

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 01.03.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/147/2021 in CP (IB) No.326/7/HDB/2018
NAME OF THE COMPANY	Khaitan Electricals Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Khaitan Electricals Ltd
UNDER SECTION	7 of IBC

ORDER

IA(IBC)/147/2021

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A.No.147 of 2021 in
CP (IB) No.326/07/HDB/2018

In the matter of

M/s. Bank of India vs. M/s. Khaitan Electricals Limited

Between:

Mr. Kamalesh Kumar Singhania,
Liquidator of M/s. Khaitan Electricals Ltd.,
Bajrang Kunj, Room No.412 & 413,
2 B Grant Lane, 4th Floor,
Kolkata – 700 012.

....Applicant/Liquidator

Vs.

M/s. HMM Shipping India Pvt Ltd.,
Ega Trade Centre, 3rd Floor,
Door No.318 (Old No.809),
Poonamallee High Road, Kilpauk,
Chennai – 600 010.

....Respondent No.1

M/s. Continental Warehousing Corporation (NS) Ltd,
No.114, Nallur Village, Atthanthangal,
Thiruvallur High Road, Redhills,
Chennai – 600 052.

....Respondent No.2

Date of order : 01.03.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : Mr. Pranay Agarwal, Advocate
: Mr. Kamalesh Kumar Singhania, Liquidator
For the Respondents : Mr. Varun Ambati for Respondent No.2
None for Respondent No.1
Heard on : 05.02.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application has been filed by the Liquidator of M/s. Khaitan Electricals Limited (in Liquidation), the **Corporate Debtor** (CD) against M/s. HMM Shipping India Private Limited i.e. Respondent No.1 being the **Shipping Company**, and M/s. Continental Warehousing Corporation (NS) Limited i.e. Respondent No.2 being **Warehousing Company**.
2. The Corporate Debtor was admitted into CIRP¹ on 28.11.2018 and later approved for Liquidation on 23.08.2019 and the Applicant was appointed as Liquidator.

The Application:

3. It is stated by the Applicant Liquidator that, while going through the records of the Corporate Debtor, he found photocopy of a Letter of Credit (LC) for a consignment of copper wire rods imported in 2011. On discovering that the afore said consignment was still lying with Respondent No.2. the Applicant

¹ Corporate Insolvency Resolution Process

approached them by writing an E-mail dated 18.12.2020 and sought more details about the same. Respondent No.2 is stated to have provided copies of Bill of Lading and the Bill of Entry status from Customs site. Copies of Letter of Credit² (**LC**) dated 15.12.2011, Bill of Lading³ (**BL**) dated 31.12.2011 issued by the Shipping Company and **Bill of Entry (Challan)** dated 20.01.2012 showing payment of Custom Duty are attached to this Application, to evidence such import by the Corporate Debtor.

4. Based upon these details, the Liquidator vide letter dated 21.12.2020 sought the Respondent No.2, the Warehousing Company to release of consignment imported by the Corporate Debtor.
5. The Applicant also approached Respondent No.1 being the Shipping Company to facilitate the delivery details of the said consignment to the Corporate Debtor. They however expressed their inability to do so in absence of the original Bill of Lading duly endorsed by the Consignee, Clearing Agent and subject to paying Storage and Detention charges incurred till empty container return date.
6. It is stated that, the said consignment contains 25,385 kgs of continuous cast copper wire rod which has been lying at the Container Freight Station (CRS) of Respondent No.2 since 2012, and which now forms a part of the Liquidation Estate. The Applicant therefore has approached this Authority for a direction to the Respondents to release this consignment to the

² Pg 23-26 of the Application.

³ Pg 36 of the Application.

Applicant Liquidator. For their claims concerning the said consignment, it is stated that the Respondents can file their respective claims if any with the Liquidator in the terms of IBC.

The Counter:

7. The 2nd Respondent with whom the imported goods are stated to have been lying has questioned the jurisdiction of the Liquidator to file the present Application contending that, the time limitation to claim any title or ownership of the said imported cargo by the Corporate Debtor had expired long back as the subject import was carried from the load port on 31.12.2011, discharged in January 2012 at Chennai port and arrived at their CFS premises on 14.01.2012.
8. It is averred that; besides their claim, a Bill of Entry was filed on 20.01.2012 by the Corporate Debtor, no other documents regarding the title or ownership of the said goods have been filed.
9. It is stated that, Respondent No.2 had made several efforts to get the said goods cleared from its premises by contacting the Shipping Agent, Customs House Agent and the Customs Authorities after payment of the storage dues and submission of the required documents, but to no avail.
10. It is claimed that, the Respondent No.2 has a right of lien and auction and can exercise the same to sell the said goods to recover the storage charges payable to it.
11. Respondent No.2 has also pointed out towards certain disputes that the Corporate Debtor had with the Consigner of the goods

in Malaysia, the Shipper and other Authorities. It is stated that the Corporate Debtor had apparently filed a case during 2012 in the District Court of Ranga-Reddy against M/s. Synergic Industrial Materials and Others for release of same cargo and that the matter was dismissed⁴ on 25.10.2019 for want of prosecution.

The Decision:

12. The entire case of the Applicant Liquidator originates from photocopy of a Letter of Credit (LC), which he claims to have found in the Corporate Debtor's record. This LC mentions '**KHAITAN ELECTRICAL LTD**' the Corporate Debtor as the Applicant and '**SYNERGIC INDUSTRIAL MATERIALS AND SERVICES PTE LTD**' of Singapore as the Beneficiary. This LC also gives a brief description of goods being '**25 TONS OF CONTINUOUS CAST COPPER WIRE ROD IN COIL FORM**'. Also indicated on the LC the name of '**HSBC BANK MALAYSIA, BERHAD, MALAYSIA**' for the '**CREDIT AVAILABLE BY NEGOTIATION OF DRAFTS TO BE DRAWN FOR THE INVOICE VALUE**'.
13. With this copy of the LC, the Liquidator obtained a copy of BL and a statement of payment of Custom Duty and sought to connect these documents to claim the import of 25,381 kgs of copper by the Corporate Debtor in the year 2011-2012. Claiming to be a part of the Liquidation Estate, the Liquidator is seeking release of said imported cargo in his favour.
14. The Liquidator's claim however faces two critical challenges. Firstly, the claim for the release of imported goods was lodged

⁴ Pg 53 of the Counter.

after a lapse of over 8 years, rendering it time-barred. Secondly, the documents submitted by the Liquidator to secure this release fail to establish unequivocally that the property in the goods ever got transferred to the Corporate Debtor

15. The copy of Bill of Lading shows Alpha Industries Berhad as the Exporter/Consignor and Satyam Shipping India Pvt Ltd as the Consignee. M/s. Synergic Industrial Materials & Services Pte Ltd, Singapore is mentioned as the Routing Agency in whose favour, the purported LC has been made. Curiously, the Bill of Lading does not mention the name of the Corporate Debtor anywhere. Copy of Bill of Entry showing payment of Custom Duty of Rs.24,77,772 also does not mention the name of the Corporate Debtor.
16. Coming to the LC while name of the Corporate Debtor is shown as an Applicant therein, Beneficiary is mentioned as M/s. Synergic Industrial Materials & Services Pte Ltd of Singapore and not the Alpha Industries Berhad of Malaysia, the Exporter from whom the cargo of copper is claimed to have been imported by the Corporate Debtor.
17. During the course of hearing, Ld. Counsel for the Applicant stated that, M/s Synergic Industrial Materials & Services Pte Ltd was the Agent of the Corporate Debtor through whom import from M/s Alpha Industries Berhad, Malaysia was made of the cargo is in question.

18. That a case was filed⁵ by the Corporate Debtor sometime in 2012 against the M/s. Synergic Industrial Materials and Others before the District Court of Rangareddy, suggests that some payment may have been made to the intermediary M/s Synergic Industrial Materials & Services Pte Ltd, of Singapore for the import of the said cargo of copper. While the exact nature of dispute between Corporate Debtor and M/s Synergic Industrial Materials & Services Pte Ltd is not known, it is clear that the LC for import of copper from Malaysia was made in favour of M/s Synergic Industrial Materials & Services Pte Ltd, but the intended amount apparently never reached the Malaysian Exporter. That is perhaps the reason why the original Bill of Lading favouring the Corporate Debtor and the related documents (listed on the LC itself) never reached the Corporate Debtor and the title of goods could not pass to the Corporate Debtor.
19. Under these circumstances, the Applicant as Liquidator of Corporate Debtor has no right now to claim the said import as part of the Liquidation Estate.

The Application is therefore dismissed.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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⁵ Case Status Report of District Courts, Rangareddy District - Page 53 of the Counter