

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 414 of 2023

(Arising out of Order dated 08.02.2023 passed by National Company Law Tribunal, Kolkata Bench, Court No. II in CP(IB) No. 76/KB/2021)

IN THE MATTER OF:

Ashok Kumar Bhasin,

Director of the Suspended Board of Director of Sigma-C Infrastructure Private Limited presently residing at 8063, Park Villa Circle, Cupertino 95014

...Appellant

Versus

1. ABB Power Products and Systems India Limited,

A company within the meaning of the Companies Act, 2013 having its registered office at 08th Floor, Brigade Opus 70/410, Kodigehalli Main Road, Bengaluru, Bangalore – 560 092

2. Mr. Ashish Giria, IRP

Having its registered office at 493 C A, G T Road South, Vivek Vihar, Phase 5, BL-8, Flat-5D, 5th Floor, Howrah - 711102

...Respondents

Appellant: Mr. Siddhartha Chatterjee, Mr. Prashant Kumar Tripathi, Ms. Ankita Upadhyay, Labony Ray, Susrea Mitra, Nahid Ahmed, Mr. Kuldip Rai, Aranya Moulick, Ms. Puja Tripathi, Advocates

Respondent: Mr. R. Sudhinder, Ms. Himani Chhabra, Advocates

J U D G E M E N T

ASHOK BHUSHAN, J:

1. This Appeal has been filed against the Order dated 08th February, 2023 passed by National Company Law Tribunal, Kolkata Bench, Court No.

II (hereinafter referred to as “The Adjudicating Authority”) admitting Section 9 Application of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “The Code”) filed by the ABB Power Products and System India Limited, the Respondent No.1 herein. The Appellant suspended director of the Corporate Debtor Sigma-C Infrastructure Private Limited has filed this Appeal challenging the admission order.

2. Brief facts of the case necessary to be noted for deciding this Appeal are :-

- (i)** The Corporate Debtor Sigma-C Infrastructure Pvt. Ltd. issued purchase order for supply of 145 KV 9-Bay DBB GIS Board required for CESC’s Princep Street Substation. Three purchase orders were issued by the Corporate Debtor for supply of GIS Board and other equipment as prince street substation of CESC Limited. The purchase orders were amended from time to time, lastly amended on 25.01.2018 and 15,05,2018. In pursuance of three purchase orders, the equipment was supplied by the Operational Creditor against the purchase orders. The Operational Creditor has only received amount of Rs. 81,33,600/-. Operational Creditor issued tax invoice dated 16th May, 2018. All materials were received by 30th May, 2018. Outstanding amount as per invoice was Rs. 7,43,21,225/-. Operational Creditor followed for payment and issued letters dated 25.09.2018, 03.10.2018, 11.10.2018 and 12.10.2018 and lastly on 31.10.2018.
- (ii)** The Corporate Debtor assured for making payment however when no payment was made, Demand Notice Under Section 8 of the Code was

issued on 26.10.2020 demanding an amount of Rs. 7,32,51,745 as principal amount with 18% interest totaling Rs. 10,10,88,798/-. Demand Notice was not replied by the Corporate Debtor. An application under Section 9 of the Code was filed by the Operational Creditor on 24.02.2021.

(iii) Notices were issued by the Adjudicating Authority in the Section 9 Application to the Corporate Debtor to file its Reply. On 17th July, 2022, supplementary affidavit was filed by the Operational Creditor bringing proof of service of Demand Notice. Operational Creditor filed its Rejoinder to the Reply before the Adjudicating Authority. Statement was made on behalf of the Corporate Debtor seeking adjournment on the ground of possibility of settlement between the parties. The Adjudicating Authority adjourned the proceedings twice subsequently the Adjudicating Authority was informed that no settlement has been entered between the parties. The Adjudicating Authority heard THE parties on 02nd January, 2023 and delivered its order on 08.02.2023 admitting Section 9 Application.

(iv) Aggrieved by the Admission order, this Appeal has been filed.

3. Learned Counsel for the Appellant challenging the Order passed by the Adjudicating Authority contends that the Adjudicating Authority has only considered one submission as to whether the petition has been duly signed and verified by the competent person. It is submitted that the Adjudicating Authority has admitted the petition holding that the same was filed by the competent person without considering any other submissions. Learned Counsel for the Appellant submits that Appellant in the Reply has

also pleaded that Operational Creditor has failed to file any document proving delivery of the materials which fact was also noticed in the communication by Advocate of Operational Creditor. Operational Creditor in Section 9 Application did not file any proof of service of Section 8 Notice. The burden of proof lies on the Operational Creditor proving delivery of goods before any claim for payment can be considered. Operational Creditor failed to prove the delivery of goods.

4. Learned Counsel for the Respondent refuting the submissions of Learned Counsel for the Appellant submits that before the Adjudicating Authority, the principal submission raised by the Appellant was that Petition has not been duly signed and verified by the competent person hence deserved to be rejected on this ground. It is submitted that there was no dispute regarding delivery of goods between the parties nor at any point of time, any such issue was raised by the Corporate Debtor and for the first time, pleas regarding non-submission of proof of service of goods has been raised whereas the Reply itself contains contradictory pleading. The plea of non-delivery of goods is belied by own pleadings of the corporate debtor that supply of the goods was defective. It is submitted that the Operational Creditor has sent several letters requesting for payment of balance amount and has also personally met the Corporate Debtor but at no point of time, any communication was sent by the Corporate Debtor raising any issue regarding non-delivery of goods. The delivery of goods was made to the consignee i.e. CESC Limited which details of consignee is mentioned in the tax invoice. The goods were delivered to the consignee which was utilized for CESC Princep Substation and at no point of time, consignee CESC Limited

informed the Corporate Debtor or the Operational Creditor about non-delivery of goods and at no point of time, has complained about not supply of goods. In the Reply filed to Section 9 Application, the Corporate Debtor raised defence that Application was not duly signed and verified by the competent person, no service of Section 8 Notice and no proof of delivery of goods have been filed. There was not even clear pleading by the Corporate Debtor that no goods were delivered by the Operational Creditor. The defence taken by the Corporate Debtor was a dishonest defence and moonshine defence. The Corporate Debtor has taken tax input of the invoice.

5. We have considered the submissions of Learned Counsel for the parties and have perused the record.

6. The Adjudicating Authority in its analysis and finding, has noted the legal proposition as to whether the Petition has been duly signed and verified by the competent person. The said issue was analyzed and finding was returned by the Adjudicating Authority that petition which was filed by Mr. Debabrata Basu on behalf of the Operational Creditor who was territory sales manager, East Zone was fully competent. Legal issue which was noticed by the Adjudicating Authority in paragraph 9 is as follows:

“9. Legal Proposition: the only question that arose for consideration was whether this petition has been duly signed and verified by a competent person?”

*i. As held by the Hon’ble Supreme Court in **Dale and Carrington Invt. (P) Ltd. and Ors V. P.K. Prathapan & Ors.** “A company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. An individual Director has no power to act on behalf of a company of which he is a Director unless by*

some resolution of the Board of Directors of the Company specific power is given to him/her. Whatever decision are taken regarding running the affairs of the company, they are taken by the Board of Directors. The Directors of companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors action behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the of the company. They are agents of the company to the extent they have been authorized to perform certain acts on behalf of the company. In a limited sense they are also trustees for the shareholders of the company.”

ii. The Hon’ble Apex Court in **United Bank of India v. Sh. Naresh Kumar and Ors.** held that “procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company.

.....

As a company is a juristic entity, it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the

Code of Civil Procedure. A person may be expressly authorized to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.”

(Emphasis Added)

iii. In **Janki Vashdeo Bhojwani and Anr. v. Indusind Bank Ltd. & Ors.**, albeit in a different context, Hon'ble Apex Court overruled a judgment of the Bombay High Court in **Pradeep Mohanbay v. Mignuel Carlos Dias**, inter alia opining as follows:

‘7. Order 3 Rule 1 and 2 Code of Civil Procedure empowers the holder of power of attorney to ‘act’ on behalf of the principal.’

iv. Further, in **A.C. Narayanan and Ors. V. State of Maharashtra and Ors.** it was held by the Hon'ble Supreme Court that “whether the power of attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless,

the general power of attorney itself can be cancelled and be given to another person.”

(Emphasis Added)”

7. The Adjudicating Authority noticed that specific power of attorney was constituted in favour of Mr. Debabrata Basu to act which finding was returned in paragraph 10.ii. which is to the following effect:

“ii. The aforesaid clause contains no rider that such authorization and sub-delegation by the Constituted Attorney has to be further approved by the Board. It is explicit therefore that in view of the powers conferred upon the constituted attorneys Mr. Poovanna C. Ammatanda, a specific power of attorney was executed by Mr. Poovanna C. Ammatanda in favor of Mr. Debabrata Basu to act as a true and lawful attorney, prima facie to represent in fact and in law the Operational Creditor.”

8. The submission which has been pressed before us by the Learned Counsel for the Appellant is that the Operational Creditor did not file any proof of delivery of goods along with Section 9 Application where it was onus on the Operational Creditor to bring on record the proof of delivery of goods. Learned Counsel for the Appellant however does not raise any argument regarding non-service of Section 8 Notice, looking to the fact that although Operational Creditor did not file any proof of service of Section 8 notice along with Section 9 Application but supplementary affidavit was filed before the Adjudicating Authority bringing on record the proof of service of Section 8 Notice.

9. The Appellant having raised the issue that Operational Creditor failed to prove delivery of goods, we need to examine the submission.

10. Section 8 Notice was issued by the Operational Creditor dated 26.10.2020 where in the column “Particulars of Operational Debt”, following statement has been made in clause ‘(d)’:

“the equipment was duly received by the Corporate Debtor from the Operational Creditor, without any dispute or demur.”

11. In section 9 Application also, the Operational Creditor in the synopsis itself stated as under:

“the equipment was duly received by the Corporate Debtor from the Operational Creditor, without any dispute or demur.”

12. In Part-IV of the Application (Particulars of Operational Debt) details of purchase orders were mentioned and further statement was made:

“the equipment was duly received by the Corporate Debtor from the Operational Creditor, without any dispute or demur.”

13. As noted above, the equipment and materials were supplied by the Operational Creditor as per purchase orders to the consignee CESC Limited. The tax invoice has been filed along with Section 9 Application dated 16.05.2018 in which details of recipients is mentioned as name of the Corporate Debtor and details of consignee was mentioned as CESC Limited. It is useful to notice the aforesaid two column of the invoice. The relevant column of the invoice is as follows:

<i>Details of Recipient (Bill To) : 2100053465</i>	<i>Details of Consignee (Ship to); 2800033901</i>
<i>Name & Address: SIGMA C</i>	<i>Name & Address: CESC LIMITED Generla</i>

<i>INFRASTRUCTURE PVT LTD</i> <i>52A, Shakespeare Sarani, 501&502 5th Floor, City & Postal Code: Kolkata – 700017</i> <i>State Code & Name : 19-West Bengal</i> <i>GSTIN/Unique ID: 19AASCS4639Q2Z4</i> <i>PAN:AASCS4639Q</i> <i>Contact Details: 033 40006223/33</i>	<i>Manager (Construction)</i> <i>CESC Storage Godown, Bagkhal, Opposite to Reliance Petrol Pump, GT Road P.S. - Rishra City & Postal Code: Kolkata – 712258</i> <i>State Code & Name : 24-Gujarat</i> <i>GSTIN/Unique ID: 19AABCC2903N1ZL</i> <i>PAN:AABCC2903N</i> <i>Contact Details:..</i>
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14. It is also relevant to notice miscellaneous text for invoice as contained in the invoice itself which is to the following effect:

“Invoice Header : Project: Supply of 145KV 9 Bays DBB GIS Board for CESC’S Princep Street Substation Order Ref: SCIPL/ABB/160831 dated 31.08.2018

Misc text for invoice : Due to high volume of the consignment, it is not practically feasible to transport complete consignment by a single vehicle. Therefore this consignment is transported by multiple vehicle, vehicle number has been mentioned below.

Vehicle/Trailer Number LR number

GJ 06 AV 7531 24951

GJ 06 AV 3134	24952
GJ 06 AX 8948	24953
GJ 06 AZ 0399	24954
MH 46 AR 6714	24955
WB 23 E 0774	24956

Packing Details – Total Cases 28 Nos.

Loose – 16 Nos (Identification no.

Boxes – 3100072039-01 to 28.

Loose – 3100072039 – 01 to 16)”

15. We may also notice that after sending the invoice, the Operational Creditor has written several letters to the Corporate Debtor requesting for payment of the outstanding amount. Letter dated 25th September, 2018 which is part of Section 9 Application is as follows:

“Ref: 3100072039

Date: 25th of September, 2018

To,

Sigma-C Infrastructure Pvt. Ltd.

52A, Shakespeare Sarani, Suite 501 & 502, 5th Floor,

Kolkata – 700017, West Bengal, India

Kind Attn: Mr. Ashok Bhasin

***Sub: Request for release of outstanding payment
against Supply of 145 KV 9-Bay DBB Board A/C CESC
Princep Street Substation.***

*Ref: 1) P.O No. SCIPL/ABB/160831 dated 31st
August, 2016.*

*2) Amendment Ref. No. SCIPL/ABB/180125
dated 25th January, 2018.*

Dear Sir,

With reference to above Purchase Order and Amendment, we would like to draw your kind attention that an amount worth Rs. 74,321,225/- against our Invoice No. 182401001946 dated 16th May, 2018 towards 90% of the contract value along with taxes and duties has already fallen overdue for payment on 30th August, 2018.

As per the Terms of the Purchase Order 90% of the contract value along with taxes and duties is payable in 90 days and all the materials were received by you on 30th May, 2018 as per copy of receipted L/Rs enclosed.

During our follow up visits to your office we were given the assurance of payment by you latest by 20th September, 2018.

We deeply regret to note that till date you have not released out above payment which is putting us in deep financial trouble due to blockage of this huge capital.

We earnestly request you to release our overdue payment of Rs. 74,321,225/- to us immediately but not later than 28th September, 2018.

We sincerely hope that you would appreciate the gravity of the situation and do needful.

Thanking you and assuring you of our best attention at all times.

Thanking you,

Yours Faithfully

For ABB India Limited

(Jayanta Nandy)

Regional Sale Director Zone East

Enclosure :- As stated above.”

16. We may also notice another letter dated 3rd October, 2018 by which Operational Creditor intimated that ABB Service Engineer's team is being withdrawn from CESC Princep Street Substation, the copy of letter dated 03.10.2018 has been annexed with Section 9 Application which is to the following effect:

"Ref: 3100072039

Date: 03rd of October, 2018

To,

Sigma-C Infrastructure Pvt. Ltd.

52A, Shakespeare Sarani, Suite 501 & 502, 5th Floor,

Kolkata – 700017, West Bengal, India

Kind Attn: Mr. Ashok Bhasin

Sub: Intimation of withdrawal of ABB's Service Engineer's Team from CESC Princep Street Substation.

Ref: 1) P.O No. SCIPL/ABB/160831 dated 31st August, 2016 for Supervision of Erection, Testing and Commissioning of 145 KV 9-Bay DBB GIS Board A/C CESE Princep Street Substation.

2) Amendment Ref. No. SCIPL/ABB/180202 dated 02nd February, 2018.

Dear Sir,

With reference to above Purchase Order and Amendment, we would like to draw your kind attention that we are reluctantly forced to withdraw our Service Engineer's Team from CESC, Princep Street Substation with immediate effect as you have not settled our payment worth Rs. 74,321,225/- against our Invoice No. 182401001946 dated 16th May, 2018 towards 90% of the contract value along with taxes and duties for Supply of above GIS against your Supply P.O No.

SCIPL/ABB/160831 dated 31st August, 2016 and Amendment Ref. No. SCIPL/ABB/180125 dated 25th January, 2018.

The above amount has already fallen overdue for payment on 30th August, 2018, i.e., 90 days from the date of receipted L/R.

Despite our vigorous follow up with you during our recent meeting expressing the financial trouble we are facing, you have not yet released our supply payment of Rs. 74,321,225/-.

During our follow up visits to your office we were given the assurance of payment by you latest by 20th September, 2018.

We consider this as a serious breach of contract terms and hence we are compelled to take this action.

Our Service Engineer's Team will again be mobilized at site after receipt of above supply payment.

Thanking you,

Yours Faithfully

For ABB India Limited

(Jayanta Nandy)

Regional Sales Director, Zone East"

17. The above correspondence which was at the relevant time between the parties indicate that there was clear statement in the Letter dated 25.09.2018 that all the materials were received by 30th May, 2018 and Corporate Debtor was informed that ABB Service Engineer's Team which was posted at the substation is being withdrawn. It is very relevant to notice that at no point of time prior to filing reply to Section 9 Application,

corporate debtor issued any such letter or complaint informing the Operational Creditor about non-delivery of goods. The tax invoice which was noticed above clearly contains the details of vehicles with their numbers by which goods were delivered. The fact is that at no point of time, the Corporate Debtor even raised a little finger about non-delivery of goods.

18. Learned Counsel for the Operational Creditor has also submitted that Corporate Debtor has also taken tax input credit of the tax invoice which was submitted by the Operational Creditor at the time of hearing. The query was put to the Learned Counsel for the Corporate Debtor as to whether Corporate Debtor has taken tax input credit. An additional affidavit has been filed on behalf of the Appellant dated 18th April, 2023 in which in paragraph 7, following has been stated:

“7. On 12.04.2023, during the course of argument, a question was raised whether the appellant had claimed any input tax credit in respect of the said goods. It is stated that the GST registration of the corporate debtor (in CIRP) had been cancelled suo moto effective from 31.08.2021 by the concerned authorities and accordingly, the appellant does not have any access to the records. Under such circumstances, the appellant is not in a position to bring on record any information pertaining to input tax credit. In any event, it is stated that under the provisions of the Central Goods and Services Tax Act, 2017, if the appellant (registered person) has wrongly availed and utilized input tax credit, it shall be liable to pay interest at such rate as may be notified and the same has no bearing on delivery of goods as proof or otherwise. Copy of the relevant documents showing such cancellation is annexed hereto and marked as Annexure “B”.”

19. The Additional Affidavit clearly indicates that Appellant has clearly avoided to make any statement as to whether the Appellant has taken tax input credit of tax invoice or not. Be that as it may, all facts and relevant circumstances, at the relevant time indicate that no issue regarding supply of goods was raised by the Corporate Debtor from May, 2018 prior to filing of the Reply which was filed by the Corporate Debtor in April, 2022. The fact that at no point of time prior to filing of Reply, issue regarding delivery of goods were raised speaks for itself.

20. We may also notice the Reply filed by the Corporate Debtor. In paragraph 3(i) and 3(k), following have been stated:

“i) CESC Limited was the end use with respect to such work orders. Firstly, the work executed by the petitioner was defective. There was delay and default committed by the petitioner. Nothing is due and payable to the petitioner. As such, question of payment of any interest does not and cannot arise.

k) The petitioner has relied upon purported tax invoices in the petition on account of alleged supplies made and/or alleged services rendered. The petitioner has not been able to prove that the materials as ordered under the supply contract has been supplied by the petitioner. There are no supporting documents or proof of dispatch of the consignment. In the absence of such supporting document, the purported petition cannot be admitted. The respondent denies that any material as per the purchase order placed by the respondent has been supplied by the petitioner.”

21. The pleading in paragraph 3(i) states that the work executed by the Appellant was defective and delay and default was committed itself bely the submission of Appellant that goods and materials were never supplied. In

paragraph 3(k), the Appellant has stated that Operational Creditor has not been able to prove that as materials ordered under Supply Contract has been supplied.

22. There is one more relevant fact which need to be noticed. When the matter was heard before the Adjudicating Authority on 29th July, 2022, statement was made by Learned Counsel for the Appellant that there is fair possibility of settlement between the parties and the matter was adjourned. Again, the Adjudicating Authority heard the parties on 29.11.2022 where the statement of the Corporate Debtor was noticed that there is possibility of settlement and the matter was adjourned. The Order dated 29th November, 2022 notes as follows:

“1. Learned Counsel on both sides present.

2. This is 2021 matter. Ld. Authorised Representative Mr. Arvind Kumar Mishra, CS appears and seeks time to file power of attorney on behalf of Corporate Debtor and also time to argue this matter. We see from the court proceedings already five opportunities have been granted to the Corporate Debtor to make its submissions. It is also significate to note this matter was adjourned as Corporate Debtor made a statement on 29.07.2022 and 28.10.2022 that there was possibility of settlement between the parties. Today, when the matter was taken up for hearing Ld. Professional appeared and sought for the further adjournment.

3. We feel this is a simply the dilatory tactic by the Corporate Debtor. We would have heard the Operational Creditor today and proceeded accordingly, as mentioned in the previous orders, however, in the interest of justice we grant corporate debtor last and final opportunity of addressing its argument to its authorized representative

on the next date subject to payment of Rs. 50,000/- cost to be deposited in Calcutta High Court Advocates' Clerks Philanthropic Trust within one week from today. It is made clear if the cost is not paid and argument not addressed on the next date the matter shall be heard ex parte.

4. Post this matter on 02.01.2023, no further adjournment will be granted.”

23. In paragraph 2 of the Order, the Adjudicating Authority has noticed that matter was adjourned as Corporate Debtor had made a statement on 29th July, 2022 and 28th October, 2022 that there was possibility of settlement between the parties. The above conduct of the Corporate Debtor also militates against its plea that goods and materials were never supplied. Had the goods and materials never supplied was a fact, how statement was made on behalf of the Corporate Debtor that there is possibility of settlement between the parties. The facts and circumstances which have been brought on record clearly prove that the plea of the corporate debtor that goods and materials were not supplied was clearly dishonest plea and moonshine defence.

24. It is also relevant to notice that the goods were supplied to the consignee CESC Limited and goods were used at substation of CESC Limited where engineer's team of the Operational Creditor was posted to complete the installation. No material on behalf of consignee has been brought by the Corporate Debtor to indicate that at any point of time consignee on whose substation the materials were supplied, raised an issue or complaint regarding non-supply of goods.

25. Learned Counsel for the Appellant in support of his submission that burden of proof was at the Operational Creditor to prove that goods and

materials were supplied, has relied on two Judgements of Hon'ble Supreme Court in **(2006) 5 SCC 558, Anil Rishi Vs. Gurbaksh Singh** and **(2011) 12 SCC 220, Rangammal Vs. Kuppuswami & Anr.**

26. Both the above judgements were considering the provisions of Section 101, 102 and 106 of the Indian Evidence Act, 1872. The observations made by the Hon'ble Supreme Court were in context of burden of proof under the Indian Evidence Act. Strict burden of proof under the Evidence Act can not be applicable with regard to proceedings under the I&B Code, 2016 which are summary proceeding where pleadings are in proforma as prescribed in Rules and Regulations.

27. In Demand Notice as well as Section 9 Application, there was categorical pleadings of the Operational Creditor that there is no dispute or demur with regard to goods supplied. The statement was made due to attending facts and circumstances when after supply of goods no issue regarding supply or delivery was raised.

28. Learned Counsel for the Appellant has also placed reliance on a Judgment of this Tribunal in **Mascot Petrochem Private Limited Vs. Midas Construction Company Private Limited, C.A. (AT) Ins. No. 1399 of 2019 decided on 03.02.2022**, where reliance has been placed in paragraph 10 and 11. In the above case, in paragraph 11, this Tribunal observed as follows:

“Therefore, we feel that Appellant had to submit unimpeachable proof of delivery of goods to establish his case under Section 9 of IBC. Such evidence was also necessary since the respondent had disputed delivery of goods in his reply to the demand notice. Therefore, we

are inclined to believe the claim of the Respondent that the goods were actually not delivered at the site.”

29. Present is a case where Demand Notice was not even replied by the Corporate Debtor and the plea raised in the Reply by the Corporate Debtor regarding non-supply of goods has been held to be dishonest plea and moonshine plea hence the judgement of this Tribunal in above case does not come to any help to the Appellant.

30. In view of the foregoing discussions, we are satisfied that the Adjudicating Authority did not commit any error in admitting Section 9 Application. Debt and Default being fully proved and all defences raised by the Corporate Debtor were groundless, no error has been committed by the Adjudicating Authority admitting Section 9 Application. We do not find any merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**New Delhi
11th May, 2023**

Basant B.