. It is represented on behalf of the Appellant that the Appellant as on date, had made a total of Rs. 77 lakhs to the Respondent (vide Annexure A8 of the Volume 3 of the paper book Pages 408 to 413). Furthermore, it is the stand of the Appellant that the Respondent, having received the amounts that were paid directly to the Bank Account via 'RTGS' by the Appellant had issued 'letter of acknowledgement' 04.06.2021 acknowledging full and final settlement of 'all dues' payable by the Appellant.

8. At this juncture this Tribunal has perused the contents of the 'payment acknowledgement letter' dated 04.06.2021 of the Respondent/Operational Creditor addressed to the Appellant/Corporate debtor wherein the total amount paid was mentioned as Rs. 74 lakhs towards to the full and final settlement of dues amounting to Rs. 80 lakhs. (vide Annexure A9 page 414 of the Volume A3 of Appellant's paper book). Also, it is the version of the Appellant in the Appeal that it has made one more payment of Rs. 3 lakhs on 08.06.2021 to the Respondent over and above the agreed sum and in all, it had made payment of Rs. 77 lakhs to the Respondent etc.

9. Considering the fact that the Appellant had paid the due amount in full and final settlement with the Respondent/Operational Creditor and an 'acknowledgement letter dated 04.06.2021' was issued by the Respondent/Operational Creditor to the Appellant/Corporate Debtor, this Tribunal, in furtherance of substantial cause of justice directs the filing of an application for withdrawal of main application in IBA/155/2020 on the file of

National Company Law Tribunal, Division Bench – I, Chennai, as per 12A of the I & B Code, Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (vide Form FA) and in accordance with the Law, by the ‘Applicant/Operational Creditor’ before the ‘Adjudicating Authority’ (through the Interim Resolution Professional) within 10 days from today, and in event of filing of said application, the ‘Adjudicating Authority’ shall dispose of the said application in accordance with the I & B Code and IBBI Regulations as expeditiously as possible. Further, it is ordered that till the ‘disposal of withdrawal of application’ by the ‘Adjudicating Authority’ the ‘formation of Committee of Creditors’ shall remain stayed.

With the aforesaid observations and the directions, the instant Comp. App (AT)(CH) (INS) No. 147/2021 stands disposed of. No costs. IA No.287/2021 and IA No.288/2021 are closed.

[Justice Venugopal M]
Member (Judicial)

[V. P. Singh]
Member (Technical)

07.07.2021
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