

NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

Company Appeal (AT)(Ins) No. 554 of 2020

IN THE MATTER OF:

**Mr. Mahendra Govindlal Agarwal
R/o. Survey No.146/3, Block No.165
Plot No.165/1, Village Jolva, Taluka
Palsana, Jolva, Surat – 394 305, Gujarat**

...Appellant

Versus

**1.Taranjot Resources Pvt. Ltd
A company incorporated under the
Companies Act, 1956 and having its registered office
At 806, SNS Arista, Plot No.94/2, T.P.Scheme No.29,
Rindh, Surat – 395 003, Gujarat.**

...Respondent No.1

**2.Dhanurdhar Processors Pvt. Ltd.
146/3, Block No.165, Plot No.165/1,
Village Jolva, Taluka Palsana, Jolva,
Surat 394 305, Gujarat
(Through Mr. Rajeev Saxena,
Interim Resolution Professional,
102, Manas Bhavan Extn. 11, RNT Marg
Indore, Madhya Pradesh).**

...Respondent No.2

Present:

For Appellant : Mr. Aditya Pande and Mr. Rahul Chitnis, Adovocates.

For Respondent : Ms. Natasha Dhruman, Advocate for Respondent No.1. Mr. CS Niyati Sengar, Advocate for Respondent No.2

J U D G M E N T

(20th August, 2020)

Dr. Ashok Kumar Mishra, Technical Member

The Appellant -Mr. Mahendra Govindlal Agarwal, a Director and a Shareholder of the Respondent No.2/ Corporate Debtor under Corporate Insolvency Resolution Process (for short CIRP) has filed this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (for short I&B Code, 2016) against the impugned order dated 05.06.2020 passed by Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench) Court-1 in CP(IB) No.357/9/NCLT/AHM/2018.

2. The Appellant has prayed for setting aside the above order dated 05.06.2020 passed by Adjudicating Authority apart from seeking costs etc.

3. The Appellant has thrust upon the following submissions based on which they want the order of the Adjudicating Authority should be set aside:-

a. Not assigning any reason in support of its conclusion and not dealt with all the issues raised by the parties to the lis;

b. Demand Notice and Petition not backed by a valid resolution of the Board of Directors of the Operational Creditors and;

c. Non-considering pre-existing disputed between Operational Creditor and Corporate Debtor regarding the quality of coal supplied by the Operational Creditor.

4. The Appellant has given a lot of thrust that the Petition filed before the Adjudicating Authority by the Operational Creditor was not authorised by its Board of Directors and no resolution of the Board have been passed. He has also thrust that the Annual Return dated 01.09.2019 of the Operational Creditor does not contain the reference of Board of Directors meeting held on 19.04.2018.

5. The Appellant has also asserted that there is a pre-existing dispute in the supply of coal by the Operational Creditor particularly with regard to the poor quality of coal supplied by the Operational Creditor resulting into a substantial losses by the Corporate Debtor. He has also submitted that the two officers of the Operational Creditor has confirmed such poor quality in the letter dated 01.01.2018 and addressed to the Operational Creditor – ***Page 161 of the Appeal paper book.***

6. The Appellant further submits that the Opeational Creditor has returned the cheques issued by the Corporate Debtor clearly shows and confirms that

the dispute regarding the quality of coal supply by the Operational Creditor resulting into the returning of cheques.

7. The Respondent – Operational Creditor has categorically denied the quality of coal issue and has provided the certificate of sampling and analysis at *Page 433 and 434 of the Reply Affidavit obtained from 3rd party Government approved lab*. He has also stated that the Corporate Debtor is concealing the facts of delivery challans. This has been incorporated in Para 8 of the impugned Order. He has confirmed that he has raised the invoices and the payment were supposed to be released within 10 days from the date of delivery of coal as per the condition mentioned in the copy of invoices.

8. The Respondent i.e Operational Creditor has sent the demand notice dated 20th April, 2018 to the Corporate Debtor and its two Directors in accordance with the provisions of the I&B Code and no reply was received after the expiry of more than 10 days from the Corporate Debtor. The Reply has not been received even till the date of filing of the petition in July, 2018. No dispute was raised against the Demand Notice.

9. The Adjudicating Authority has observed in Para 11 of the impugned order that the Operational Creditor is claiming the principal amount of Rs.

87,25,069.90/- whereas even the worst situation the dispute is Rs.20Lakhs hence, Debt is more than Rs.1 Lakh. Hence it is an admitted liability.

10. The Operational Creditor -Respondent has also raised the issue of forging of signature of their representatives in the confirmation letter dated 01.01.2018.

11. As far as the return of cheques to the Corporate Debtor is concerned, the Respondent has categorically stated that they have misrepresented before the Operational Creditor that they were closing the account maintained with Cosmos Bank. Hence, they need old cheques back and they will issue fresh and valid cheques for the new accounts proposed to be opened with another Bank.

12. The Respondent/Operational Creditor has also stated that in the Annual Returns there are only 12 rows and hence they have skipped the recording of Board meeting dated 19.04.2018. They have confirmed on affidavit convening of Board Meeting dated 19.04.2018.

13. We have carefully gone through the various submissions as raised above both by the Appellant and the Respondents and have observed the followings:

- a) The order dated 05.06.2020 delivered by Adjudicating Authority is briefly covering all the issues that has been raised by both Appellant and Respondents and the Adjudicating Authority has heard the case more than 10 times and then he has given his observation and finally admitted the Petition. The presentability of the Author of the Judgment/order varies from individual to individual, the expected thing in the judicial fora is that the judgment must be reasoned judgment and all issues are clearly to be brought out. We feel that on overall reading of the order, he has considerably brought out all the issues and basis for his arriving at a particular conclusion including passing of orders.
- b) The Operational Creditor is no doubt, a body corporate and artificial person under the Companies Act, 2013 and they have given under the Affidavit that they have conducted more than 12 Board Meetings including Board Meeting on 19.04.2018. However, they have escaped the recording of all Board Meetings in the Annual Return as there are only 12 rows in the prescribed form. We found no ground to reject such explanation. The grounds for rejecting an Application is categorically mentioned in Section 9(5) (ii) of the I&B Code, 2016 and the same is given hereunder:

“Section 9(5)(ii) - reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that *Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.*

In the Appeal Paper Book **page 33 Annexure A-2**, the Application filed by Operational Creditor is provided by Appellant wherein all the columns are filled up. The Application is complete in all respects.

- c) In this case, the Operational Creditor is disputing the signature of its representative on acknowledgment of defects as stated in letter dated 01.01.2018 and they have alleged that this is a forged signature. He has also submitted that the supplies were made even after 18.12.2017 by

the Operational Creditor and Corporate Debtor never asked to stop this supply. The Operational Creditor has also provided third party Govt. approved labs for sampling and testing of goods as appearing **at page No.433-434 of Reply of Operational Creditor**. The Corporate Debtor has failed to communicate the Operational Creditor after receipt of Demand notice for the dispute and hence he has not complied with the provisions of Section 8(2) (a) of the IBC, 2016:

Section 8(2) - The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

- d) As far as returning of cheques are concerned, the cheques were of 2nd January, 2018 to 3rd March, 2018 from the details matching with the challan date and cheque date as appearing **at page 161 to 169 of the appeal paper book**, all the cheques have been returned in an approximately 60 days after receipt of goods. This is a business relationship and in business such things happen. In this context, the Interim Resolution Professional (for short IRP) has also submitted that

the Corporate Debtor has 41 Operational Creditors and one Financial Creditor *Page 3-10 of the Affidavit in reply filed by IRP.*

14. After considering the various submissions made by the Appellant and the Respondents and our observation as stated supra, we find no merit in this Appeal & hence uphold the order of Adjudicating Authority and dismiss the Appeal.

No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member (Technical)

(Ms. Shreesha Merla)
Member (Technical)

New Delhi

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