

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.361 of 2023

IN THE MATTER OF:

Intec Capital Ltd.

...Appellant

Versus

**Uday Kumar Bhaskar Bhat
IRP of Atharva Auto Logistics Pvt. Ltd.**

...Respondent

Present:

For Appellant: Mr. PBA Srinivasan, Mr. Dhruv Parwal, Mr. V. Aravind, Ms. Srishti Bansal, Mr. Sumit Swami, Advocates.

For Respondent:

O R D E R

05.04.2023: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 17.01.2023 by which application filed by the Appellant has been rejected. The Section 7 application was filed by the Appellant which was admitted vide order dated 18.02.2022. In pursuance of the publication issued by the IRP, claim was filed by the Appellant of Rs.6,52,42,330/-, which was provisionally admitted by the IRP on 18.03.2022. Subsequently, after verification, the RP has reduced the claim amount of the Appellant to Rs.3,16,90,306/-. Aggrieved by the reduction of the claim amount, an application was filed by the Appellant before the Adjudicating Authority, which has been rejected by the impugned order.

2. Shri Srinivasan, learned counsel for the Appellant challenging the order contends that the Resolution Professional has no jurisdiction to

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change/reduce the claim amount after he has once admitted the claim. He further submits that the reliance of the Resolution Professional on the award dated 19.01.2018 was misplaced, since the award would have been relevant only if the Appellant has initiated proceeding for recovery of amount, however, the said award is not relevant when the claim is made by the Appellant before the IRP.

3. The Adjudicating Authority has noted the submission of the parties and has rejected the application. Observation made in Para 7 of the order is as follows:

“7. Having thoughtfully considered, the entire matter and after going through the record, we are of the considered view that no legality has been committed by the IRP while determining the claim amount of the Applicant. Here, it is pertinent to mention that the claim amount mentioned in the Applicant under Section 7, cannot be taken to be a final amount for the purposes to be determining the voting percentage of the Applicant. It is not disputed that initially an amount of Rs. 1.3 crores were advanced as loan to the Corporate Debtor alongwith the certain other persons/entities. The dispute with regard to the said loan went into an arbitration and culminated into award dated 19.01.2018 the copy which has been attached with the reply file by the Respondent. The principle amount initially lent to the Corporate Debtor is mentioned as Rs. 1.3 crore. By way of this award the Corporate Debtor has been held liable to pay a

sum of Rs. 1,35,35,770/- alongwith pending and future interest at the rate of 19% per annum from 16.08.2017 till realization. The award has not been challenged at any forum till date and appears to have attained finality considering the fact that the period of limitation to challenge the award by either of the parties has already expired. The IRP has calculated the interest on the principle amount of Rs.1,35,35,777/- as awarded in the award therefore, in our considered view, the claim of the applicant has been rightly calculated for the purposes of determining the voting rights of the applicant and no legality or infirmities seems to have been committed by the IRP while doing so. Even otherwise as per Regulation 14(2) of CIRP Regulations 2016, the Resolution Professional has right to revise the amounts of the claim admitted as and when he comes across any additional information warranting such revision. Therefore, the IRP could already vary the amount on the basis of the Award passed in favour of the Petitioner.”

4. In so far as submission of the Appellant that Resolution Professional cannot reduce the claim amount once admitted, suffice it to say that, it is clear from the email dated 18.03.2022 sent by the IRP that the claim amount of Rs.6,52,42,330/- was only provisionally admitted, which was subject to verification. Under CIRP Regulations, 2016, the Resolution Professional has, in events additional materials comes, power to change the claim amount. Therefore, we do not find any error in the said order.

5. The submission of learned counsel for the Appellant that the award which was delivered by the Sole Arbitrator is not relevant insofar as claim of the Appellant is concerned, a copy of the Arbitral Award has been brought on the record by the Appellant at page 120 of the Appeal Paper Book, which was also filed with Section 7 application. The Arbitration Proceeding was initiated by the Appellant himself and the Sole Arbitrator passed award, which is to the following effect:

“In view of the above discussion, this tribunal hereby passes an Award in favour of the Claimant and against the Respondent/s to the following effect:

- 1. That the Respondents shall be jointly and severally liable to pay to the claimant a sum of **Rs.1,35,35,777/- (Rupees One Crore Thirty Five Lakh Thirty Five Thousand Seven Hundred Seventy Seven Only)** with pendentelite and future interest @ **19%** per annum from **16.08.2017** till its realization.*
- 2. The claimant is entitled to recover cost of the present arbitration proceeding which has been quantified at Rs.25,000/- from Respondents.*
- 3. The claimant shall be entitled to recover all costs and expenses that may be incurred in seeking recovery of the amount awarded from the Respondents.”*

6. The Resolution Professional has calculated the claim of the Appellant as per the award dated 19.01.2018. Appellant who has himself initiated the

Arbitration Proceeding cannot deny that he is bound by the award which was delivered in his favour. Claim calculated on the basis of the award can neither be said to be incorrect nor against the materials on record. The Adjudicating Authority has rightly taken the view that no error has been committed by the Resolution Professional in reducing the amount of the claim of the Appellant. We do not find any error in the impugned order. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

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