

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

Reserved on: 22.02.2023
Pronounced on: 20.03.2023

FMA 1262 of 2022
With
CAN 1 of 2021

SPS Steels Rolling Mills Limited and Ors.

...Appellants

-Vs-

The Asansol Durgapur Development Authority and Anr.

...Respondents

With

FMA 152 of 2022
With
CAN 1 of 2022

Asansol Durgapur Development Authority

...Appellant

-Vs-

SPS Steels Rolling Mills Limited and Ors.

...Respondents

Present:-

Mr. Kumarjit Banerjee,
Ms. Sinthia Bala, Advocates
... for the appellants

Mr. Sayantan Bose,
Ms. Ankita Choudury,
Mr. Sattik Rout, Advocates
... for the respondent

Mr. Lahit Mohan Mahata, Id. AGP
Mr. Rudranil De, Advocate
... for the State

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. These cross appeals are directed against the order of the learned Single Judge dated 4th of August, 2021 whereby WPA 5949 of 2020

filed by the appellants in FMA 1262 of 2022 has been disposed of with a direction to the appellant in FMA 152 of 2022 to refund the sum received from the writ petitioner as transfer fee.

2. The facts in nutshell are that appellants in FMA 1262 of 2022 (writ petitioners) had filed the writ petition challenging the demand of transfer fee by the respondent No.1 (appellant in FMA 152 of 2022) contained in the letter dated 24th of June, 2019 in respect of 4 lease deeds dated 16.02.1999, 29.12.1990, 11.11.2003 and 04.05.2010 and seeking a declaration that no such transfer fee was payable. The plea of the writ petitioner was that the proceedings were initiated against the writ petitioner No.1 under Section 7 of the Insolvency and Bankruptcy Code in the National Company Law Tribunal, Kolkata. The petitioner No.2 was declared by the Committee of Creditors to be the successful resolution applicant on 14th of February, 2019 and the resolution plan submitted by the petitioner No.2 was approved by the National Company Law Tribunal, Kolkata Bench vide order dated 8th of April, 2019. The petitioner No.2 had made payment of entire amount of Rs. 266 crores in terms of the resolution plan and had proceeded to assume control of the petitioner No. 1 company along with its assets and properties. It also took over the management and control of the petitioner No. 1 company. At the stage of seeking permission to mortgage the leasehold interest over the premises to the Punjab National Bank, the respondent No. 1 had raised the issue of payment of transfer fee in respect of the lease deeds in question and had issued the letter dated 24th of June, 2019 demanding the sum of Rs. 1,42,01,342/-. The writ petitioner had deposited the said amount and had filed the petition

challenging the demand letter and seeking the refund of the amount along with the 18% interest from the date of deposit.

3. Learned Single Judge by the impugned order has reached to the conclusion that the transfer fee was exempted under the resolution plan sanctioned by the National Company Law Tribunal and has found that the demand of the respondent No. 1 for transfer fee was unsustainable and the receipt of payment of such unsustainable demand was vitiated. Accordingly, learned Single Judge directed the respondent No.1 to refund the sum received as transfer fee within six weeks.

4. The order of the learned Single Judge has been challenged by the respondent No. 1 in FMA 152 of 2022 on the ground that respondent No. 1 was entitled to recover the transfer fee whereas the writ petitioner has challenged the order of the learned Single Judge in FMA 1262 of 2022 claiming the interest on the amount directed to be refunded.

5. Having heard learned Counsel for the parties and on perusal of the record, we find that so far as FMA 152 of 2022 filed by the respondent No.1 questioning the direction of the learned Single Judge to refund the amount recovered towards transfer fee is concerned, undisputedly in the insolvency proceedings resolution plan dated 9th of May, 2019 was approved by the National Company Law Tribunal, Kolkata. The resolution plant contains the following clause:

“(xv) The Company and the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan.”

6. Thus, in terms of the resolution plan, the company and resolution applicant were exempted for payment of transfer charges.

7. Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Through the Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited Through the Director and Others** reported in **(2021) 9 SCC 657** has held that on approval of the plan, it becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. In that judgment, it has also been held that 2019 Amendment in the Code was declaratory and clarificatory in nature and it has retrospective result.

8. Hence, in view of the above judgment, we do not find any merit in FMA 152 of 2022 which is accordingly dismissed.

9. So far as FMA 1262 of 2022 is concerned, the writ petitioner is claiming interest on the amount deposited towards transfer fee under protest. The record reflects that after approval of the resolution plan the respondent No.1 had issued the demand notice dated 24.06.2019 demanding the sum of Rs. Rs. 1,42,01,342/- towards transfer fee. Writ petitioner vide covering letter dated 30th July, 2019 had deposited the amount under protest without prejudice to the right to dispute the demand by stating that the writ petitioner was in urgent need of an NOC for availing of the loan for working capital and up gradation and that the litigation on the issue was likely to take some time to reach at a decision. Thereafter vide communication dated 19th August, 2019, the writ petition had demanded the refund of the said amount mentioning the urgency which had forced the writ petitioner to deposit the amount under protest.

10. In terms of the condition contained in the approved resolution plan and also in terms of the law settled by the Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Through the Authorised Signatory (supra)**, the respondent No. 1 was not entitled to recover the transfer charges. The writ petitioners were compelled by the circumstances to deposit the transfer charges under protest. Learned Single Judge has already found that the demand by the respondent No. 1 towards the transfer charges was unsustainable and has directed for refund of the same.

11. Reliance has been placed by learned Counsel for the writ petitioner upon the judgment of Hon'ble Supreme Court in the matter of **Union of India Through Director of Income Tax vs. Tata Chemicals Limited** reported in **(2014) 6 SCC 335** wherein considering the issue of refund of income tax, Hon'ble Supreme Court has expressed that there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the revenue, the government cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. It has further been held that the obligation to refund money received and retained without right implies and carries with it the right to interest.

12. Learned Counsel for the respondent has referred to the provisions of the Interest Act and has submitted that interest can be paid only if loss is suffered. In the present case, the writ petitioner has definitely suffered loss of interest on the amount unlawfully demanded which otherwise would have earned interest if kept in deposit. As against this, reliance upon the judgment of the Hon'ble Supreme Court

in the matter of **New Delhi Municipal Committee vs. Kalu Ram and Another** reported in **(1976) 3 SCC 407** has been placed by learned Counsel for the writ petitioner in support of the plea that the Insolvency and Bankruptcy Code is self-contained Code.

13. In the aforesaid circumstances, we are of the view that the writ petitioner is entitled to interest on the amount deposited in pursuance to the unsustainable demand letter dated 24.06.2019. Hence, considering the prevailing rate of interest, we dispose of FMA 1262 of 2022 holding that writ petitioner is entitled to interest at the rate of 8% on the amount deposited towards the transfer charges in pursuance to the impugned demand letter from the date of deposit till the date of refund.

14. It has also been pointed out that the amount has not been refunded till now, therefore, the amount in question along with the interest as directed above be refunded to the petitioner within a period of six weeks from today.

15. The order of the learned Single Judge is accordingly modified to the extent indicated above. FMA 1262 of 2022 is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
20.03.2023

PA(SS)

(A.F.R. / N.A.F.R.)