NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 2320 of 2024

[Arising out of the Order dated 08.11.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Court-II), in CP(IB) No. 252 of 2023.]

IN THE MATTER OF:

Jay Ambe Industries - Prop Rajesh Khemani
Age: 61; Occupation: Business
11, Uma Industrial Estate, Opp. Maya Laxmi Rub -Tex,
B/h Hotel Bhagyoday, Vasna - Iyava Village,
Sanand, Ahmedabad-382170, Gujarat **...Appellant**

Versus

MIM Petroworld Pvt. Ltd.
30 Sainikpuri Society, Near Chanakya Puri,
Sama Road,
Vadodara 390008, Gujarat. **..Respondent**

Present:

For Appellant	**:**	Mr. Sahil Rao, Advocate.
For Respondent	**:**	Appearance not marked.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been preferred by the appellant being aggrieved by the impugned order dated 08.11.2024, passed by the Ld. National Company Law Tribunal, Ahmedabad Bench (Adjudicating Authority) passed in CP (IB) 252 of 2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) whereby the petition filed by the appellant has been rejected.

2. Brief facts giving rise to this appeal are that appellant/operational creditor and CD entered into business terms with each other in January, 2022. The CD is a Pvt. Ltd. Company engaged in the trading business and having its registered office at the residential premises of the Director of the CD. The CD is not having any manufacturing facility and all the transactions between the appellant and CD were on 'Bill to Ship Basis' i.e. on any order, goods were delivered directly to the customers of the CD under his instructions.

3. The appellant/ operational creditor supplied goods on various dates to the CD and raised various invoices from 13.12.2022 to 18.12.2022 against the purchases made by the CD amounting to Rs. 17,732,898/- however these invoices were not paid and a default had occurred.

4. It is further reflected that the payment of the invoice was required to be made by the CD as per the credit terms stated in the invoice and the invoice was due after 30 days of its issuance.

5. It is also reflected that when the amount of the invoices was not paid a notice under Section 8 of the Code was issued by the appellant to the CD on 17.08.2023 via email as well as through registered post which was received by the CD on 21.08.2023, and the demand of Rs. 17,732,898/- along with interest of Rs. 1,867,637/- was made by delivering the aforesaid notice. The reply to this notice was sent by the CD on 29.08.2023, raising certain pre-existing disputes.

6. It is also reflected that the appellant/operational creditor has filed petition under Section 9 of the Code which has been dismissed by the Ld. Adjudicating Authority while passing the impugned order.

7. Ld. Counsel for the appellant submits that the Ld. Adjudicating Authority has committed manifest illegality in rejecting the petition filed by the appellant by passing a cryptic/unreasoned order.

8. It is further submitted that perverse findings have been recorded by the Ld. Adjudicating Authority in the impugned judgment with regard to issuance of credit notes by the CD while no credit note has been issued by the CD on the appellant and instead some debit notes were raised by one of the customer of the CD on the CD and thus no credit/debit has been raised by the CD on the appellant, thus the finding of the Ld. Adjudicating Authority in this regard is against the factual matrix.

9. It is further submitted that the transactions between the CD and the appellant are of the period from 17.01.2022 to 18.12.2022 whereas the debit note of Reliable Industries is for Invoice pertaining to 31.03.2021 and debit note dated 22.08.2023 has been issued by Hiltop Highrise Pvt. Ltd. pertaining to discount on oil purchase for the period from April 2023 to May

2023, after the date of issuance of notice by the appellant under Section 8 of the Code.

10. It is further submitted that there is no communication of any dispute on 01.11.2022 and in fact no dispute has been raised with respect to any specific invoices and the first communication in this regard has been received by the appellant from the CD after issuance of Section 8 notice.

11. It is also submitted that there was some dispute between the CD and its customers and the same cannot be ipso facto assumed to be a dispute between the appellant and the CD in absence of any direct link or communication with regard to the same. Ld. Counsel has placed reliance on ***Rajendra Bhai Panchal vs. Jay Manak Steels***, (2020) SCC Online NCLAT 730.

12. It is further submitted that the CD has relied on certain screenshots of WhatsApp chat which are not admissible in evidence without any certificate issued by the service provider under Section 65 b of the Information and Technology Act. Ld. Counsel has placed reliance on (i) M/s. Kashyap lnfraprojects Pvt. Ltd. V. M/s. Hi-Tech Sweet Water Technologies Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 33 of 2023 (ii) Startree Retailors Private Limite V. Mr. Anil Kumar Birla, Liquidator of Ennore Coke Limited, Company Appeal (AT) (CH) (INS) No. 49 of 2021, (iii) Mrs. Leena Salot, Proprietor of Riddhim Textiles V. Ridham Synthetics Private Limited, Comp. App. (AT) (Ins) No. 375 of 2024 & I.A. No. 1278 of 2024, (iv) Dell International Services India Private Limited V. Adeel Feroze and Others, 2024 SCC OnLine Del 4576.

13. It is further submitted that even after the alleged raising of dispute the CD has made regular payments to the appellant which belies the argument of existence of prior dispute and no communication with respect to any prior dispute with regard to any specific invoice has been communicated to the appellant and reliance in this regard has been placed on (i) Surendra Sancheti Vs. Gospell Digital Technologies Co. Limited & Ors., Company Appeal (AT) (Insolvency) No. 583 of 2024, (ii) Romi Datta Vs. Sigma Supply Chain Solutions Pvt. Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 1652 of 2023, (iii) S.S. Engineers Vs. Hindustan Petroleum Corporation Ltd. and Others, 2022 SCC OnLine SC 1385, (iv) Sharad Chandra Goel Vs. Tarannom Shargh International Transportation Co., 2023 SCC OnLine NCLAT 232.

14. It is also submitted that the CD has not attached any lab test reports in order to substantiate any issues with the quality of the material supplied by the appellant and therefore the plea of prior dispute has been taken only to avoid payment to the appellant.

15. Ld. Counsel for the Respondent on the other hand submits that no illegality or to say any irregularity has been committed by the Ld. Adjudicating Authority in rejecting the petition filed by the appellant.

16. It is submitted that right from the reply filed to the demand notice issued by the appellant the Respondent CD is raising the dispute pertaining to the inferior material supplied by the appellant and in this regard the CD was regularly corresponding with Uday Shah and Rajesh Bhai who were issuing invoices on behalf of the appellant.

17. It is further submitted that so far as the plea of non-speaking order is concerned the impugned order has recorded the submissions of the Counsels and also the finding thereon.

18. It is further submitted that in order to substantiate the existence of prior dispute the Respondent had produced before the Ld. Adjudicating Authority screenshots of WhatsApp chat which shows that even the lab test report has also been provided to the appellant through such WhatsApp communication and when the WhatsApp chats had not been denied the same are admissible as reliable evidence.

19. It is further submitted that due to the inferior supply of material the CD has sustained losses to the tune of Rs. 3.75 Crore and these losses has been communicated by the Respondent to the Appellant and no reconciliation pertaining to the same has been made so far by the appellant.

20. It is further submitted that the CD has furnished credit notes with regard to the losses suffered by it, to the appellant and the dispute which is existing between the parties is of the same period whereon the invoices have been issued by the appellant.

21. It is further submitted that the dispute raised by the CD were around December, 2022 to January 2023 and may not be termed to be a moon shine or feeble dispute in view of the existence of lab test report.

22. It is also submitted that the application moved by the appellant under Section 9 of the Code was incomplete as no time has been provided therein of default. There was no debt due and payable to the appellant by the Respondent and no illegality in this regard has been committed by the Ld. Adjudicating Authority.

23. Ld. Counsel for the Respondent has relied on the following case laws:

(i) Nilanjana Chakravorty Dutta v. Binod Kumar Choudhary and Ors., CA (AT) (Ins) No. 927 of 2022.

(ii) Piyush Banerjee v. IL&FS Financial Services Ltd., CA (AT) (Ins) No. 1383 of 2022.

(iii) Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.

(iv) Straw Commodities LLP v. Anram Agro Trading (P) Ltd., (2024) SCC Online NCLAT 2172.

(v) Rajratan Babulal Agarwal v. Solartex India Pvt. Ltd. & Ors., (2023) 1 SCC 115.

(vi) Shri Bajrang Wind Park Developers v. Inox Wind Infrastructure Services Ltd., [CP (IB) No. 212 of 2021- NCLT Ahmedabad (Bench II).

(vii) Samman Lal Sher Singh Pvt. Ltd. v. RS Print Solution Pvt. Ltd., 2025 SCC Online NCLAT 1369.

(viii) Suryansh Merchandise India Ltd. v. Gujarat Ambuja Exports Ltd. [CP (IB) No. 147 of 2020- NCLT Ahmedabad.

(ix) Sendoz Commerical Pvt. Ltd. v. IREL (India) Ltd. [2025 SCC Online NCLAT 1310].

(x) Morex Corporation Ltd. v. Jindal Poly Films Ltd., 2025 SCC Online NCLAT 1189.

(xi) Feng Ji v. Giesecke and Devrient MS India Pvt. Ltd., CA (AT) (Ins) no. 213 of 2023.

(xii) Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. AIR2017SC4532.

(xiii) Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (India) Pvt. Ltd. AIR2021SC4199.

(xiv) Davinder kumar Singhal, Directors (Powers Suspended) of Medinnbelle Herbalcare Pvt. Ltd. v. Sanjay Kumar Chetwani and Ors., CA (AT) (Ins) No. 1088 of 2021.

(xv) Captain S.P. Singh v. Himalyan Heli Services Pvt. Ltd., CA (AT) (Ins) No. 955 of 2020.

(xvi) Sabarmati Gas Ltd. v. Shah Alloys Ltd., (2023) SCC Online SC 7.

(xvii) Amit Wadhwani v. Global Advertisers and Ors., CA (AT) (Ins) No. 616 of 2021.

(xviii) Quippo Energy Ltd. v. Soundararaja Mills Ltd., CA (AT) (Ins) No. 231 of 2020.

(xix) Instyle Fashion v. Aditya Birla Fashion and Retail Ltd., (2024) SCC Online NCLAT 70.

(xx) Allied Silica Ltd. Rep by its Director v. Tata Chemicals Ltd. 2020 SCC Online NCLAT 613.

(xxi) M/s. Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. M/s. Girnar Fibres Ltd., Civil Appeal No. 3033 of 2022.

24. Having heard Ld. Counsels for the parties, we at the outset, record our dissatisfaction with regard to the manner in which the petition of the appellant has been disposed of by Ld. Adjudicating Authority by writing a cryptic order. The impugned order has only mentioned that certain credit notes amount was due from the appellant and prior dispute on quality resulting in the stoppage of the machines was communicated to the

appellant by Respondent on 01.11.2022. Relevant part of the impugned judgment is reproduced as under:

> *"5. On perusing the documents submitted and submissions made by the parties, the Tribunal is of the view that the respondent has been regularly with certain credit notes of amounts due from the applicant. The dispute on quality and stoppage of machines was communicated on 01.11.2022 by Respondent which was not replied and subsequently on 14.08.2023, a demand notice was issued by applicant demanding payment. This establishes a pre-existing dispute on a regular supply due to quality of the product supplied of specific invoices, which is a commercial dispute which is pre-existing between the parties".*

25. We recall that the applicant/appellant is/was in the business of supplying hydrocarbon oil and has supplied it on various dates to the Respondent and various invoices with regard to the same were issued from 13.12.2022 to 18.12.2022 amounting to Rs. 17,732,898/-. It appears to be an admitted case of the applicant that goods were delivered directly to the customers of the CD on his (CD's) instructions on 'bill to ship basis'.

26. Perusal of Part-IV of the application filed by the appellant under Section 9 of the Code would reveal that Rs. 17,732,898/- has been shown as the amount of outstanding bills/invoices and Rs. 1,867,637/- has been claimed as interest thereon. Thus, in total Rs. 19,600,535/- has been claimed by the applicant and the date of default has been shown from 12.01.2023 to 17.01.2023.

27. It is also evident that demand notice under Section 8 of the Code and under Rule 5 of the application to adjudicating authority rules, 2016 was given by the appellant to Respondent on 17.08.2023, wherein identical amount as shown in Part-IV of the application was claimed.

28. It is also evident that the reply to this notice has been given by Respondent/CD on 29.08.2023 stating therein that appellant and Respondent had entered into the business and one Uday Jatin Shah was introduced to the Respondent by the appellant as the partner of Jay Ambe Industries (appellant) and due to this Respondent initiated all dealings with aforesaid Uday Jatin Shah. It is also stated that the material which was provided to the Respondent was not up to the mark and the grade of the product supplied was disappointing and this was mentioned and informed by the Respondent to the aforesaid Uday Jatin Shah, who assured to settle the matter.

29. It is further stated in the reply to the notice that due to the supply of sub-standard material machines started to fail and this was communicated to the appellant on 01.11.2022 and thereafter the machines completely stopped due to the second grade quality of the product on 24.12.2022.

30. It is further stated in the reply that the quality of the product could only be known after 1-2 months of its usage and also that the filter of the machines were damaged and replaced incurring huge expenses on the CD. Reference was also given to get the material supplied by the appellant, tested in the lab and the sample is stated to have failed, information with regard to the same was also stated to have been given to the appellant through WhatsApp.

31. Thus, what is evident from the reply of the notice that specifically the dispute about the supply of sub-standard material has been raised by the Respondent contending that at first the issue was raised before Uday Jatin

Shah and thereafter communicated to appellant wide communication dated 01.11.2022.

32. Perusal of the reply filed by the Respondent before the Ld. Adjudicating Authority would also reveal that the Respondent in para no. 3 (f), (g) and (h) has taken the plea of supply of sub-standard goods and also about the losses incurred thereby along with the fact that the lab reports were also shared through WhatsApp to the Appellant as well as to Uday Jatin Shah.

33. Perusal of the record would reveal that various screenshots of WhatsApp Chats of various dates of November- December, 2022 have been enclosed with the reply filed by the Respondent before Ld. Adjudicating Authority showing the anguish of the Respondent pertaining to the supply of sub-standard goods and damaged caused by the same to the machines.

34. The appellant appears to have filed a rejoinder to the reply filed by the Respondent before Ld. Adjudicating Authority and has denied much of the contents of the reply so filed by the Respondent but in para no. 4.7 of the rejoinder has only stated that selective WhatsApp chats have been filed by the Respondent and therefore the only objection has been taken pertaining to the filing of selective WhatsApp chats and thus the screenshots of the WhatsApp chat filed by the Respondent through its reply has not been specifically denied by the appellant in its rejoinder.

35. The Respondent had also filed two debit notes issued by its customers i.e. Reliable Industries and Hiltop Highrise Pvt. Ltd. The debit note pertaining to the Reliable Industries appears to be to date 23.08.2022 with regard to the supply dated 31.03.2021, which is certainly of the period prior

to the supply made by the Appellant to the Respondent. Therefore, this debit note does not appear to be relevant. However, the second debit note issued by the Hiltop is pertaining to the purchase made in April to May, 2023 and thus appears to be relevant to show that the amount has been debited for sub-standard supply and having regard to the fact that bill to ship supplies are made by the appellant the same appears to be relevant to substantiate the supply of sub-standard material.

36. We also notice that fact of failure of the material supplied, in lab test report has also not been specifically denied by the appellant in its rejoinder affidavit filed before Ld. Adjudicating Authority and what has been stated therein, is that in reply to the Section 8 notice, lab report is stated to have come after 3 months while in reply the same is stated to have come immediately, but it has not been denied that in the lab report the material has failed the test.

37. Ld. Adjudicating Authority has mentioned in its order a communication made by the Respondent pertaining to the supply of sub-standard material on 14.08.2023. This communication is not available on our record as the same has not been filed by any of the party. The lab test report is also referred by the parties but any copy of the same is also not on record. We very well have adjudicated the dispute between the parties finally but for the absence of these documents the only recourse available to us is to remand the matter back to the Ld. Adjudicating authority for passing a fresh order. Thus keeping in view all the facts and circumstances of the case in our considered opinion the impugned order may not with stand the test of law and is liable to be set aside.

38. For the reasons given herein before, the impugned order is set aside the appeal filed by the appellant is thus **allowed**. The matter is remanded back to Ld. Adjudicating Authority to pass a fresh reasoned order after providing opportunity of being heard to the parties. For this purpose, the CP (IB) 252 of 2023 is revived on the board of the Ld. Adjudicating Authority. The parties shall appear before the Ld. Adjudicating Authority on 22.04.2026. There is no order as to costs.

39. Pending I.A.'s if any are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
06.04.2026.
sr