NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(INS) No.1116 of 2019

(Arising out of Order dated 26.08.2019) passed by the National Company Law Tribunal, Chennai Bench in MA/791/2019 in CP/665/IB/CB/2017)

IN THE MATTER OF:

Indian Oil Corporation Ltd.
No. 3-6-436 to 438
IInd and IIIrd Floor, Naspur House
Himayat Nagar,
Hyderabad – 500029. **...Appellant**

Versus

Mr. Ashish Arjun Kumar Rathi,
Liquidator of SBQ Steels Pvt. Ltd.,
C/o BDO India LLP
5th Floor, Main Building
Guna Complex, New No. 443 and 445
(Old No. 304 and 305), Mount Road,
Teynampet,
Chennai – 600018. **...Respondent**

Present:

For the Appellant: **Mr. Neeraj Malhotra, Senior Advocate with Mrs. Priya Puri and Mr. Yati Sharma, Advocates**

For the Respondent: **Mr. Tushar Bhushan and Mr. Pawan Bhushan, Advocates**

J U D G M E N T

VENUGOPAL M.J.

The Appellant/Operational Creditor (Applicant) has preferred the instant Company Appeal (AT) (ins)No. 1116 of 2019 being aggrieved against the order dated

26.08.2019 in M.A No. 791/2019 in CP/665/IB/2017 passed by the Adjudicating Authority ('National Company Law Tribunal') Chennai.

2. The Adjudicating Authority ('National Company Law Tribunal') Chennai while passing the impugned order dated 26.08.2019 at para 8 to 11 had observed the following :

> *"8. Now the point for determination is as to whether this Applicant is entitled to claim which is claimed as damages and compensation for Rs. 2.35 Crores and interest portion for Rs. 2.90 Crores.*
>
> *9. The Corporate Debtor has never agreed to pay towards these two components rejected by the Liquidator, whereby we are of the view that this Applicant is not entitled to claim anything that has not been crystallized in the agreement and that has not been agreed between the parties, therefore, we are of the view that this Liquidator has rightly rejected those two claims.*
>
> *10. As to the second point i.e. not mentioning about the reasons for*

rejection of those two claims, it is true that the Liquidator has not given reasons in detail, but that does not mean reasons are not given. Moreover, if the claim of the Applicant is ascertainable, then only the question of considering it as claim will arise. In this case, as to the above two components of claims raised by the Applicant, they are rejected on the ground no covenant has been arrived at over these two claims. When claim itself not claimable, for the sake of giving reasons in detail, that procedure is required to be repeated. For the Applicant has failed to place any material reflecting that this Corporate Debtor is obliged to pay on these two counts, we are of the view that not giving any reasons in detail cannot become a ground for invalidating the claim already considered and rejected by the Liquidator.

> *11. Though the Liquidator has not clearly mentioned in many words as to why he has rejected those two claims, with regard to the component of investment made in storage facility, he has mentioned that it is not admissible based on the information available, as to interest portion, it has been categorically mentioned that since there is no binding agreement between the parties obligating the Corporate Debtor company to pay interest, we believe that reason is more than sufficient for rejecting the interest component."*

and finally dismissed the Miscellaneous Application.

3. The Learned counsel for the Appellant contends that the present appeal is filed against the impugned order passed by the 'Adjudicating Authority' in two claims without ascribing any reasons as contemplated under Section 40 of the I&B Code.

2. It is the stand of the Appellant/Applicant that it entered into an agreement dated 08.02.2010 with SBQ Steels Limited (Company) towards supply of furnace oil for a period of 15 years and that the

Company had agreed to procure a minimum quantity 10,00- MT of furnace oil per annum from the 2nd years onwards till 6th year from the date of upliftment failing which the Company had agreed to compensate the Appellant at the rate of Rs.2000/- MT of furnace oil. In fact, the Appellant took on lease a portion of the land from the Company measuring 1760 sq. mts. for putting up fuel storage facility for a period of 15 years on an 'Annual Rent' of Rs. 1,000/-. That apart, the Appellant had installed 70KL horizontal tank and two 286KL vertical tanks for storage at a cost of Rs. 3,09,17,932.71/-.

4. The Learned counsel for the Appellant comes out with a plea that since the Company had failed to perform its obligations as per Agreement, the Appellant was perforced to initiate 'Arbitration proceedings' against the company. Furthermore, the Insolvency proceedings were initiated against the Company and a 'moratorium' was issued. Moreover, Form-B as regards the proof of claim was submitted by the Appellant before the 'Interim Resolution Professional'.

5. It comes to be known that the Company was ordered to be liquidated on 30.01.2019 and that the Appellant submitted its claim to the Liquidator under Form-C. The Appellant had furnished a Surveyors Report together with its claim and that the relevant portion of said Report runs as under:

"Storage Tanks:

Storage Tanks – 2Nos at SBQ STEEL

Description		*As per Bills provided by IQCL in the Month of October Year 2010 Value in Rs. (Approx.)*
1.MS Steel CRVT-2 nos of 286 KL Capacity for FO Service Pipe line works etc. with connected Pipe lines	*7 Mts Dia X 7.5 Mtr Ht*	

6. The contention of the Appellant is that the 'Liquidator' had rejected the claim of Appellant amounting to Rs. 2,35,00,000/- towards investment made in the storage facility and Rs.2,90,00,000/- in respect of interest. As a matter of fact, the Appellant's claims to the tune of Rs. 9,87,93,000/- was admitted by the Liquidator as per email dated 23.04.2019 and more importantly, no reasons were assigned for rejecting the claims on 'Investments' made and for 'payment of Interest'.

7. The submission of the Learned counsel of the Appellant is that the 'Liquidator' had not clearly mentioned in so many words as to why he had rejected the two claims and as per section 40 (1) proviso of the I&B Code, the Liquidator is required to assign reasons for rejection of any claims.

8. The Learned counsel for the Appellant takes a plea that a Liquidator/quasi-Judicial Authority is bound to pass a reasoned order, because of the fact when the value of claims admitted under Section 40 of the Code, the 'Determination' is a 'decision' being arrived at, which in turn can be a subject matter of 'Appeal' before an 'Adjudicating Authority' in terms of Section 42 of the I&B Code.

9. The Learned counsel for the Appellant points out that Section 3(6)(a) of the Code deals with 'claim' meaning a right to payment, whether or not such right is reduced to Judgment, Fixed, Disputed, undisputed, Legal, equitable, secured or unsecured and relies upon the decision of Hon'ble Supreme Court Sovintorg (India) V. State Bank of India AIR 1999 SC 2963 wherein it is held that 'interest can also be awarded on equitable grounds'.

10. The Learned counsel for the Appellant refers to the order passed by the Adjudicating Authority (NCLT), Mumbai in MA 550 of 2018 in CP1696/I&BC/MB/MAH/2017 IDFC Bank Ltd. Vs. Monnet Power Company Limited wherein it is observed as under:

> *"It is also not in dispute that the Claimant i.e. BHEL itself is under obligation to pay the interest to the Financial Institutions from whom the finances have been arranged. Under the present circumstances it was implied that the delay in payment shall bear the Interest Burden. It was logically argued that in the absence of any express condition agreed upon between the parties that no interest would be charged even if payment is*

defaulted, the claim along with Interest is legally permissible." and the aforesaid order was affirmed by the Appellate Tribunal in Company Appeal (AT) (Ins) 743 of 2018 dated 26.02.2019 Mr. Navneet Kumar Gupta Vs. BHEL Company.

11. Repelling the contentions of the Appellant, it is submission of Learned counsel for the Respondent that the Appeal filed by the Appellant is not maintainable against the Respondent on the ground that the claim of the Appellant is hit by Limitation. Although, the Appellant submitted that a claim of Rs.15,13,00,000/- in Form 'C' dated 12.03.2010 against the provisions of the Agreement for supply of 'Furnace oil', dated 08.02.2010 executed between the Appellant and the Corporate Debtor, for want of information pertaining to the proof of such claim pertaining to interest of damage clause, the Respondent's office duly accepted a sum of Rs. 9,88,00,000/- through email dated 23.04.2019.

12. In short, it is the submission of the Learned counsel for the Respondent that the claim of the Appellant was partly accepted by the Respondent on 23.04.2019 and in respect of the claim of Rs. 2,35,00,000/- the same is not to be accepted because of the pending 'Arbitration Proceedings' were pending. Therefore, when an amount is in dispute/disputed then, an Operational Creditor is not entitled to receive such claim during 'Liquidation'. Apart from this, in the year 2014, the

Operational Creditor invoked the 'Arbitration Proceedings' and till the year 2017 the same was not over and no order was passed in respect of the same, till date. As such, it is contended that the 'Corporate Debtor' was actually disputing the said amount claimed by the 'Operational Creditor' and that the pendency of 'Arbitration' is enough to exhibit 'Dispute', in which event, a 'Liquidator' is necessarily to reject the claim of an 'Operational Creditor'.

13. The learned counsel for the Respondent contends that there exists no clause towards 'Interest' in the 'Agreement' between the 'Corporate Debtor' and the 'Appellant' and hence, the rejection of claim by the 'Liquidator' is a tenable one.

14. While winding up, the Learned counsel for Respondent points out that at best the claim can be remitted to the 'Liquidator' to assign/reiterate the reasons for such rejection. Also, that the claim of the Appellant during CIRP was rejected and a detailed meeting took place between the Appellant and the Resolution Professional's team on 19.06.2018 and in reality, the reasons for rejection of their claim were also discussed during the said meeting.

15. At the outset it is to be pointed out that the 'Liquidator' of SBQ Steels Ltd. in his e-mail sent on 23.4.2019 addressed to Virender Rao JM, Subbiah, E, Raunaq Arvind, Bagade; Sathish Babu U.N; Rao, Lakshmana on the subject of 'SBQ / Liquidation/ intimation of rejection of claims' had stated the following:-

> *"Dear Sir/Madam*
> *Ref: Claim submitted in Form C dated 12.3.2019 in relation to Indian Oil Corporation Limited*

We wish to inform you that an amount of Rs. 9,88,00,000/- has been admitted. See below the table for detailed breakdown:

Description of claim	*Claim Amount*	*Admitted Amount*	*Remark*
Outstanding balance as per claim	*9,87,93,000*	*9,87,93,000*	
Investment made in storage facility	*2,35,00,000*	*-*	*Not admissible*
Rent on Fuel handling capacity	*7,000*	*7,000*	
Interest	*2,90,00.00*		*As per contractual agreement there is no provision for interest. Hence not considered*

The claim has been reviewed and verified based on the information made available through the date of admission i.e. April 18, 2019. Accordingly, any changes/revisions in circumstances or information newly made available after this date could affect the amount of claim admitted."

16. A mere running of the eye of the contents of aforesaid e-mail dated 23.4.2019 sent by the 'Liquidator' shows that in regard to 'Investment made in storage facility', the claim amount of Rs. 2,35,00,000 was described as 'not admissible'. In fact, a sum of Rs. 9,87,93,000/- was admitted by the liquidator, and no reason was assigned for the inadmissibility of the amount claimed. In so far as the interest claimed for Rs.2,90,000/- is concerned, the 'Liquidator' had mentioned in the e-

mail as per contractual agreement there was no provision for interest and hence it was not considered.

17. As a matter of fact, ascribing reasons are the 'heart and soul' of a reasoned order/ judgement. It is relevantly pointed out that in the impugned order of the Adjudicating Authority, the said Authority at paragraph 9 and among other things observed that the Appellant (Applicant) is not entitled to claim anything that has not been crystallised in the Agreement and that has not been agreed between the parties and opined that the 'Liquidator' had rightly rejected these two claims. But the Adjudicating Authority at para 10 of the impugned order had proceeded to observe that the 'Liquidator' had not assigned reasons in detail for rejection of the two claims in the subject matter in issue, but that was not to mean reasons were not furnished and resultantly came to the conclusion that when the claim itself was not claimable, for the sake of giving reasons in detail that procedure was required to be repeated and continuing further, not giving any reasons in detail could not be a ground for invalidating the claim already considered and rejected by 'Liquidator'.

18. It is to be borne in mind that in the erstwhile Insolvency period where the claim of creditor arose from the contract which provided interest, the interest could be claimed only upto the date of winding up of the order as per decision '*Esmail Esoof Moolla v. Chartered Bank, (1931) 1 Comp Cas 235*'.

19. It is to be pointed out that as per Section 40 of the I&B Code, the 'Liquidator' is to determine the claims admitted under this section in such manner as may be

prescribed by the Insolvency & Bankruptcy Board of India. Not assigning reasons and that too in a rejection order relating to a claim is not a 'prudent and reasonable course of action', as opined by this Tribunal.

20. On a careful consideration of respective contentions, on going through the impugned order of the Adjudicating Authority and keeping in mind of the contents of the e-mail table sent on 23.04.2019, this Tribunal comes to a resultant conclusion that the 'Liquidator' had not assigned detailed reasoning in respect of the non-admissibility of the claim relating to investment made in storage facility for Rs.2,35,00,000/- and in respect of 'Interest' merely stated that as per contractual agreement there was no provision for an interest and hence not considered, are incorrect and legally untenable in the eye of law. The very observations of the Adjudicating Authority in the impugned order that the 'Liquidator' had not given reasons in detail but that does not mean that reasons are not given etc., will go to show that the same is not a valid and correct one. In this regard, as per Section 40 of the Code a 'Liquidator' being an 'Authority' decides the matter in a quasi-judicial manner and his decision is open to challenge u/s 42 of the I&B Code. An unreasoned order may be just and valid from the point of view of an authority who passes the same. But to the affected, the said order is not a 'valid one'. A 'Reasoned order' will have an appearance of 'Justice'. A decision by judicial or quasi-judicial Authority not informed of reasons provides room for arbitrariness and such decision cannot be supported. In terms of the ingredients of Section 40 of the 'I&B' Code, reasons are to be spelt out for rejecting the claims, which in the present case was not followed by the 'Liquidator'. An 'Adjudicating Authority' can interfere when a

'Liquidator' had not exercised its discretion in a bonafide manner or he had proposed a thing which no reasonable person would act. A 'Liquidator' as an Officer of the 'Adjudicating Authority'/ Tribunal is expected to perform his duties fairly, justly and honorably in dealing with the claims of persons. It cannot be forgotten that 'Interest' due on damages sought for violation of contract gives rise to a legal right to claim payment. It also qualifies as an 'actionable claim'. Apart from that, considering the fact that the Appellant stakes a claim for interest which can be awarded on equitable grounds and further it had submitted a surveyor's report along with the claim and the said report is based on bills provided by the Appellant and there being rejection of these claims, this Tribunal without any haziness holds that the impugned order of the Adjudicating Authority in MA/791/2019 in CP/665/IB/2017 is liable to be set aside to secure the ends of justice and accordingly the same is set aside by this Tribunal because of the fact that the tenor and spirit of Section 40 of the I&B Code was not adhered to at the time of passing the impugned order. Consequently, the Appeal succeeds.

21. In fine, the present Appeal is allowed. The impugned order dated 26.08.2019 passed by the Adjudicating Authority in MA/791/2019 in CP/665/IB/2017 is set aside. No costs. The Adjudicating Authority (NCLT), Chennai is directed to restore MA/791/2019 in CP/665/IB/2017 to its file and to pass fresh order on merits, after providing enough opportunities to the respective side to raise all factual and legal pleas, besides placing reliance upon the citations/ decisions, of course uninfluenced and untramalled with any of the observations made by this Tribunal in this Appeal. I.A. No.3307/ 2019 seeking exemption to file certified copy of the

impugned order passed by the Adjudicating Authority stands disposed of with a direction being issued to the Appellant to file the certified copy of the impugned order within three weeks from today.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Venugopal M.]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

NEW DELHI

22nd May, 2020

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