

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 115 of 2018

IN THE MATTER OF:

M/s. Amar Tours & Transport

...Appellant

Versus

M/s. Go Airlines (India) Ltd.

...Respondent

Present:

For Appellant : **Mr. Harshit Sanwal and Mr. Saurabh Upadhyay,
Advocates**

For Respondent : **Dr. U.K. Chaudhary, Senior Advocate assisted by
Mr. Meenesh Dubey, Mr. Abdes Chaudhari, Ms.
Manisha Chaudhary, Mr. Himanshu Vij, Advocates
and Mr. Prasad M. Pathare, Dy. G.M. of Go Airlines
(India) Ltd.**

ORDER

08.05.2018 The appellant - M/s. Amar Tour & Transport (Operational Creditor) preferred an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') for initiation of 'corporate insolvency resolution process' against the respondent - M/s. Go Airlines (India) Ltd. (Corporate Debtor). By the impugned order dated 13th February, 2018, the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi rejected the application on the ground of 'existence of dispute'.

2. On notice the respondent has appeared and filed reply enclosing the documents in support of 'existence of dispute'.

3. The Audit finding suggests that on 24th February, 2015, the official of the 'Corporate Debtor' highlighted to MD that there is an involvement of the appellant in fraudulent activity raising false claims. On 25th February, 2015 a team of finance, operations and legal constituted to find the fraudulent claim of the appellant. After the investigation made, a meeting was convened at Mumbai with the appellant wherein the respondent (Corporate Debtor) put to notice about the investigation of the team. He was specifically confronted with the issues relating to the fraudulent parking receipts, manipulating with the odometer etc. The minutes of the meeting reads as follows:-

“Minutes of the meeting between GoAir and Amar Transport Services Delhi.

Date of the meeting : 25/05/15, Monday

Venue : Go Air Green Room, WIC

Members present :

Go Airlines (I) Ltd.

Mr. Joyakesh Poddar (GM Finance)

Mr. Rahebar Sheikh (Sr. GM Flight Ops)

Mr. Amit Kulkarni (GM Procurement)

Amar Transport Services

Mr. Amar Sharma (Proprietor)

“Points discussed:

The audit findings with respect to Audit report submitted by DHC regarding Invoices raised by Delhi

Transport vendor, was shared with Mr. Amar Sharma in detail.

1. **Parking Receipts submitted to GoAir:** *Mr. Amar Sharma accepted that the Parking receipts submitted by them are not genuine receipts. He also clarified that all the parking payments are done by them in cash and they do not get any receipts from the landlords. Hence they have submitted such non-genuine receipts.*
2. **Difference between Odometer reading and Log Sheet Kms:** *Mr. Amar Sharma accepted that the odometers of the cars have been tampered by them to display less Kilometres. This has been done to get a higher resale value of the cars. It has resulted in a difference between the actual recorder Kms on the Log sheets and the Odometer readings in the cars (the odometer readings are showing much lesser Kms. Compared to Log sheets).*
3. **Kms charged are excess compared to the actual distance :** *Mr. Amar Sharma stated that the Kms are charged based on a fixed “Km Chart” provided by GoAir. However GoAir has clearly stated that there is*

no reference of fixed approved “Km Chart” mentioned in the Agreement.

4. **Separate Invoices raised for individual crew even in the event of crew clubbing:** *This was highlighted to Mr. Amar Sharma. Also Invoices raised for non-roaster crew, same crew Invoiced twice and Invoice raised for crew on leave were also highlighted. Mr. Amar Sharma accepted that the crew is clubbed whenever possible. However, he insisted that Go Air is charged only as per actual transport facility provided.*
5. **Non Availability of Go Air Logo on Cars :** *Mr. Amar Sharma clarified that there is restrictions from Delhi Authorities to display Logo on the windshields. However, GoAir maintained that it was a part of the contract and the issue about restrictions/permissions to display Logo was never brought to the notice of GoAir before.*
6. **Unavailability of GPS in Cars :** *GoAir highlighted the observation raised in the Audit Report regarding the unavailability of GPS system in cars. Mr. Amar stated that all the cars are fitted with GPS system and can be accessed at any point of time.*

7. GoAir insisted that all the above explanations/clarifications be submitted in writing. Mr. Amar Sharma agreed to send us a detailed e-mail with all above clarifications required.”

4. After admitting, the appellant tried to justify its activity the matter by the email dated 25th May, 2015 as follows :

“From : Amar S [mailto: amar@jspexpress.in]
Sent : 25 May 2015 18:15
To : Amit Kulkarni; Rahebar Sheikh

Subject :

Dear Sir,

There are few points that have been raised by you. I would like to clarify them.

1. Parking receipts are not genuine.

We are paying parking to two defer end venders one is GMR and other is our landlord. The landlord is not providing us bill or receipt for the payments every month.

2. Odometer is not matching with log sheet km.

There will be difference in km between log sheet and odometer because drivers after dropping or before pickup he go to his home or other place for food some to get freshen up & in last few months we have revised the odometers to show the buyers less km done by the car to get good price

while selling the cab. That km are not chargeable to GoAir but yes it makes the difference in odometer & log sheet.

3. *Fixed km.*

Fixed km. has been provided to us by Go Air on that basis we are charging you.

4. *Clubbing & bill for clubbing*

Yes we do clubbing which is possible at that time. We charge 2 km. extra for per clubbing. This has been given to us with fix km. sheet at the time we started this contract.

5. *GPS.*

Yes al the cabs which are operating for Go Air since we have started this contract, & 100% working till today.

6. *Logo at the cars.*

When we have started the contract I have asked to take permission by NDMC for logo otherwise they will challan the cabs. Till today that permission has been not provided by go Air.

Thanks with regards,

Amar Tours & Transport Delhi.”

5. Learned counsel appearing on behalf of the appellant submitted that subsequent to the aforesaid meeting and the reply, the respondents have accepted that the bills are raised by the appellant. However, the documents

shows that there is an 'existence of dispute' relating to fraudulent raising of bills and for the said reason the Adjudicating Authority refused to entertain the application.

6. We find no ground to interfere with the impugned order dated 13th February, 2018. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk