

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 676 of 2023

IN THE MATTER OF:

Indamer Mjets Airport Services Pvt. Ltd.

...Appellant

Versus

Dezire Group Through

Mr Harmanjeet Singh Bedi, Partner

...Respondent

Present:

**For Appellant : Mr. Tushar Bhardwaj & Mr. Vinayak Maini,
Advocates.**

For Respondent : Mr. Palash S Singhai, Advocate.

ORDER

30.05.2023 Heard Counsel for the Parties.

2. This Appeal has been filed against the order dated 03.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) passed in I.A. 1724 of 2023 in C.P. (IB)-1033 (MB)/2022 filed by the Appellant which has been rejected.

3. In the present case, the notices were issued on 28.09.2022 by the Adjudicating Authority. The Corporate Debtor filed the Reply on 21.12.2022 to which the Rejoinder was also filed by the Applicant on 14.01.2023. There were some delays in filing the Reply, hence the Application for Condonation for Delay was filed.

4. The order was passed on 27.01.2023 which claims to be uploaded on 06.02.2023, where the cost of Rs. 10,000/- was imposed for Condonation of Delay in filing the Reply.

5. Counsel for the Appellant submits that he could not know about the cost and he came to know only on 13.02.2023 that he has to pay such cost. The Appellant did have the bank details of the Respondent hence the cost could not pay. On 14.02.2023 the Adjudicating Authority noticing that the cost has not been paid, the right of Reply of the Appellant was forfeited and the matter was adjourned to 29.03.2023.

6. Counsel for the Appellant, thereafter filed an application to recall the order which was passed on 14.02.2023 which has been rejected by the Impugned Order. Counsel for the Appellant submits that the Appellant was always ready to pay the cost and it could not be paid such cost because he came to know about the order dated 27.01.2023 only on 13.02.2023.

7. It is further submitted by Counsel for the Appellant that he having already filed the Reply which ought to have been considered more so when the Rejoinder was also filed by the Applicant.

8. Counsel for the Appellant submits that the Appellant of their own has made the payment of cost in the bank accounts of the Respondent.

9. Counsel for the Respondent submits that the Respondent never refused to accept the cost, however the payment of the cost was made in their account without their knowledge and information.

10. We have considered the submissions made on behalf of the Parties and perused the records.

11. The sequence of the events indicates that the Reply as well as the Rejoinder was filed and only delay was there in filing the Reply which was also condoned, subject to payment of the cost. The order dated 14.02.2023 came to be passed forfeiting the right of Reply on account of non-payment of the

cost. The Counsel for the Appellant has explained the circumstances on which the cost could not be paid by 14.02.2023.

12. Appellant paid the cost before filing of the Appeal, although without information and consent of the Counsel for the Respondent.

13. Counsel for the Respondent who is present, submits that he never refused to accept the cost.

14. Taking into facts and sequence of events, we are of the view that Reply filed by the Corporate Debtor had to be considered, it has further been submitted by the Parties that next date is fixed for the hearing on 5th June, 2023.

15. Looking into the facts that hearing has not yet taken, we dispose of this Appeal with observations that Reply filed by the Appellant as well as the Rejoinder, he taken into consideration while hearing on the Appeal by 5th June, 2023 or thereafter.

16. We make it clear that the Appellant will not be allowed to take adjournment.

[Justice Ashok Bhushan]
Chairperson

[Naresh Salecha]
Member (Technical)

Sim/nn