

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No.517 of 2018**

[Arising out of Order dated 16.07.2018 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in Appeal No. C.P. (IB) No.167/9/HDB/2018]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Equipment Conductors &  
Cables Limited  
21, Satkar Building,  
79-80, Nehru Place,  
New Delhi – 110019

Original Petitioner

Appellant

Now at:

Equipment Conductors &  
Cables Limited  
A-30/9, DLF Phase – I,  
Qutab Enclave,  
Gurgaon – 122002  
Through its Authorized  
Representative,  
Shri Alok Sharma,  
Managing Director

**Versus**

Transmission Corporation  
of Andhra Pradesh Limited  
Vidyut Soudha, Gunadala,  
Eluru Road, Vijaywada,  
Andhra Pradesh – 520004  
Through its Chairman

Original Respondent

Respondent

**For Appellant:**

**Shri Arun Kathpalia, Senior Advocate with Shri  
Dheeraj Gupta and Ms. Sanam Siddiqui, Advocates**

**For Respondent:**

**Shri Rakesh K. Sharma and Shri Nishant Sharma,  
Advocates**

**J U D G E M E N T****(1<sup>st</sup> April, 2019)****A.I.S. Cheema, J. :**

1. The Appellant – Operational Creditor filed C.P. (IB) No.167/9/HDB/2018 under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) against the Respondents – Corporate Debtor which came to be rejected as the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) on 16.07.2018 came to a conclusion that there was a pre-existing dispute with regard to quantum of liability.

2. The Appellant claims and it has been argued for the Appellant that the Respondent had placed orders with the Appellant for supply of conductors/finished products on 25.05.1998 and the goods were supplied. The entire amount of invoice has been paid with delay but without interest as was required to be paid under Sections 3 to 5 of “Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993” (Interest Act – in short). According to the Appellant, it had filed claim with Arbitral Tribunal (Haryana Micro and Small Enterprises Facilitation Council) claiming Rs.40,25,648/- upto 30.06.2001 for bills mentioned at Serial Nos.1 to 45. Subsequently, updated claim was filed to claim Rs.1,36,00,184/- upto 31.01.2008 on account of interest. The Arbitral Tribunal allowed the claim of the Appellant on 21.06.2010 with regard to bills mentioned at Serial Nos.26 to 45 to actual date of payment with

monthly compounding as per the provisions of the Interest Act. The Respondent filed Objection Petition on 19.10.2010 under Section 34 of the Arbitration and Conciliation Act, 1996 (Arbitration Act – in short) read with Section 19 of The Micro, Small and Medium Enterprises Development Act, 2006 (Act of 2006 – in short) to set aside the Award. The Objection Petition AC 580 of 2010 was dismissed by ADJ, Chandigarh in August, 2014 and Respondent filed Appeal FAO 68/2015 under Section 37 of the Arbitration Act before Punjab and Haryana High Court on 29.01.2016 remanded the matter back giving opportunity to the Respondent to raise objections under Section 34. It is stated that the Appellant then approached Industry Facilitation Council to secure the Arbitral Award amount but the same was dismissed on 14.09.2017 by the Council holding that there was no ambiguity in the Award and as regards interest, the same was recurring aspect and could not be determined for a particular time and had to be seen at the time of making final payment.

3. The Appellant claims that on 25<sup>th</sup> January, 2018, Appellant issued Demand Notice under IBC for Rs.3,79,61,269/- as dues upto 31.05.2016 and future interest as per the Award dated 01.06.2016. The said Demand Notice was cursorily and vaguely replied by the Respondent on 2<sup>nd</sup> February, 2018 claiming that the Objection Application under Section 34 of the Arbitration Act was still pending and referred to Execution Petition CEP 41/2017 Court Orders and claimed that the same was dismissed and attachment Order seized to exist. Consequently, the Appellant filed

Application under Section 9 of IBC on 19<sup>th</sup> February, 2018. On 17<sup>th</sup> April, 2018, the Court of ADJ, Chandigarh dismissed Objection Petition under Section 34 and confirmed the Arbitral Award. The Respondent filed Appeal to Hon'ble Supreme Court in SLP (C) 14954/2018 but the same was dismissed by the Hon'ble Supreme Court on 06.06.2018. According to the Appellant, in the circumstances, it was apparent that there was the debt due and the Executing Authority erroneously dismissed the Company Petition filed under Section 9 of the IBC.

4. Against this, Reply has been filed by the Respondent and it is also argued that before the Arbitration Council, the Appellant had filed its claims for invoices 1 to 45 but the same were allowed only regarding invoices 26 to 45 and invoices at Serial No.1 to 25 were held to be time barred. It is claimed that the amounts towards interest for the delayed payment of original invoice amount, which was liable to be paid in respect of claims 26 to 45, was appended to the said Award at Rs.22,42,619/-. Respondent claims that after the Arbitral Award was passed, the Appellant went on filing several execution proceedings and the Respondent challenged Award under Section 34 of the Arbitration Act. Respondent had filed original Petition under the Arbitration Act OP 523 of 2010 before Chief Judge, City Civil Court, Hyderabad under Section 34 of the Arbitration Act. Respondent also deposited 75% of the Award amount as per Section 19 of "Micro Small and Medium Enterprises Development Act, 2006". This Act repealed the Interest Act with effect from 02.10.2006. The Respondent has

referred also to proceedings filed by the Appellant with regard to its rejected claim regarding invoices at Serial Nos.1 to 25. In the present matter, we are not concerned with litigation with regard to those invoices at Serial Nos.1 to 25.

5. It is stated for the Respondent that the OP filed by the Respondent was transferred to District Judge, Chandigarh and renumbered as Arbitration Case No.580 of 2010. The District Court, Chandigarh dismissed the Arbitration Case No.580 of 2010 in August, 2014 on the ground that the Respondent had failed to deposit full amount towards 75% of the Award. (This was required to be determined in view of Section 7 of the Interest Act to entertain the Appeal.) Being aggrieved, Respondent filed Appeals before the Hon'ble High Court of Punjab and Haryana which was numbered as FAO 34 of 2015 and FAO 68 of 2015. Common Orders were passed on 29.01.2016 along with other Appeals between the same parties and the Order of District Court in OP 580 of 2010 was set aside and matter was remanded to District Court for determining the actual amount towards 75% of the Award giving Respondent time to deposit the balance in 15 days. It was directed by the High Court that on deposit of the amount towards 75%, the District Court shall decide the case on merits. The Respondent claims that Respondent accordingly filed its calculation in respect of 75% of the amount and after determining the same, it was deposited in District Court, Chandigarh.

6. It is argued for Respondent that during pendency of the OP in District Court, Chandigarh, Appellant filed Execution Petition before 2<sup>nd</sup> Additional District Court, Chandigarh and got the Execution Petition transferred to the City Civil Court at Hyderabad which came up before 2<sup>nd</sup> Additional Chief Judge, City Civil Court, Hyderabad and was registered as EP 61/2011. The same was dismissed in limini on 19<sup>th</sup> February, 2016. The Respondent states that the Appellant then filed another Execution Petition EP 33/2016 before City Civil Court, Hyderabad to recover monies as per the Award under dispute, but for recovery of amount beyond the award together with other amounts in respect of claims 1 to 25 for which no Award had been passed and in the process, sought prohibitory orders which were granted on 30<sup>th</sup> June, 2016 because of which, Respondent filed Civil Revision CRP 3601 of 2016 before the Hon'ble High Court of Andhra Pradesh and the same was allowed on 8<sup>th</sup> November, 2016 holding that the Execution Petition filed with regard to invoices 1 to 25 and the Garnishee Order issued for recovery of the said amount was illegal. The Garnishee Order was, however, confirmed with regard to invoices 26 to 45. Respondent claims that being aggrieved, Respondent filed SLP 187 of 2017 before the Hon'ble Supreme Court of India but the same was disposed by direction to the Additional District Judge, Chandigarh to determine the amount towards 75% of the Award to enable Respondent to deposit the same within 15 days from the date of Order. According to the Respondent, subsequently, as per Orders of District Court, the Respondent deposited the determined amount towards 75%.

7. The Respondent has submitted that subsequently Execution Petition of the Appellant 33 of 2016 was transferred to Additional Chief Judge, City Civil Court, Hyderabad and renumbered as CEP 41 of 2017 and the Executing Court considered the Orders of District Court, Chandigarh which ascertained the amount towards 75% of the Award and considering the fact that Respondent deposited 75% Award, was pleased to dismiss the CEP by Order dated 20.11.2017.

8. The Respondent is pointing out that the Appellant again filed CEP 15/2018 relating to invoices 26 to 45 before the Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad which was closed by Orders dated 27.08.2018 by the Executing Court. According to the Respondent, when such CEP was pending before City Civil Court, Hyderabad, the present proceedings came to be filed which according to the Respondent has been rightly dismissed by NCLT by Impugned Order. The Respondent has also referred to the Appellant approaching Haryana Facilitation Council and the Counsel holding on 06.09.2017 that the application filed by the Appellant was not maintainable and has pointed out further developments of the Appellant moving another Application for review of that Order and arraying APDISCOMS together with State Bank of India as garnishees and that the Council without Notice to the Respondent for garnishee relying on the calculation made by the Appellant re-determined the amounts. According to the Respondent, the Respondent together with APDISCOMS have filed Writ Petition challenging Order dated

11.07.2018 passed by the Haryana Facilitation Council and the Hon'ble High Court of Andhra Pradesh by Interim Order dated 24.08.2018 suspended the Order dated 11.07.2018.

9. Respondent is further pointing out as per Orders dated 13.01.2017 of the Hon'ble Supreme Court in SLP 187 of 2017, District Court, Chandigarh vide Order dated 06.01.2018 decided that the 75% of the awarded amount comes to Rs.24,50,046/- which it is claimed is paid. According to the Respondent, during execution proceedings, the Execution Court got attached Rs.6,57,506/- from the Respondent's bank account. District Court, Chandigarh dismissed the OP and confirmed the Award on 21.06.2010. However, according to the Respondent, he has paid in all Rs.24,95,041/- which is full amount of the Award and no dues of any money is payable under the said Award (Diary No.7688 – Page-11).

10. The learned Counsel for the Respondent pointed out that when the Arbitration Case 580 of 2010 filed by the Respondent/A.P. TRANSCO before ADJ was dismissed on 17.04.2018, Respondent had filed FAO 2764 of 2018 to the High Court but the same was dismissed on 18<sup>th</sup> May, 2018 and the Respondent then filed SLP 14954/2018 before Hon'ble Supreme Court, which also came to be dismissed on 6<sup>th</sup> June, 2018. The Counsel submitted that after such dismissal, Respondent had filed MA 1638/2018 in SLP (C)14954/2018 seeking clarification and the Hon'ble Supreme Court passed the following Order:-



“By Order dated 6.06.2018, this Court has simply dismissed the Special Leave Petitions of the petitioner which amounts to conforming the order of the High Court.

Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing for the applicant/petitioner submits that it should be clarified that the petitioner has a right to file objections under Section 47 of the Civil Procedure Code and also points out that there are certain payments due to the petitioner as well which should be adjusted.

It is made clear that this Court had not expressed any opinion on such aspects. It will be open to the petitioner to move such application and the Executing Court can deal with the same in accordance with law.

With the aforesaid observations, the Misc. Applications stand disposed of.

Pending applications, if any, also stand disposed of.”

Referring to the above Order, the argument is that since much before the Notice under Section 8 was given in the present matter, there were disputes regarding the amount of interest payable and its calculation and when that dispute spiralled up to Hon’ble Supreme Court, the above Order came to be passed. Referring to the above Order of the Hon’ble Supreme Court, it is argued by the learned Counsel for the Respondent that the dispute regarding adjustment calculation of dues has been left open to the Respondent to raise the same before the Executing Court. The Respondent claims that in the present matter, there has been lot of litigation and after the above Order dated 30<sup>th</sup> July, 2018 of the Hon’ble

Supreme Court, the Hon'ble Supreme Court has directed that the payments made shall be adjusted by the EP Court and as per provisions of CPC, whether award is satisfied is to be decided by the Executing Court. According to the Respondent, the Appellant has suppressed facts and the reference to the above litigation clearly shows that there are serious disputes between the parties with regard to the dues.

11. The learned Counsel for the Appellant referred to the provisions of the Interest Act and subsequent Act of 2006 to claim that it is a simple matter of calculations and the Award has to be looked into. The Interest has to be calculated as per the provisions in these Acts.

12. We have heard both sides Counsel as above and have gone through the matter and the copies of various judicial Orders filed relating to the dispute between the parties. Copies of the Orders have been filed by the Appellant and the Respondent. (Respondent filed the copies with additional Affidavit filed with Diary No.9336).

13. As per Section 9 of the IBC, the only requirement for Adjudicating Authority is to see in such application under Section 9, if there is record of dispute. In the present matter, when the Notice under Section 8 was sent by the Appellant, the Respondent sent Reply (Copy at Annexure - A-6) referring to the litigation between the parties. Looking to the rival claims of the parties as mentioned above, and copies of the various judicial Orders which have been filed, we do not think that it is a simple matter

where there is an Award and Sections 34 and 37 proceedings under the Arbitration Act have been disposed of. The litigation clearly shows serious disputes pending between the parties with regard to the calculations of dues. Admittedly, the amount of Award has been paid but the dispute appears to be continuing with regard to the interest. In the facts of the present matter, considering the developments of the litigation as pointed out by the learned Counsel for the Respondent, we find that there is pre-existing dispute with regard to calculation of dues and we do not find any fault with the Orders passed by the Adjudicating Authority rejecting the application.

In the result, there is no substance in this Appeal. The same is dismissed. No Orders as to costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

*/rs/nn*