

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

**Company Appeal (AT) (Insolvency) No. 961 of 2019**

**IN THE MATTER OF:**

**Anil Syal**

**...Appellant**

**Versus**

**Sanjeev Kapoor**

**(Proprietor Kapoor Logistics) & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. Amit Dhaka, Mr. Manohar Malik and Ms. Nupoor Maharaj, advocates.**

**For Respondent: Mr. J.M. Kalia, Ms. Bhawana Garg and Ms. Sudha Sachdeva, Advocates for R-1.**

**Mr. Prabhat Ranjan Singh, Advocate for R-2.**

**Mr. Abhishek Anand, Mr. Anant A. Pavgi and**

**Mr. Tushar Tyagi, Advocates for IRP.**

**J U D G M E N T**

**[Per; V. P. Singh, Member (T) ]**

The appellant – Anil Syal, Ex. Director and Shareholder of the Company ‘Flywheel Logistics solutions Pvt. Ltd.’, Respondent’ No 2 has preferred this Appeal under Section 61 of the ‘Insolvency and Bankruptcy Code, 2016, against the impugned order dated 2<sup>nd</sup> September 2019, passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench in C. P. No. (IB)- 1488/ND/2018, titled as ‘M/s Kapoor Logistics Versus ‘M/s Flywheel Logistics Solutions Private Limited’ .The learned Tribunal has by its order dated 2<sup>nd</sup> September 2019 admitted the petition filed under Section 9 of the ‘I&B Code 2016 and has initiated ‘Corporate Insolvency Resolution Process’ against the 2<sup>nd</sup> Respondent, i.e. Flywheel

Logistics Solutions Pvt Ltd. Being aggrieved by the impugned order dated 2<sup>nd</sup> September 2019, the instant appeal has been filed by Mr. Anil Syal, Ex-Director & Shareholder of Flywheel Logistics Solutions Pvt Ltd (from now on will be referred as FLSPL).

The brief facts of the case are as follows: -

The proprietorship firm of the Respondent No 1, M/S Kapoor Logistics has filed the application U/S 9 of the I & B Code against Respondent 'Corporate Debtor'- 'M/s Flywheel Logistics solutions Pvt. Ltd.'. The service contract was entered into and executed between Sanjeev Kapoor proprietor of M/s Kapoor Logistics, / 'Operational Creditor' and 'M/s Flywheel Logistics Solutions Private Limited'-the 'Corporate Debtor' for running route vehicles in Freight Line Haul Operations Between Pantnagar and Pune.

The 'Corporate Debtor' - M/s Flywheel Logistics Solutions Private Limited, submitted trip information to the applicant/ Respondent No 1 - Sanjeev Kapoor, for freight services rendered from January 2017 to August 2017.

The Respondent No. 1 the 'Operational Creditor' has stated that Logistics Services were provided by the Applicant/Respondent No1 to the 'Corporate Debtor', and under that invoices were raised for the amount totalling to Rs. 66,00,860/- for the period January 2017 to August 2017, after that part payment of Rs. 35,68,484/- was received from the 'Corporate Debtor' against the pending Bills. The Respondent No 1/ Applicant, stated that balance confirmation of Rs. 30 Lakhs was admitted by the 'Corporate

Debtor' vide e-mail dated 27<sup>th</sup> July 2018. But despite repeated e-mail and reminders, the outstanding dues were not paid by the 'Corporate Debtor' to the Respondent /Applicant.

After that the Respondent No.1/ Applicant issued Demand Notice under Section 8 of the 'Insolvency and Bankruptcy Code, 2016, under Rule 5 of the Insolvency & Bankruptcy Code Application to Adjudicating to Authority Rules, 2016 , calling upon the 'Corporate Debtor' to pay the total outstanding amount of Rs. 33,69,997/- (Thirty-Three Lakhs Sixty-Nine Thousand Nine Hundred and Ninety-Seven Only) and contended that the services rendered by the Applicant were settled for a sum of Rs. 35,68,484/- and further stated that last payment made by the 'Corporate Debtor' on 22<sup>nd</sup> August 2017 amounting to Rs. 12,02,266.

In reply to the application, the 'Corporate Debtor' / Appellant controverted the averments made in the application and asserted that they had not received the invoices along with the demand notice. Therefore, the application is not maintainable for want of valid demand notice.

The Appellant further contended that the alleged invoices raised by Respondent No. 1 are forged and fabricated. The name, stamp, address of the Company is different, i.e. Flywheel Logistics Pvt. Ltd., whereas the corporate debtor /Respondent No. 2, Company is 'M/s Flywheel Logistics Solutions Pvt. Ltd.', is having different CIN Numbers and registered addresses. Thus, in the absence of any invoices being raised by the Respondent No. 1 upon the Respondent No. 2, and for forging and

fabricating the invoices, the petition of the Respondent No. 1 /‘Operational Creditor’ ought to be rejected.

The appellant further contended that the Adjudicating Authority failed to appreciate that there is ‘pre-existing dispute’ though there were enough evidence and documents which were relied upon by the Respondent No.1- ‘Operational Creditor’ itself, and were sufficient beyond any doubt to show the ‘Pre-existence of dispute’.

The appellant also contends that the Respondent No. 1 –‘Operational Creditor’ has issued Demand Notice under Section 8 of the ‘Insolvency and Bankruptcy Code, 2016 under Form 3 and Form 4, both dated 1<sup>st</sup> August 2018. But the Demand Notice served on the Respondent No. 2, relates to the separate corporate Entity by the name of 'M/s Flywheel Logistics Pvt. Ltd.', having deferent CIN Number and different registered address.

Heard the argument of the learned counsel for the parties and perused the record.

The question of law that arises for our determination is as under:

**Whether the demand notice issued U/S 8 of the I & B Code 2016, against the corporate debtor, for the dues of sister concern/group company, can be treated as a valid notice?**

That on perusal of the record it appears that the purported invoices were issued against **M/s Flywheel Logistics Pvt. Ltd. (now FLPL Pvt. Ltd.)** bearing **CIN No. U60200DL2009PTC192531**. However, demand notice issued U/S 8 of the ‘Insolvency and Bankruptcy Code, 2016’ has

been issued to the Respondent No. 2 herein, i.e. **M/s Flywheel Logistics Solutions Pvt. Ltd. bearing CIN No. U60232DL2015PTC288609.**

Admittedly invoices have been issued in the name of 'M/s Flywheel Logistics Pvt. Ltd.'. It is also on record that 'M/s Flywheel Logistics Pvt. Ltd.' and 'M/s Flywheel Logistics Solutions Pvt. Ltd' are different 'Corporate Entities', having deferent CIN Numbers and registered addresses.

Thus, it is clear that the Respondent No 1 Applicant / 'Operational Creditor' has no right to claim dues, relating to the invoices issued against 'M/s Flywheel Logistics Pvt. Ltd.', from the corporate debtor M/s 'Flywheel Logistics Solutions Pvt. Ltd.' i.e. FLSPL, the Respondent No 2, which is a separate corporate entity, having different CIN Number.

It is also on record that the mandatory primary requirement for filing petition U/S 9 of the 'Insolvency and Bankruptcy Code, 2016' is the service of the Demand Notice U/S 8 of the Code. The demand notice should have been served along with the copy/bill(s) / invoice(s) on the 'Corporate Debtor'. But in the present case, the Bill / Invoice was raised against, M/s Flywheel Logistics Private Limited, having CIN No. U60200DL2009PTC192531, whereas the mandatory demand notice under Section 8 of the 'IBC' has been served against the 'Flywheel Logistics Solutions Pvt. Ltd.' having CIN No. U60232DL2015PTC288609.

Therefore, on the above basis, it is clear that the demand notice issued against the 'Corporate Debtor' is not a valid notice U/S 8 of the Code. The alleged demand notice relates to the dues of the other Company, namely

'M/s Flywheel Logistics Private Limited'. For filing a petition under Section 9 of the Code, service of demand notice under Section 8 is mandatory requirement, and after that if a 'Corporate Debtor' fails to pay the dues within 10 days of service of demand notice with copy of the invoices, as mentioned in sub-Section 1, or bring to the notice of the 'Operational Creditor' existence of dispute, then right to file an application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016' accrues. In this case demand notice in Form 3 and Form, 4 has been issued in the name of 'M/s Flywheel Logistics Solutions Pvt. Ltd.'. But the amount being claimed by the said demand notice is not relating to the 'Corporate Debtor' but relates to another company viz. 'M/s Flywheel Logistics Pvt. Ltd.'.

Thus, the service of demand notice cannot be treated as valid and proper service. In the circumstances stated above, the appeal deserves to be allowed.

### **ORDER**

The appeal is allowed and the impugned order dated 2<sup>nd</sup> September, 2019 passed by the Adjudicating Authority in C. P. No. (IB)- 1488/ND/2018, regarding admission of the Company Petition filed under Section 9 of the 'Insolvency and Bankruptcy Code, 2016 is set aside.

We further direct the IRP/RP to release the 'Corporate Debtor' from all the rigour of law imposed on account of admission of petition U/S 9 of the Code. The 'Corporate Debtor' shall function independently through its Board of Directors from immediate effect. The Adjudicating Authority is further

directed to fix the CIRP cost and fees to be paid to IRP / RP which is to be initially paid by the 'Corporate Debtor'. The 'Corporate Debtor' will be entitled to recover the CIRP costs incurred and fees paid to IRP / RP by adjusting in dues, if any, or by execution from 'Operational Creditor'.

The above order shall not prejudice the rights of the appellant to initiate action against Flywheel Logistics Pvt Ltd.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

[V. P. Singh]  
Member (Technical)

**NEW DELHI**

08<sup>th</sup> November, 2019

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