

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 126 of 2021

IN THE MATTER OF:

Tek Travels Private Limited

Plot No. 183, Udyog Vihar Phase 1,

Sector 20, Gurugram – 122008,

Haryana

... Appellant

Versus

PCM Worldwide Flights Private Limited

428, 4th Floor, Bhera Enclave, New Delhi

- 110051

... Respondent

Present:

**For Appellant: Mr. Rachit Kohli, Mr. Vishesh Sharma,
Advocates.**

For Respondents: Mr. Sushant Kumar, Advocate.

J U D G M E N T

(Date: 18.05.2022)

[Per.: Dr. Alok Srivastava, (Member Technical)]

The present appeal has been filed by the Appellant who is aggrieved by the order dated 18.12.2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench – VI (hereinafter called ‘impugned order’) on an application preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short ‘IBC’) on the ground of pre-existing dispute between the Appellant ‘Tek Travels Private Limited’

as Operational Creditor and the Respondent 'PCM Worldwide Flights Private Limited' as Corporate Debtor.

2. The conspectus of the case is that the Appellant provides B2B travel services to travel agents and tour operators under the brand name 'Travel Boutique Online' (website www.travelboutique.com) and the Respondent is a travel agency which started procuring services of the Appellant from the year 2017.

3. The Appellant has claimed that on account of services rendered to the Respondent/Corporate Debtor, he issued 134 invoices amounting to Rs. 54,17,775/- on the Respondent and also 6 (six) Agency Debit Memos (ADMs) received from various airlines. It is the Appellant's case that the Respondent made part payment towards these invoices from time to time, at irregular intervals, and out of total due amount of Rs. 61,24,342/-, the Respondent has defaulted in payment of Rs. 5,73,882 which alongwith interest of Rs. 1,03,015 is an operational debt of total of Rs. 6,76,897 which is due or payment in default by the Corporate Debtor. He has further stated that he issued a demand notice under Section 8 of the IBC on 18.10.2019 but did not receive any objection from the Corporate Debtor regarding the quality of services provided by him to the Corporate Debtor. He has further stated that as a matter of policy various airlines issued ADMs which are subject to ITA Regulation and such ADMs are routinely sent to the travel agency on whose behalf bookings are made for making requisite payments. In the same way the six ADMs received by the Operational Creditor, which had made flight bookings on behalf of the Respondent, but the requisite payments were not made by the

Corporate Debtor, and hence, the Operational Creditor 'Tek Travels Pvt. Ltd.' was forced to file an application under Section 9 of the IBC, which was rejected by the impugned order on the ground of pre-existing dispute.

4. We heard the arguments of the Ld. Counsels for both the parties and also perused the record.

5. The Ld. Counsel for the Appellant has argued that the Adjudicating Authority has rejected his Section 9 application on the ground of pre-existing dispute between the parties even though the Corporate Debtor had never communicated to the Appellant/Operational Creditor any deficiency quality of timeliness of services and purported dispute was raised by the Corporate Debtor before issuing the demand notice under Section 8 of the IBC. He has further argued that the Corporate Debtor has made part payment against the invoices issued by the Operational Creditor and if there had been any dispute about the said invoices, no payments would have been made. He has further referred to an email sent by the Appellant/Operational Creditor dated 24.03.2018 by which the copies of the ADMs issued by the respective airlines were sent to the Corporate Debtor as had been requested by him (attached at pp. 369 – 372 of the appeal paper book). He has also pointed out that vide email dated 19.01.2018 (attached at pg. 359 of the appeal paper book), the Operational Creditor asked for debiting of an amount Rs. 5,35,142 against the attached ADMs regarding system abuse etc., with which the concerned ADMs were attached. On these bases, he has urged, the Corporate Debtor who had violated the booking policy of various airlines, in particular 'Married Segment Abuse' violation. The

Corporate Debtor has, in principle accepted the ADMs, and only wanted copies of the ADMs vide its email dated 10.01.2018, which is referred to in Para 6 of the impugned order, and the said copies of ADMs were supplied to the Corporate Debtor vide emails dated 19.01.2018 and 24.03.2018 (supra), yet the Corporate Debtor has failed to make the requisite payment of Operational Debt.

6. The Ld. Counsel for the Respondent has argued that the bookings are made by the agent which is the Appellant/Operational Creditor in this case and only the agent has access to the database of the airlines and, therefore, if there has been any violation, it is on the part of the Appellant. He has further argued that he wanted the copies of the ADMs which were not supplied by the Appellant/Operational Creditor and, therefore, in the absence of full information about the ADMs and the reasons, therein, he did not make any payment since the payments were disputed.

7. The Section 9 application filed by the Appellant (attached at pp. 69 – 289 of the appeal paper book), in part IV, includes the total amount claimed to be in default as Rs. 6,76,897 which includes Rs. 5,73,882 as principal debt and Rs. 1,03,015 as interest amount. In addition, the Operational Creditor has annexed list and copies of invoices/ADMs issued on the Corporate Debtor by the Operational Creditor for the period 13.05.2017 onwards.

8. It is noted that the demand notice under Section 8 was issued on 18.10.2019 (attached at pp. 59-68 of the appeal paper book) wherein the same amount of Rs. 6,76,897/- has been mentioned as amount due and in default. It is also noted that in

reply dated 02.03.2020 filed by the Respondent to the Section 9 application (attached at pp. 290-299 of the appeal paper book) wherein the Corporate Debtor in Para 6 has stated as follows:-

‘.....Alleged dues as claimed by the Petitioner allegedly arises out agency debit memos “ADMs” so issued by the Petitioner against the Respondent. The Respondent states that ADM is a notice that an airline carrier sends to a travel agency, telling the travel agency that the ticket was wrongly booked and asking that agency to pay a certain amount of money for the same. In the present case, the tickets were booked by the Petitioner itself with the airline company, with which the Petitioner has tie up. The Respondent states that it has no tie up with airlines company and therefore uses Petitioner’s platform for booking tickets.....’

9. Further, in paragraph 9 of the reply of the Respondent it is stated by him as follows:-

“Respondent states that the Respondent raised the dispute much prior to filing of the present petition or even the alleged demand notice dated 18.10.2019. The Respondent states that the Petitioner on 09.01.2018 the Petitioner informed the Respondent about the ADMs and informed the Respondent that once the issue of ADM is raised same will be duly informed. The Respondent on receipt of the same information duly informed the Petitioner on 10.01.2018 that they would be in a position to make any payment against ADM only on receipt of the same.”

10. On perusal of the Respondent’s reply to Section 9 notice, we find that the Respondent had communicated to the Operational Creditor vide email dated 10.01.2018 (reproduced at pg. 297 of the appeal paper book) stating very clearly that *‘they would be in a Company Appeal (AT) (Insolvency) No. 126 of 2021*

position to make any payment against ADM only with respect of the same'. We find that details of the ADMs, as sought by the Corporate Debtor vide email dated 10.01.2018, were supplied to the Corporate Debtor vide email dated 19.01.2018 sent by Sunita Nair of Tek Travels Pvt. Ltd. to Meera Kashyap with copy to 'Travel Markers' alongwith copies of the ADMs (attached at pg. 359 of appeal paper book), and again vide email dated 24.03.2018 (attached at pp. 369-377 of the appeal paper book) details of ADMs receipt for 'Married Segments Policy' violation were sent by the Operational Creditor.

11. We note that the ADM policies of various airlines are formulated in response to IATA Regulation 852 'wherein the travel agent is responsible for ticketing issues'. Furthermore, at pg. 342 of the appeal paper book, it is mentioned in the ADM policy of Air France/KLM that 'in case a travel agent issues a ticket based on PNR with broken segments that were initially married, an ADM will be sent. The ticketing agent is responsible for malpractices even if booking has been done by a sub agent' and further that 'the ADM dispute resolution shall be between the airline and the ticketing agent'. Similar ADM policies are framed by Turkish Airline, Air France/KLM and Air India (attached at pp. 329-355 of the appeal paper book). In pursuance of the ADM policy of various airlines, we note that the ADMs were issued by Air France/KLM and Turkish Airlines, in the present case the Travel Boutique Online which are the brand name of the Operational Creditor. Thus, the primary responsibility for responding to the ADMs is of the ticketing agency 'Travel Boutique Online'.

12. The impugned order in Paragraph 6 notes as follows:-

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'It is the case of the Respondent that there has been a pre-existing dispute between the parties as the respondent had raised the dispute much prior of the filing of the petition or even the alleged demand notice. The Respondent has placed on record the email in order to prove its claim. The applicant has denied the allegations. However, the documents on records show that the respondent raised its dispute much above before issuance of demand notice. It is seen that vide an email dated 10.01.2018 clearly shows that it had raised a bonafide dispute regarding the claims as n that date there were no ADMs available to it and the respondent stated that any payment against the said ADM can be made only on the receipt of the same which the petitioner failed to furnish and the same was not paid accordingly.'

13. From the paragraph 6 of the impugned order, we find that the Adjudicating Authority has relied on the email dated 10.01.2018 to infer that a bonafide dispute exists between the Operational Creditor and the Corporate Debtor and regarding the claims as on that date there were no ADMs available to the Corporate Debtor. We also find that vide emails dated 19.01.2018 and 24.03.2018 the copies of the said ADMs were supplied to the Corporate Debtor. These copies were, therefore, supplied much before the issuance of the demand notice on 18.10.2019 and therefore no dispute existed before the issue of demand notice under section 8.

14. Thus, while in the general working of the ticket agent and sub ticket agent, once the ADM is issued the amount is debited by the sub-ticketing agent even though in the ADM policies of various airlines, the responsibility rests with the ticketing agent. Moreover, in the present case, we note that the Corporate Debtor has not

raised any objection or dispute regarding the quality of the supply of goods or services before the issue of demand notice and the Corporate Debtor has raised the issue of non-receipt of copies of ADMs much later, which appears to have been supplied by the operational creditor before the section 8 demand notice was issued. Therefore, the dispute raised by the Corporate Debtor appears to be a fictitious and sham dispute which seems to have been raised in order to avoid payment of operational debt.

15. Since, the Adjudicating Authority has primarily looked at the non-supply of ADMs to the Corporate Debtor in support of the contention regarding pre-existing dispute, we are of the view that it has committed an error by not considering the fact that the Operational Creditor had supplied the copies of the ADMs which is evidenced by emails dated 19.01.2018 and 24.03.2018 referred (supra).

16. On the basis of detailed discussion above, we are of the view that the purported dispute considered by the Adjudicating Authority as a result of non-supply of copies of ADMs is more like a sham dispute, and it should not come in the way of admission of Section 9 application. We thus, hold that the impugned order is liable to be set aside and Section 9 application of the Operational Creditor should be admitted. The case is remanded to the Adjudicating Authority for passing necessary order which should include order regarding all consequential actions which should follow upon admission of Section 9 application within 15 days of this judgment.

17. In the facts of the case, there is no order as to costs.

(Justice Ashok Bhushan)
Chairperson

(Dr. Alok Srivastava)
Member (Technical)

New Delhi

18th May, 2022

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