

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 736 of 2018

IN THE MATTER OF:

Rautomead Ltd.

...Appellant

Vs

Shilpi Cables Technologies Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Ankur Mahindro, Ms. Ankita A. Xaexo, Ms. Deepanchal Nanda, Ms. Sanjoli Mehrotra, Mr. Rohit Bohra and Mr. Jayant Mohan, Advocates.

For Respondents: Mr. Puneet Singh Bindra and Ms. Simran Jeet, Advocates for RP.

ORDER

28.11.2018: This appeal has been preferred by 'M/s. Rautomead Ltd.', a supplier of machine called 'Vertical Continuous Casting Machine' alongwith its accessories, against order dated 13th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench wherein prayer made by the Appellant has been rejected.

2. The Appellant filed the application before the Adjudicating Authority with following prayer:-

"a) Direct that the machine, identified as Vertical Continuous Casting Machine, Serial No. 40901602, Model RS 3000/6-22, along with its accessories be cordoned off and a Receiver be appointed to take possession of the same and permit its examination by the Applicant's technical team and possible buyers.

b) Permit the Receiver to give possession of the machine to the Applicant and permit them to remove the same at a date and time mutually convenient."

3. The Adjudicating Authority taking into consideration that the Appellant has already been paid 90% of the claimant and only 10% remained to be paid, rejected the applicants contention that in terms of clause 27 and 29 of the agreement the goods belongs to the Appellant (Seller).

4. Similar plea has been taken by learned counsel for the Appellant who relied on 'Conditions of Sale' as shown in their Terms and Conditions where in following provisions has been made in clause 27, 28 and 29:-

"27. Property and title in and to the goods shall remain with the Seller and shall not pass to the Buyer until all monies due by the Buyer to the Seller (and to any of its holding and subsidiary or associated companies), including any interest and charges, shall have been paid in full.

28. Until payment of all monies has been made in full as aforesaid the Buyer undertakes to the Seller:

(i) to store all goods so that they are readily identifiable as the Seller's goods;

(ii) to keep goods in good and substantial repair and condition;

(iii) at all times to ensure that the goods are safely housed in secure premises under the control of the Buyer and not without the consent in writing of the Seller to remove the goods to another location;

- (iv) to allow authorised representatives of the Seller access to the premises in which the goods are housed on all reasonable occasions for the purpose of inspecting the same;*
- (v) In the event of default in making any payment to the Seller on the due date for payment, and in addition to any other remedies available to the Seller under these terms and conditions or otherwise, to permit any authorised representative or agent of the Seller to enter any premises in which the goods are housed and to remove such good and to pay all reasonable costs of the Seller in effecting such entry and removal and in transporting the same to the Seller's Dundee works or any other location chosen by the Seller, the Buyer rendering all reasonable assistance to the Seller for this purpose;*
- (vi) to effect and maintain insurance of the goods in their full reinstatement value (as conclusively determined by the Seller) against loss or damage by fire and such other normal commercial risks as the Seller may decide and notify to the Buyer, have the Seller's interest endorsed thereon, produce evidence to the Seller if so required that such insurance is in force and to hold the proceeds of such insurance and all rights to obtain payments thereunder in trust for the Seller.*

29. *If the Buyer becomes apparently insolvent or compounds with his or its creditors or has a liquidator, receiver or administrator appointed over all or any of its assets or carries out or undergoes any analogous act or proceeding under foreign law, or ceases, or threatens to cease, trading for any reason prior to the property in any goods passing as aforesaid, than the Buyer's rights to re-sell or otherwise deal in the goods shall automatically terminate and the Seller shall be entitled to repossess any of such goods in accordance with the above provisions.*

The Seller shall be entitled without prejudice to its other rights and remedies either to terminate wholly or partly any Contract between the Seller and the Buyer or to suspend any further deliveries under any such Contract if:

- (i) any debt is due and payable by the Buyer to the Seller but is unpaid whether formally demanded or not; or*
- (ii) the Buyer has failed to provide any letter of credit, bill of exchange or any other security required by the Contract; or*
- (iii) the Buyer has rejected, returned or failed to take delivery of any goods tendered by the Seller otherwise than in accordance with the Buyer's contractual rights; or*

(iv) the Buyer (being a body corporate) becomes insolvent or passes a resolution or suffers an order to be made for its winding up or has a receiver appointed (or carried out or undergoes any analogous act or proceeding) or (being an individual or partnership) becomes or is declared bankrupt or insolvent or suspends payment of his debt in whole or in part or proposes or enters into any composition or arrangement with his or their creditors or has an order in bankruptcy made against him (or suffers or undergoes any analogous act or proceeding).

The Seller shall be entitled to exercise its aforesaid right of termination or suspension at any time during which the event or default giving rise thereto has not ceased or remedied.”

5. Learned counsel appearing on behalf of the Resolution Professional opposed the prayer and submitted that 90% of the sale amount has already been paid to the Appellant and for rest of the 10% amount Appellant has already filed a claim before the Resolution Professional. The claimants claim with respect to 10% amount has also been reflected in the Books of Accounts. However, learned counsel for the Appellant disputed the aforesaid plea taken by learned counsel for the Respondent.

6. We have heard learned counsel for the parties and perused the records.

7. It is not in dispute that Appellant has already received 90% of the sale amount and 10% of the amount is due to him. Appellant has placed reliance on 'Condition of Sale' which is treated to be as agreement, to claim that the asset belongs to Appellant and has not been transferred to the Corporate Debtor. However, we do not accept such submission, as in terms of the provisions of I&B Code, it was always open to the Resolution Professional with the consent of the Committee of Creditors not to act on agreement reached between the Corporate Debtor with another person prior to the commencement of Corporate Insolvency Resolution Process. In the present case as admittedly 90% of the amount has already been paid to the Appellant (Seller) and has made claim of rest of 10% of the sale amount, no relief can be granted.

8. It is informed by learned counsel for the Resolution Professional that Resolution Process having failed, application of liquidation has already been filed. If that be so, no relief can be granted to the Appellant at this stage. The appeal is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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