

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT
CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No. 107 of 2021

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Read with Rule-22 of the National Company Law Appellate Tribunal Rules, 2016)

**Against the Order dated 04.03.2021 in IBA/61/2020 passed
by the Adjudicating Authority, (National Company Law
Tribunal, Division Bench-II, Chennai Bench)**

In the matter of:

**Precision Hydraulics Private Limited
Plot No-83, 84 & 117,
Export Promotion Industrial Park
SIPCOT Industrial Complex
Gumindipoodi, Thriuvallur District
Pin- 601201**

...Appellant

V

**Bhairavi Cargo and Logistics Private
Limited Having its registered office at No-40,
Officer Lane,
Pallavaram, Chennai-43,
Tamil Nadu, India.**

...Respondent

Present:

For Appellant : Mr. K. Senguttuvan, Advocate

**Coram : Mr. Justice M. Venugopal Member (J)
Mr. Kanthi Narahari Member (T)**

JUDGMENT
(VIRTUAL MODE)

Per: Kanthi Narahari Member (T)

(1) The present Appeal is filed assailing the Order of the Adjudicating Authority (National Company Law Tribunal, Division Bench – II, Chennai) in IBA/61/2020 dated 04.03.2021 whereby the Adjudicating Authority dismissed the Application filed by the Appellant invoking the jurisdiction of the authority under Section 9 of the Insolvency and Bankruptcy Code 2016 (IBC 2016) against the Respondent/Corporate Debtor.

Appellant's Submissions :-

(2) The Learned Counsel for the Appellant submitted the brief facts necessitated to adjudicate the Appeal. He submitted that the Appellant is engaged in the business of manufacturing and exporting of Hydraulic cylinder to various customers as per their requirement. While so, the Appellant had sold/transferred MEIS Licenses between the period of July 2018 and November 2018 to the Respondent through different transfer letters and raised periodical invoices for Licenses sold. It is stated that the Respondent Company is engaged in the business of clearing, forwarding and transportation.

(3) The Learned Counsel for the Appellant submitted that the agreement between the Appellant and the Respondent is that the Respondent has to remit the sum agreed for transfer of such Licenses into the Bank account of the Appellant/Operational Creditor and the details have been specified in the invoices. Instead the money was remitted into the personal account of ex-employees of the Appellant. The Respondent through e-mail dated 14.10.2019 has provided the copies of the transfer letters and invoices thereby acknowledging the liability in respect of the said transfer made in favour of the Respondent. Further, the Respondent addressed an e-mail dated 17.10.2019 to the Appellant seeking details of Bank Account to which the money may be transferred by the Respondent to the Appellant. The Appellant furnished Bank Account details through e-mail dated 18.10.2019. The Learned Counsel for the Appellant submitted that the Respondent committed default and the Appellant issued demand notice in accordance with the Insolvency and Bankruptcy Code 2016 demanding payment of outstanding dues as on 25.09.2018 being Rs. 1,29,70,574/-. The Respondent replied to the said demand notice. Having committed default, the Appellant filed the Application under Section 9 of the I & B Code 2016. However, the Hon'ble Adjudicating Authority dismissed the Application on the ground of existence of dispute. The Learned Counsel submitted that there is no existence of dispute and the Hon'ble Adjudicating Authority ought to have admitted the Application and initiated CIRP proceedings against the Respondent.

Appraisal/Analysis :-

(4) Heard the Learned Counsel for the Appellant. The short point involved in this matter is whether the 'Ld. Adjudicating Authority' rightly dismissed the Application on the ground of pre-existing of dispute between the parties?

(5) The Adjudicating Authority held that there is 'pre-existing dispute' between the parties prior to filing of the Application, and held that the 'Application' is not admitted. Accordingly, the Application is dismissed.

(6) The bone of contention of the Appellant is that they have supplied the material which falls under the category of 'Goods' and the same has been delivered to the Respondent/Corporate Debtor and the ownership has also been transferred to the name of the Corporate Debtor/Respondent through execution of different transfer letters. It is also stated that the Respondent/Corporate Debtor had failed to pay the money due to the Appellant/Operational Creditor towards the said purchase of the Scrip/Goods therefore, it is the stand of the Appellant that the money due against the scrip becomes an 'Operational Debt' as the scrip is considered to be a 'Goods' as held by the Hon'ble Supreme Court of India.

(7) This 'Tribunal' does not have any contradictory stand that the goods delivered to the Respondent/Corporate Debtor does not fall under the category of 'Operational Debt'. However, we have to examine whether any 'dispute' existing between the Appellant and the Respondent/Corporate Debtor prior to issuance of

‘Demand Notice’ under Section 8 of the I & B Code 2016 as it is mandatory under the said Code. It is the case of the Appellant that the amounts were remitted into the ‘Personal Accounts’ of the Employees’ instead remitting the amounts to the ‘Bank Account’ of the Appellant/Operational Creditor.

(8) The Respondent issued Notice dated 26.10.2019 annexed as A4 at Page 43 of the Appeal Paper Book(s) to the Appellant wherein it is stated as under :-

2. Your Company had given nine custom duty incentive certificate for sale to us and the details and the value of which detailed given under:

S.No	License Number	Date	Amount
1	3819009427	21-12-2018	1118516
2	3819008247	11-10-2018	1299068
3	3819008241	11-10-2018	669652
4	3819008467	23-10-2018	1534655
5	3819007106	12-07-2018	3173328
6	3819007870	31-08-2018	582037
7	3819007586	07-08-2018	1184326
8	3819007315	21-07-2018	452331
9	3819007255	20-07-2018	896481
Total			10910394

3. *My clients state that all the certificates were handed over to my clients by your Companies representatives along with a covering letter mentioning receipt of entire payment. The said certificate were sold by my clients on different dates for a value of Rs. 10703939 (Rupees One Crore Seven Lakhs Three Thousand Nine Hundred and Thirty Nine Only) which is 1.73% lesser than the face value of the certificate. As T. Kumaresan one of our directors was the only person liaising with you we had also made all the payments upon his instructions.*

(9) In the Notice, the Respondent, admitted that the certificates were sold by the Respondent on different dates for a value of Rs. 1,07,03,939/- lesser than the face value of the certificates. It is also stated at Para 4 of the Notice that (1) Mr. T. Kumaresan, Director was the only person liaising with the Appellant and made the payments. Further, from the Notice, it is also seen that that the entire payment of Rs. 1,07,03,939/- was paid by the Respondent to the accounts of T. Kumaresan, Iyyapan (Finance Controller), Mr. Rajesh and Mr. Damodharan (Logistics in charge).

(10) Further, in the Notice the Respondent had demanded payment of Rs. 12,02,995/- from the Appellant on receipt of this Notice dated 26.10.2019. The Appellant replied to the said Notice a copy of the Reply dated 15.11.2019 annexed as A4 at Page 49 of the Appeal Paper Book(s) wherein the Appellant had stated that the Respondent/Corporate Debtor failed to pay the said amount and denied all the Allegations made in the Notice dated 26.10.2019. It is also stated that the payments against the invoices were not made to the Appellant/Company and therefore the

Appellant/Company had not received the payment and committed default.

(11) Thereupon, the Appellant issued a 'Demand Notice' dated 26.11.2019 demanding a sum of Rs. 1,29,70,574/- in full within ten days from the receipt of the 'Demand Notice'. The Respondent/Company replied to the 'Demand Notice' on 05.12.2019 annexed as A10 at Page 63 of the Appeal Paper Book(s).

(12) In reply, the Respondent had stated that the said 'Demand Notice' dated 26.11.2019 is only a counter blast to the Legal Notice already issued by the Respondent dated 26.10.2019. Further, the Respondent stated that the alleged Demand Notice dated 26.11.2019 is not inconsonance with the IBC 2016 as no invoices were annexed with the Demand Notice.

Findings :-

(13) From the perusal of the Legal Notice dated 26.10.2019 issued by the Respondent, it is clear that the Respondent had raised a dispute with regard to the payments made to the Appellant. Further, the Appellant also replied to the Legal Notice issued by the Respondent on 15.11.2019 denying the contents as made in the Legal Notice. The above events are prior to issuance of 'Demand Notice' dated 26.11.2019. Therefore, this Tribunal is of the Prima facie view that there exists dispute prior to issuance of Demand Notice. Therefore, having arrived at a finding that there exists 'prior dispute' between the Appellant and the Respondent, this 'Tribunal' is not traversing into the merits of the case and as such, there is no

illegality in the 'Impugned Order' passed by the Adjudicating Authority dated 04.03.2021. Further, the law laid down by the Hon'ble Supreme Court in the matter of 'Mobilox Innovations Private Limited -Vs- Kirusa Software Private Limited', is squarely applicable to the facts of present case on all force.

(14) For the aforesaid reasons, the instant Appeal is devoid of merits and liable to be dismissed. Accordingly, the same is dismissed. No Orders as to costs.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Chennai
01.09.2021
GS

