

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. Nos. 125-126 of 2018

In

Company Appeal(AT)(Insolvency) 101 of 2017

IN THE MATTER OF:

M/s Shilpi Cable Technologies Ltd. ...Appellant

Vs

Macquarie Bank Ltd. ..Respondent

Present:

For Respondent: Mr. Vivek Sibal and Mr. Yash Patel, Advocates

With

I.A. Nos. 272-273 of 2018

In

Company Appeal(AT)(Insolvency) 102 of 2017

IN THE MATTER OF:

M/s Shilpi Cable Technologies Ltd. ...Appellant

Vs

Macquarie Bank Ltd.Respondent

Present:

For Respondent: Mr. Puneet Singh Bindra, Advocate for the Resolution Professional of Shilpi cables Technologies Ltd. and Mr. Vivek Sibal, Advocate

O R D E R

08.08.2018 The Respondent - Macquarie Bank Ltd. preferred applications under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") which were admitted by the

Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, by orders dated 24th May, 2017 passed in C.P. No. (IB) - 64(PB)/2017 and in C.P. No. (IB)-65(PB)/2017. Both the aforesaid orders on challenge before this Appellate Tribunal in these appeals, by common order dated 1st August, 2017, the impugned orders both dated 24th May, 2017, were set aside.

2. Respondent thereafter preferred appeal before the Hon'ble Supreme Court which remitted the appeals, we noticed by our order dated 22.01.2018 which reads as follows:

...

*“2. The Respondent – Macquarie Bank Limited ('Operational Creditor') thereafter moved before the Hon'ble Supreme Court in **“Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd.”** – Civil Appeal No. 15135 of 2017, wherein the Hon'ble Supreme Court set aside the order passed by this Appellate Tribunal and restored the order passed by the Adjudicating Authority. In view of the restoration of the original order, the Resolution Professional filed the present petition for clarification as to how the period of 180 days to be computed of completing the 'Resolution process'.*

3. *On 15th January, 2018, this Appellate Tribunal passed following order:*

“Let notice be issued on Respondent. Mr. Vivek Sibal, Advocate accepts notice on behalf of Respondent – 'Operational Creditor'. No further notice need be issued to him.

Post the matter on 22nd January, 2018.

In the meantime, ‘Interim resolution Professional’ will file an additional affidavit enclosing the copies of the orders passed by the Adjudicating Authority (National Company Law Tribunal) including the order dated 19th December, 2017. The ‘Interim Resolution Professional’/ Resolution Professional will continue and complete the process from the stage when ‘Interim Resolution Professional’ left the process in view of the order passed by this Appellate Tribunal.”

....

3. On 15th March, 2018, learned Counsel for the Appellant submitted that there are two more points to argue; on his request appeals were adjourned.

4. Again, when the matter was taken up on 3rd May, 2018, no argument was advanced by the learned Counsel for the Appellant, therefore, the following order was passed:

“03.05.2018 – After the case was remitted by the Hon’ble Supreme Court, the matter was taken up on 15th March, 2018. On the said date, learned Counsel for the appellant submitted that there are two more points to be argued to challenge the initiation of ‘Corporate Insolvency Resolution Process’. More than 1 ½ months have been passed, no further arguments have been advanced. Today learned counsel for the appellant asking for time on the ground of non-availability of the learned Senior Counsel. While we deprecate such prayer, as last chance grant time to the learned counsel for the appellant(s) to address on the other issues, if involved in these appeals.

Post the matter for 'admission (After Notice) on 11th May, 2018 at 2.00 P.M. on the top of the list.'

5. Today again time has been sought for by the learned Counsel for the Appellant for adjournment. However, as this is not a regular Bench and after remand by the Hon'ble Supreme Court on 15.12.2017, the matter is pending since long, we refused to grant any more adjournment.

6. Learned Junior Advocate appearing on behalf of the Appellant submits that he has no instruction to argue the appeals. Therefore, we have gone into merit of the appeals to find out any other ground(s) taken by the Appellant.

7. In the appeals, the common Appellant has taken the plea that as per agreement reached between the parties, they have agreed to be governed by English law and, therefore, the Respondent was barred from initiating the proceeding under 'I&B Code'. However, such plea cannot be accepted in view of substantive provisions of 'I&B Code' as it is always open to the Respondent to file application under Section 9 of "I&B Code', if there is debt and default. Merely because there is a provision of arbitration in the agreement, cannot be ground to hold that there is an existence of dispute.

8. The other ground taken by the Appellant is that the Respondent was to prove the payment. A plea has been taken that all the transactions entered between the parties within the credit cycle of 180 days which is still substantive in view of invoices and, therefore, no amount is due as on date. However, such plea cannot be accepted in view of the fact that there is an

admitted debt in pursuance of invoices raised by Respondent, the Appellant has not paid the amount and defaulted.

9. This apart both appeals are not maintainable having filed by the Corporate Debtor through (suspended) Board of Directors in view of the judgment passed by the Hon'ble Supreme Court in '**Innoventive Industries Ltd. Vs. ICICI & Anr.**' – (2018) 1 SCC 407 (pargraph-11).

10. For both the reasons, the appeals are dismissed both on the ground of non-maintainability and on merit. No cost.

11. In the result the Corporate Insolvency Resolution Process initiated stands restored. Time consumed because of pendency of appeals before this Appellate Tribunal and the Hon'ble Supreme Court be excluded for the purposes of counting the period of 180 days/270 days. The Resolution Profession will continue from the stage it was stopped due to order of this Appellate Tribunal. The Adjudicating Authority will proceed with the matter in accordance with law.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

Akc/gc