

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins.) No. 1180 of 2024

(Arising out of the Order dated 30.04.2024 passed by the National Company Law Tribunal, Chandigarh Bench in I.A. No. 792 of 2023 in C.P. (IB) 94/Chd/Hry/2020)

IN THE MATTER OF:

Jindal Lifestyle Limited

(Company registered under the Companies Act, 2013)

Through Authorised Representative

Mr. Puran Singh.

Having its office at:

Stainless Centre, Plot No. 50, 6th Floor, Sector 32,

Gurugram - 122001, Haryana

E-Mail ID: contact@jindallifestyle.com

...Appellant

Versus

1. Mr. Satyendra Sharma

Resolution Professional of Arkin Creations Pvt

Ltd.

Having office at:

M-3, Block No. 51, Anupam Plaza - II, First

Floor, Above Axis Bank, Sanjay Place,

Agra - 282002, Uttar Pradesh, India

E-mail ID: satyendrasirp@gmail.com,

cirp.arkincreations@gmail.com

...Respondent No. 1

2. Ms. Deepika Jindal, Director of Appellant

Having office At:

Stainless Centre, Plot No. 50, 6th Floor, Sector 32,

Gurugram, Haryana – 122001.

E-Mail ID: jindallifestylelimited@gmail.com

...Respondent No. 2

3. Mr. Abhishek Poddar, Director of Appellant.

Having office At:

Stainless Centre, Plot No. 50, 6th Floor, Sector 32,
Gurugram, Haryana – 122001.

E-Mail ID: jindallifestylelimited@gmail.com

...Respondent No. 3

**4. Mr. Vijar Kumar Sharma, Director of
Appellant**

Having office At:

Stainless Centre, Plot No. 50, 6th Floor, Sector 32,
Gurugram, Haryana – 122001.

E-Mail ID: jindallifestylelimited@gmail.com

...Respondent No. 4

5. Ms. Sangeeta Prasad, Director of Appellant.

Having office At:

Stainless Centre, Plot No. 50, 6th Floor, Sector 32,
Gurugram, Haryana – 122001.

E-Mail ID: jindallifestylelimited@gmail.com

...Respondent No. 5

6. Mr. Rajesh Mohata

Having office At:

Stainless Centre, Plot No. 50, 6th Floor, Sector 32,
Gurugram, Haryana – 122001.

E-Mail ID: jindallifestylelimited@gmail.com

...Respondent No. 6

Present

For Appellant:

Mr. Sarad Kumar Sunny & Mr. Madhan Binzani,
Advocates.

For Respondents:

Mr. D. Pathak, Ms. Shweta Sharma, Ms. Vaibhavi
Pathak, Mohd. Nazim Khan & Mr. Satyendra
Sharma, for RP

J U D G E M E N T

(21.08.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Jindal Lifestyle Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code')

against the Impugned Order dated 30.04.2024 passed by the National Company Law Tribunal, Chandigarh Bench ('**Adjudicating Authority**') in I.A. No. 792 of 2023 in C.P.(IB) No. 94/CHD/HRY/2020).

2. Mr. Satyendra Sharma, who is the Resolution Professional of Arkin Creations Pvt. Ltd. is the Respondent No. 1 herein.

3. The Corporate Insolvency Resolution Process ("**CIRP**") was initiated against the Corporate Debtor, Arkin Creations Private Limited, on 07.10.2022 vide order in CP (IB) No. 94/Chd/Hry/2020.

4. The Appellant submitted that, prior to CIRP, the Corporate Debtor initiated arbitration against the Appellant under the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSME Act, 2006**") for alleged non-payment towards supply of goods, claiming a principal amount of Rs. 21,50,332 plus interest. The Appellant contended that the arbitration was referred to Shri P.P. Chhabra as Sole Arbitrator on 17.06.2016 by the Haryana Micro and Small Enterprises Facilitation Council ("**HMSEFC**"), as the Corporate Debtor was registered as a small-scale industry under the MSME Act, 2006.

5. The Appellant submitted that the arbitration proceeded ex-parte against the Appellant's erstwhile company, JSL Architecture Limited, culminating in an Arbitral Award dated 23.01.2017 ("**Arbitral Award**"). The Appellant contended that JSL Architecture Limited never received a copy of the Arbitral Award at the time it was made or thereafter.

6. The Appellant submitted that from 23.01.2017 until the initiation of CIRP on 07.10.2022, the Corporate Debtor took no steps to enforce or execute the Said Award. The Appellant contended that the Appellant first received the Said Award as an enclosure to Respondent No. 1's demand notice dated 18.01.2023 under Section 60(5) of the code, seeking payment of Rs. 44,99,365 comprising the principal amount of Rs. 21,50,332 and interest of Rs. 23,49,033. The Appellant contended that the Appellant replied to the demand notice on 23.01.2023, disputing the claims.

7. The Appellant submitted that the Adjudicating Authority erred in giving effect to the purported Arbitral Award dated 23.01.2017, as it was merely a report on findings referred to arbitration and not an enforceable award under the MSME Act, 2006. The Appellant contended that the Sole Arbitrator failed to submit the report to the Haryana Micro and HMSEFC as required by Rule 4(16) of the Haryana Micro, Small and Medium Enterprises Facilitation Council Rules, 2007, vesting the Facilitation Council with sole authority to make a final award, thereby rendering the purported award non-binding.

8. The Appellant submitted that the Adjudicating Authority failed to appreciate that, per Section 18(3) of the MSME Act, 2006, the Arbitral Award dated 23.01.2017 is governed by the Arbitration and Conciliation Act, 1996, and enforcement lies exclusively before a civil court of competent jurisdiction under Section 36 of the Arbitration and Conciliation Act, 1996, not the Adjudicating Authority.

9. The Appellant submitted that the Adjudicating Authority overlooked that the Arbitral Award dated 23.01.2017 is a nullity under Section 18(5) of the MSME Act, 2006, as it was not made within 90 days from the reference date of 17.06.2016, which required completion by 18.09.2016, but was issued on 23.01.2017, violating the mandatory timeline.

10. The Appellant submitted that the Adjudicating Authority could not take cognizance of the Arbitral Award dated 23.01.2017 under Section 35 of the Indian Stamp Act, 1899, due to insufficient stamping, yet proceeded to enforce it despite this finding, constituting a legal error. The Appellant submitted that the prayers in IA No. 152/2023, allowed by the impugned order, do not fall within Section 60(5) of the Code, as recovery of Rs. 21,50,332 plus interest does not constitute a question "arising out of" or "in relation to" the Corporate Debtor's CIRP.

11. The Appellant submitted that the Adjudicating Authority failed to recognize that the Arbitral Award dated 23.01.2017 is unenforceable under Section 36 of the Arbitration and Conciliation Act, 1996, as no execution proceedings were initiated by the Corporate Debtor pre-CIRP. The Appellant submitted that the demand notice dated 18.01.2023 under Section 60(5) of the Code is invalid, as the claim for Rs. 21,50,332 plus interest does not "arise out of" the CIRP but stems from a pre-CIRP award.

12. The Appellant submitted that the ex-parte nature of the Arbitral Award dated 23.01.2017 is invalid due to lack of proper service of notices on JSL

Architecture Limited's registered office, violating procedural fairness. The Appellant submitted that no notice under Section 21 of the Arbitration and Conciliation Act, 1996, was served, rendering the proceedings void ab initio.

13. The Appellant submitted that the Arbitral Award dated 23.01.2017 was not served until the demand notice dated 18.01.2023, preventing timely challenge or execution. The Appellant submitted that enforcement of the Arbitral Award dated 23.01.2017 is barred by limitation under Article 136 of the Limitation Act, 1963.

14. The Appellant submitted that the Corporate Debtor abandoned the claim by not enforcing the Arbitral Award dated 23.01.2017 for over five years, estopping revival by the Resolution Professional. The Appellant submitted that the Arbitral Award dated 23.01.2017 remains unenforceable under Section 36 of the Arbitration and Conciliation Act, 1996, as no steps were taken to make it executable.

15. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and to allow the appeal.

16. Per contra, the Respondent No. 1 denied all averments made by the Appellants as misleading and baseless.

17. The Respondent No. 1 submitted that the Appellant's contention that the Resolution Professional should have approached a civil court under Section 36 of the Arbitration and Conciliation Act, 1996, for execution is misconceived. The

Respondent No. 1 contended that this ignores the Code's overriding effect under Section 238, designed to expedite insolvency resolution.

18. The Respondent No. 1 submitted that the Adjudicating Authority gets jurisdiction under Section 60(5) of the Code to enforce awards during CIRP. The Respondent No. 1 submitted that the Appellate Tribunal's judgment dated 30.01.2018 in ***K.S. Oils Ltd. Vs. The State Trade Corporation of India Ltd. & Anr.*** (Company Appeal (AT) (Insolvency) No. 284 of 2017) held that the Code prevails over the Arbitration and Conciliation Act, 1996. The Respondent No. 1 further submitted that this Appellate Tribunal's judgment dated 22.01.2020 in ***Ugro Capital Ltd. Vs. Bangalore Dehydration & Drying Equipment Company Pvt. Ltd.*** (Company Appeal (AT) (Insolvency) No. 984 of 2019) recognizes the right to initiate IBC proceedings on final decrees or awards.

19. The Respondent No. 1 submitted that the arbitral award dated 23.01.2017 is enforceable as a decree under Section 36 of the Arbitration and Conciliation Act, 1996 as the 12-year limitation period for execution under Article 136 of the Limitation Act, 1963, runs from when the award becomes enforceable, expiring on 23.01.2029. The Respondent No. 1 submitted that the Supreme Court's judgment dated 04.10.2007 in ***U.P. State Sugar Corporation Vs. Jain Construction Co.*** (2007) 8 SCC 601 holds that limitation for execution starts from the date the award becomes enforceable.

20. The Respondent No. 1 submitted that the NCLAT's judgment dated 14.02.2023 in ***MBL Infrastructures Ltd. Vs. Manish Kumar Bhagat*** (Company

Appeal (AT) (Insolvency) No. 769 of 2020) confirms that awards are enforceable within 12 years under Article 136. Further, the Respondent No. 1 submitted that the Hon'ble Supreme Court's judgment dated 16.09.2020 in ***Govt. of India Vs. Vedanta Ltd. (2020) 10 SCC 1*** affirms that limitation for execution commences when the award is final and enforceable.

21. The Respondent No. 1 submitted that limitation for enforcement starts from the date the award becomes enforceable, not from knowledge or receipt. The Respondent No. 1 contended that the Appellant's argument of first receiving the award via demand notice dated 18.01.2023 is irrelevant, as limitation runs from the award date of 23.01.2017. it is further submitted by the Respondent No. 1 that the Hon'ble Supreme Court's judgment dated 13.09.2019 in ***P. Radha Bai Vs. P. Ashok Kumar (2019) 13 SCC 445*** holds that limitation for execution begins when the award is enforceable, regardless of knowledge.

22. The Respondent No. 1 submitted that the arbitral award dated 23.01.2017 is enforceable despite being unstamped, which in any case is curable. The Respondent No. 1 submitted that this Appellate Tribunal's judgment dated 18.03.2020 in ***M/s. Siemens Gamesa Renewable Power Pvt Ltd Vs. Ramesh Muthangi (Company Appeal (AT) (Insolvency) No. 1196 of 2019)*** holds that the NCLT can entertain unstamped documents in IBC proceedings.

23. The Respondent No. 1 submitted that the Supreme Court's judgment dated 20.07.2011 in ***M/s SMS Tea Estates Pvt. Ltd. Vs. M/s Chandmari Tea Co. Pvt. Ltd. (2011) 14 SCC 66*** clarifies that unstamped documents are admissible in

evidence if impoundment and duty payment occur. Further, the Respondent No. 1 submitted that the Supreme Court's judgment dated 10.04.2019 in ***Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions & Engineering Ltd.*** (2019) 4 SCC 201 holds that unstamped agreements are not enforceable under Section 11 of the Arbitration Act but does not extend to IBC proceedings.

24. The Respondent No. 1 submitted that the Supreme Court's judgment dated 25.04.2023 in ***N.N. Global Mercantile Pvt. Ltd. Vs. Indo Unique Flame Ltd.*** [(2023) 7 SCC 1] reinforces that unstamped instruments are inadmissible under Section 35 of the Stamp Act, but the NCLT's tribunal status exempts it from this bar.

25. The Respondent No. 1 submitted that Section 18(5) of the MSME Act, 2006, is directory, not mandatory, and non-compliance does not render the award a nullity. The Respondent No. 1 contended that the 90-day timeline is procedural, and awards issued beyond it remain valid if no prejudice is caused. The Respondent No. 1 submitted that the Delhi High Court's judgment dated 18.11.2019 in ***Avery Cycle Industries Ltd. Vs. Parkash Metal Industries*** (FAO (COMM) 71/2019) holds that Section 18(5) of the MSME Act, 2006 is directory and not mandatory. The Respondent No. 1 further submitted that the Kerala High Court's judgment dated 02.11.2020 in ***Kerala State Electricity Board Vs. Principal, MSME-TDS*** (OP (C) No. 2518 of 2018) affirms the directory nature of Section 18(5) of the MSME Act, 2006. The Respondent No. 1 submitted that the Allahabad High Court's judgment dated 05.01.2021 in ***M/s Bins***

International Vs. U.P. Micro and Small Enterprises Facilitation Council (Writ - C No. 19385 of 2020) supports that non-compliance does not invalidate awards.

26. Concluding his arguments, the Respondent No.1 requested this Appellate Tribunal to dismiss this appeal with exemplary cost.

Findings

27. A short point in the present appeal is regarding power of the Adjudicating Authority to deal with claims of the Corporate Debtor under CIRP against the Appellant arising out of an Arbitral Award. The Arbitral Award is amounting to Rs. 44,99,365/- comprising the principal amount of Rs. 21,50,332/- and interest of Rs. 23,49,032/-. It is the case of the Appellant that he received the Arbitral Award for the first time along with demand notice dated 18.01.2023 sent by the Respondent No.1 which he disputed. The Appellant has also taken several legal/technical grounds in his defence including that Arbitral Award dated 23.01.2017 was merely a report on finding referred to Arbitrations and further the sole arbitrator did not submit its report to HMSEFC, thus, the alleged Arbitral Award is not binding.

28. The Appellant has also taken a plea that Arbitral Award is covered by Arbitration and Reconciliation Act, 1996 and enforcement could be done only before civil court under Section 36 of Arbitration and Reconciliation Act, 1996 and Adjudicating Authority does not have any role.

29. The Appellant further argued that the award is a nullity (under Section 18(5) of MSME Act, 2006) as the same was not made within 90 days from reference dated 17.06.2016 and finally the Appellant has pleaded that the Arbitral Award was not sufficiently stamped.

30. Now, we shall take up the various points raised by the Appellant as noted above since we have already noted contention of Respondent No. 1 while recording his pleadings.

31. The first issue is regarding whether the Respondent No. 1 could have initiated the IA No. 792/ 2023 in CP (IB) No. 94/Chd/Hry/2020 before the Adjudicating Authority for enforcing the Arbitral Award or Respondent No. 1 should have gone to relevant civil court as pleaded by the Appellant. It is pertinent to understand that IBC is a self-contained code which intend for timely resolution of the Corporate Debtor. It is further well settled principal that the proceedings under the Code are time bound and several judicial fora including this Appellate Tribunal and Hon'ble Supreme Court of India have held in catena of judgements that strict timelines are lifelines for revival of the Corporate Debtor. Prima-facie, if the contentions of the Appellant are accepted that the Respondent No. 1 should have gone to the civil court, then no one can assess as to how much time the whole process is going to take before the Arbitral Award is implemented and finally the decree which is challengeable at several layers of the judicial fora is executed in favour of the Corporate Debtor.

32. At this stage, we take into consideration that Section 60(5) of the Code, which categorically contains the non-obstante clause. The 60(5) of the Code reads as under: -

*“Section 60: Adjudicating Authority for corporate persons.
(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdictionJI to entertain or dispose of—*

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

(Emphasis Supplied)

33. From above reading of Section 60(5) of the Code, it becomes clear that once the Adjudicating Authority is required to deal any matter brought before it, which is within the domain of the Code, no other forum have any jurisdiction to entertain such proceedings. Taking into this consideration, we find that the Adjudicating Authority was well within rights to entertain the relevant IA filed

by the Respondent No. 1 regarding enforcing the Arbitral Award, we noted earlier.

34. In this connection, we would like to refer to Section 238 of the Code which clearly mandate that in situation where the Code is in conflict with any other prevailing law, the code will prevail and override other laws. In this connection, we note that there are several judgments supporting this ratio. We will refer to this Appellate Tribunal's earlier judgement in the matter of ***K.S. Oils Limited. Vs. The State Trade Corporation of India Limited and Anr.*** passed in ***Comp. App. (AT) (Ins.) No. 284 of 2017*** where same principals has been confirmed. The relevant para No. 12 & 13 of this judgment reads as under: -

“12. As per Section 238, the I & B Code override other laws, as quoted below:

"238. Provisions of this Code to override other laws. -The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

13. Thereby, the I & B Code will prevail over the Arbitration and Conciliation Act, 1996”

(Emphasis Supplied)

35. It is admitted fact that the Arbitral Award was indeed issued and the same has not been challenged by the Appellant, thus, the Arbitral Award has attained the finality and the same need to be prosecuted by Respondent No. 1 being

Resolution Professional of the Corporate Debtor in order to help in revival of the Corporate Debtor. The Adjudicating Authority is also required to exercise its powers under section 60(5) of the Code to direct the judgment debtor in respect of Arbitral Award to pay the determined amount under the Arbitral Award.

36. The Appellant has also taken pleading that Arbitral Award dated 23.01.2017 is a nullity as the Corporate Debtor was not registered as a MSME on the date of supply of goods to the Appellant. In this connection, the Respondent No. 1 has brought to our notice that the Corporate Debtor was registered as MSME at all time and has enclosed the certificate of registration.

37. Another point has been pleaded by the Appellant is regarding insufficient stamp by the Sole Arbitrator making the award itself nullity. In this connection, we do agree with the reasoning of Respondent No. 1 that the same, in any case, curable as the Hon'ble Supreme Court of India clarified in the judgment dated 25.04.2023 in NN Global Market Limited (Supra).

38. We also find the merit in the contentions of the Respondent No. 1 that 90 days' timelines prescribed under MSME Act, 2006 for Arbitrator is not mandatory and non-compliance and delayed submission of Arbitral Award cannot be a ground to treat the Arbitral Award a nullity and we tend to agree with the same. In this connection, we find that the Hon'ble High Court of Delhi has also stipulated the same ratio in case of *Avery Cycle Industries Ltd. (Supra)*.

39. We have also gone through the Impugned Order on the subject and do not find any error in the Impugned Order allowing IA No. 792/2023 filed by the Respondent No. 1 before the Adjudicating Authority.

40. In fine, we are not convinced on any of the pleadings and legal or technical grounds taken by the Appellant before us.

41. We reiterate that based on above detailed observations, we do not find any error in the Impugned Order. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Justice Mohammad Faiz Alam Khan]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

Sim