NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 915 of 2022

IN THE MATTER OF:

Gandhar Oil Refinery (India) Ltd. ....Appellant

Vs.

City Oil Pvt. Ltd. ....Respondent

Present:
For Appellant: **Mr. Ajay Gaggar, Mr. Robin Singh Sirohi and Ms. Pavni Poddar, Advocates.**
For Respondent: **Mr. Kumar Anuragh Singh and Mr. Zain.A.Khan, Beena Sharma, Advocates for Respondent.**

O R D E R

30.09.2022: Aggrieved by order of dismissal of CP (IB) No. 150 (KB) of 2021 in limini, the Applicant before Adjudicating Authority filed this Appeal under Section 61 of IBC, 2016.

2. The facts in brief are that the Appellant is a public limited company engaged in processing petroleum products. The Respondent is a Pvt. Ltd. Company engaged in manufacturing and trading lubricants and grease involved in business transactions with the Appellants since March 2014.

3. During the course of business, the Respondent periodically placed order with the Appellant for supply of Divyol 75 and Divyol 480 (SN 500). In the month of April, 2018 and August, 2018 the Respondent placed 3 (three) purchase orders, vide purchase order nos. Respondent/GO/02/18-19 dated April 16, 2018, Respondent/GO/03/18-19 dated May 10, 2018 and

Respondent/GO/05/18-19 dated August 18, 2018 for supply of above products. In pursuance of purchase orders, the Appellant supplied the products to Respondent as per the terms of the purchase order, the same was accepted without any protest. The Appellant raised invoices for Rs. 73,56,627/- on the Respondent and accepted by the Respondent.

4. The Respondent because due to an extent of Rs.3,61,91,915.35/- towards the credit transaction prior to April 28 of 2018, thus, the total amount due is Rs. 4,35,48,542.35/- as on August 23, 2018. The Respondent paid Rs. 3,62,00,000/- towards discharge of debt due, in part, till August 23, 2018. An amount of Rs.73,48,542.35/- remained unpaid by 19th October, 2019.

5. As the Respondent failed to pay the balance amount of Rs.73,48,542.35/-, the Appellant issued a notice dated December 31, 2019, demanding payment of outstanding amount of Rs. 73,48,542/- together with interest @ 24% per annum as per the terms and conditions agreed upon by the parties. In response to the notice, Respondent by letter dated January 28, 2019 inter alia acknowledged the debt due but pleaded inability to clear the outstanding due to the Appellant within three months from January, 2020. However, agreed to settle the issue amicably. As no settlement is arrived, the Appellant issued a demand notice dated 05.03.2020, claiming Rs. 73,48,542.35/- towards Principal amount Rs. 29,22,819/- towards interest calculated @ 24% per annum.

6. On receipt of demand notice, the Respondent paid Rs.9,50,000/- in total; the last payment of Rs. 2,00,000/- was made on 29.01.2021. As such an amount of Rs. 1,04,39,547/- is due. The Respondent had neither paid the outstanding amount nor disputed the debt within 10 days from the date or receipt of demand notice under Section 8 of IBC, 2016. Therefore, the Appellant having no other alternative, filed application under Section 9 of IBC, 2016 to initiate insolvency process against Respondent. Corporate Debtor, claiming to be operational creditor.

7. The Adjudicating Authority without considering the terms of invoice for payment of interest @ 24% on delayed payment which form part of operational debt, dismissed the application in limini.

8. Appellant raised a specific ground that the condition to pay interest @ 24% on the amount due, on account of delayed payment was not considered properly though interest would form part of the debt, both in the grounds of appeal and during arguments, placing reliance on the Judgment of this Tribunal in ***Prashant Agarwal Vs. Vikash Parasrampuria & Anr.*** dated *15.07.2022* in *Company Appeal (AT) (Ins.) No. 690 of 2022* in support of his contention. The learned Counsel has also drawn the attention of this Tribunal, a letter addressed by the Respondent on receipt of notice and a petition filed by Respondent in demur to the application. It is further contended that the Adjudicating Authority on erroneous appreciation of law and terms of the invoices for payment of interest @ 24% on delayed

payment was not properly considered, committed an error, requested to set aside the impugned order dated 09.05.2022.

9. The Respondent refuting the contentions, contended that no opportunity was afforded to it before passing impugned order, no reply was filed to the application. However, interest is a part of invoice, the same is not accepted by signing under it, therefore, the Respondent is not under obligation to pay interest @ 24% on the delayed payment, on the other hand no date is fixed for paying of the invoice amount. In the absence of acceptance to such term for payment of interest @ 24%, the interest claimed by Appellant interest would not form part of debt to satisfy the threshold requirement. Hence, the Adjudicating Authority rightly dismissed the application by impugned order. It warrants no interference by this Appellate Tribunal. If the Tribunal for any reason, not convinced by argument of the Respondent, the order may be set aside and remanded to Adjudicating Authority to afford an opportunity to file reply and contest the application, so, as to decide the matter on merits.

10. Admittedly, the impugned order was passed by the Adjudicating Authority at the threshold even without affording an opportunity to Respondent to put forth its defence by ways of Reply, however the Respondent filed petition as demur but that application was not decided, no order was passed on demur application.

11. Though no specific form is prescribed under IBC or any regulations formed thereunder as to contents of order or Judgment. In

the absence of any provision in IBC or rules, regulations as to what order or Judgment should contain, the general rules relating to contents of order or Judgment shall be followed by Adjudicating Authority.

12. In the present case, the Adjudicating Authority dismissed the CP (IB) No. 150/KB/2022 relying on earlier order dated 19.01.2022 passed in CP (IB) No. 797 (ND) 2021 between CBRE South Asis Pvt. Ltd. Vs. M/s United Concepts and Solutions Pvt. Ltd., where the Adjudicating Authority as follows:

> "*In view of the observations made by the Co-ordinate Bench, New Delhi in paragraphs 14 and 17 of the order 19.01.2022 passed in CP (IB)-797(ND)/2021 (CBRE South Asis Pvt. Ltd.) Vs. M/s United Concepts and Solutions Pvt. Ltd.), which read as follows:*
>
> *14. That in the light of the above discussion, we are of the view that the interest amount cannot be clubbed with the Principal amount of debt to arrive at the minimum threshold of Rs. 1 Crore for complying with the provision of Section 4 of IBC, 2016."*
>
> *17. Since the present application has been filed in the year 2021, therefore, we find no force in the arguments of Ld. Counsel of Operational Creditor that the limit of Rs. 01 Crore is not applicable to its case."*

13. A perusal of the order under challenge, the order did not satisfy any of the requirements of an order or judgment. During hearing the learned counsel for appellant contended that interest agreed to be paid by the respondent as per tax invoice would form part of the debt placing reliance on the judgment of this Tribunal in *Prashant Agarwal Vs. Vikash Parasrampuria & Anr.*, the counsel also drawn the attention of this Tribunal to letter addressed by the respondent to the

notice where the respondent narrated the discussion between representative of the appellant and respondent. The counsel for the respondent would submit that no admission is made about liability to pay interest, it is only discussion between the representative of appellant and respondent. Curiously he has drawn the attention of this tribunal to the term regarding interest, thereby the respondent did not agree to pay interest at any rate, when serious question are raised about the liability to pay interest on delayed payment, the Adjudicating Authority ought to have afforded an opportunity to file counter.

14. In any view of the matter, the order does not satisfy the requirement, this Tribunal can't decide in question as to liability to pay interest either in the presence of contract or in the absence of contract, without affording an opportunity to file reply to the petition, in case the liability to pay interest is decided without an opportunity it would amount to denial of reasonable opportunity which is in violation of principles of natural justice.

15. Though the requisites of order are not prescribed, still the general principles have to be followed while writing order. The Apex Court and other court time and again laid down principles regarding contracts of order.

16. It is settled law that the Court or Tribunal shall record reasons for its conclusion on the basis of merits. What an order should contain normally is not specified anywhere but the order must be

reasoned one since the judgment or order in its final shape usually contains in additional to formal parts (a) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order is based and (b) A substantive or mandatory part, containing the order made by the Court as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260).

17. Thus, in view of the requirements of an order or judgment referred above, an order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to those cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. The requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of

reasons. Reason, therefore, is the soul and spirit of a good judgment or order. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him. Justice M.M.Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment or order writing, which is as follows:

> *"(i) Introduction section;*
> *(ii) Setting out of the facts;*
> *(iii) The law and the issues;*
> *(iv) Applying the law to the facts;*
> *(v) Determining the relief; including costs; and*
> *(vi) Finally, the order of the Court."*

18. Keeping in view various principles and observations, the 'Apex Court' laid down certain guidelines for writing judgments and orders in 'Joint Commissioner of Income Tax, Surat, Vs. Saheli Leasing and Industries Limited' (Civil Appeal No. 4278 of 2010) in para No. 7 of the judgment and they are extracted hereunder:

> *"7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-*
> *a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable*

law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."

c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

19. When judgment is pronounced without reasoning, it is not a judgment in the eye of law for the reason that the requirement of reasoning either by Original Court or Appellate Authority is to convey the mind of the judge while deciding such an issue before the Tribunal. The object of the Rule in making it incumbent upon the

Tribunals to record reasons is only to afford an opportunity in understanding the ground upon which the decision is founded with a view to enabling them to know the basis of the judgment or order and if so considered appropriate and so advised, to avail the remedy of appeal.

20. From a bare reading of the principle laid down in the above judgment, the requirement of recording of reasons is only to show that the Court has focused concentration on rival contentions and to provide litigant parties an opportunity of understanding the ground upon which the decision is founded. Even if it is an order under the provisions of the Act, still these basic requirements cannot be ignored by Courts and Tribunals. In such case, a judge is required to apply his mind and give focused consideration to rival contentions raised by both parties. Courts/Tribunals ought to be cautious and only on being satisfied that there is no fact which needs to be proved despite being in admission, should proceed to pass judgments vide ***Balraj Taneja and another Vs. Sunil Madan and another***[1]. The need for recording of reasons is greater in a case where the order is passed at the original stage, a decision without reasons is like grass without root, the requirement to record reasons is one of the principles of natural justice as well and where a statute required recording of reasons in support of the order, it must be done by the authorities

[1]AIR 1999 SC 3381

concerned as held by the Apex Court in ***S.M. Mukerji Vs. Union of India***[2].

21. Appling the principles referred above to the facts of the present case, we have no hesitation to hold that the order under challenge is bad in law and liable to be set aside, since the order did not satisfy the requirements of an order. Accordingly the order is set aside.

22. In the result, the order under challenge passed in CP (IB) No. 150/KB of 2021 dated 9th May, 2022, passed by National Company Law Tribunal, Kolkata Bench No. II is set aside, while remanding the CP (IB) No. 150/KB/2021, with a direction to restore the same to its original number, afford an opportunity to the respondent to file reply to petition and rejoinder if any to counter and decide in accordance with law as expeditiously as possible.

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Barun Mitra]
Member (Technical)

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[2] *1990 Crl.L.J.2148*