

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**  
**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Ins) No. 94/2023**  
**(IA No. 331/2023)**

**(Filed Under Section 61 of the Insolvency and Bankruptcy Code, 2016)**

**(Arising out of the Impugned Order dated 13/02/2023 in**  
**C.P.(IB) No. 159(CHE)/2022, passed by the ‘Adjudicating Authority’,**  
**National Company Law Tribunal, Chennai Bench)**

**In the matter of:**

**Arpana Packaging Pvt. Ltd. ...Appellant**

**V**

**Regma Ceramics Pvt. Ltd. ...Respondent**

**Present :**

For Appellant	:	Mr. Rahul Balaji & Mr. Vishnu Mohan	} Advocates
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**JUDGEMENT**

**(Physical Mode)**

**12/04/2023:**

**Background:**

‘Heard’ the Learned Counsel for the ‘Appellant, Mr. Rahul Balaji, appearing for the ‘Appellant’, at the ‘Admission’ stage, itself. To avoid an avoidable delay, ‘Notice’ is not issued and this ‘Tribunal’, proceeds straightaway, for passing necessary ‘Judgement’, in this ‘Appeal’.

The ‘Petitioner’/ ‘Appellant’/ ‘Operational Creditor’, has preferred the instant Company Appeal (AT) (CH) (Ins) No. 94 of 2023, as an ‘Aggrieved Person’, on being dissatisfied with the ‘Impugned Order’, dated

13/02/2023, in C.P.(IB)/159/CHE/2022, passed by the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Division Bench-I, Chennai’.

Earlier, the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Division Bench-I, Chennai’, while passing the ‘Impugned Order’, dated 13/02/2023, in C.P.(IB)/159/CHE/2022 (Filed by the ‘Petitioner’/ ‘Appellant’/ ‘Operational Creditor’), at Paragraph 10, has observed the following:

*Para 10: “It is not a disputed fact that there is a case pending before the MSME FC Pondicherry in Case No. 3444/Ind & Com/Unit-III/B7/2020. The same also forms a part of the Applicant/Operational Creditor’s submissions. Thus Taking Into consideration the blanket of facts and circumstances of this case, this Adjudicating Authority comes to the inevitable conclusion that this Application is liable to be dismissed as there is a “pre-existing dispute” in light of the Hon’ble Supreme Court Judgement in Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited; 2017 1 SCC Online SC 353.”*

and consequently, dismissed the ‘Application’/ ‘Petition’.

**Appellant’s Contentions:**

Assailing the ‘Correctness’, ‘Propriety’, ‘Validity’ and ‘Legality’ of the ‘Impugned Order’, dated 13/02/2023, passed by the ‘Adjudicating

Authority’/ ‘National Company Law Tribunal, Division Bench-I, Chennai’, the Learned Counsel for the ‘Petitioner’/ ‘Appellant’/ ‘Operational Creditor’, submits that the ‘Appellant’/ ‘Petitioner’/ ‘Operational Creditor’ was approached by the ‘Respondent’, to ‘Pack’, ‘Store’ and ‘Sell’ Ceramic Tiles, and further the ‘Appellant’/ ‘Petitioner’, was supplying the said Boxes to the ‘Respondent’, for more than ‘5 years’ and it had raised ‘Invoices’, from time to time and inspite of the passing of the number of months, large amount of money remain unpaid by the ‘Respondent’. But the ‘Activity’ of ‘Packing’, ‘Storing’ and ‘Selling’ of the said sale boxes continued, without any disruption.

Advancing his ‘Argument’, the Learned Counsel for the ‘Appellant’/ ‘Petitioner’/ ‘Operational Creditor’, points out that during the course of the Appellant’s/ Petitioner’s Business relationship with the ‘Respondent’/ ‘Corporate Debtor’, the ‘Appellant’, had raised more than ‘1716 Invoices’, amounting to Rs. 6,82,66,341/- (Six Crores Eighty Two Lakhs Sixty Six Thousand Three Hundred and Forty One Only), towards which the ‘Respondent’/ ‘Corporate Debtor’, had paid a sum of Rs. 4,91,11,111 (Four Crores Ninety One Lakhs Eleven Thousand Hundred and Eleven only), leaving a balance of Rs. 1,91,55,230/- (One Crore Ninety One Lakhs Fifty Five Thousand Two Hundred and Thirty Only). That apart, the last payment effected by the ‘Respondent’/ ‘Corporate Debtor’, was on

23/06/2020, and hence there is a 'Admission of Liability', on the part of the 'Respondent'/ 'Corporate Debtor'. Also that, the Parties were maintaining a running account for Business Transactions between them throughout the length of their Business Relationship.

Expatiating his 'Argument', the Learned Counsel for the 'Appellant'/ 'Petitioner'/ 'Operational Creditor', emphatically, points out that, although the 'Appellant'/ 'Petitioner', had already addressed an 'Application', dated 07/10/2020 to the 'Chairperson', 'Micro and Small Enterprises Facilitation Council', Puducherry' (making a reference), whereby and where under, it was mentioned among other things, that the 'Appellant'/ 'Petitioner', had supplied the goods to the 'Respondent'/ 'M/s. Regma Ceramics Private Limited', and the 'Respondent', had not paid the amount, as per the 'Ingredients' of Section 15 of the 'Micro Small and Medium Enterprises Development Act, 2006 (No. 27/2006)' and hence the 'Appellant'/ 'Petitioner', is not precluded from initiating, Section 9 'Application', in CP/IB/159/CHE/2022, before the 'Adjudicating Authority'/ 'National Company Law Tribunal', Division Bench -I, Chennai'.

The Learned Counsel for the 'Appellant', points out that eventhough the 'Appellant'/ 'Petitioner', had made a reference, as early as on 07/10/2020, before the 'Chairperson' of 'Micro and Small Enterprises Facilitation Council, Puducherry', yet the fact of the matter is that, amount

due in question, is liable to be paid by the ‘Respondent’/ ‘Corporate Debtor’, and further more, that the mere invocation of Section 18 of the ‘Micro, Small and Medium Enterprises Development Act, 2006’, and made use of, by the ‘Appellant’/ ‘Petitioner’, will not itself, entitle the ‘Appellant’/ ‘Petitioner’, to move the main Company ‘Petition’, before the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Division Bench -I, Chennai’, for getting its due back and that too, with the ‘Principal Sum’ of Rs. 1,91,55,230 (One Crore Ninety One Lakhs Fifty Five Thousand Two Hundred and Thirty Only), together with interest at 24 %, per Annum, aggregating in all, Rs. 1,75,19,991 (One Crore Seventy Five Lakhs Nineteen Thousand Nine Hundred and Ninety One Only), especially, when the date of ‘Default’, being 05/09/2018, when the ‘First Invoice’, fell due and payable.

To lend support to his ‘Contention’, the Learned Counsel for the ‘Appellant’/ ‘Petitioner’/ ‘Operational Creditor’, seeks in aid of the ‘Order’, dated 13/01/2020, in Company Appeal (AT) (CH) (Ins) 1142 of 2019, passed by National Company Law Tribunal, New Delhi, (‘Three Member Bench’), at Paragraph 9 to 14, it is observed as under:

***Para 9:*** “We have heard Counsel for both sides and going through the matter, we find that the Adjudicating Authority erred in concluding that because Operational Creditor had moved the MSME Authorities, it showed

*pre-existing dispute. The Appellant had a relief open under the MSME Act and only because the Appellant moved the Authority under MSME Act, it does not mean that there is a pre-existing dispute. The dispute raised by the Appellant before the MSME was that it had dues to recover and that the Respondent has not paid. This by itself does not mean that there is pre-existing dispute as far as the Respondent is concerned. Under the IBC Section 5 Sub-Section (6), the dispute is defined as under:- “(6) “dispute” includes a suit or arbitration proceedings relating to— (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty”*

***Para 10: Section 17 of MSME Act reads as under:-***

*“17. Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16”*

***Sub-Section (1) of Section 18 of that Act reads as under:-***

*“(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprise Facilitation Council.*

*Thus the context of the word “dispute” in Section 18 takes colour from Section 17 of MSME Act. It is different from context of Section 5(6) read with Section 8 of IBC.*

**Para 11:** *At present, nothing is shown that there was any pre-existing dispute raised by the Respondent with regard to the services rendered by the Appellant. When this is so, only because the Appellant went to the MSME Authorities was no ground for the Adjudicating Authority to reject the Application under Section 9. A further communication from the Authority has been placed on record by the Appellant at Page – 89. Although the subsequent letter shows that the conciliation proceedings had yet to start. We will go a little ahead so that even if the conciliation proceeding was to start, if the Respondent did not raise dispute regarding the supply of goods or quality of services, still it would be open for the Adjudicating Authority to look into the question whether or not dispute as covered under the IBC, is attracted.*

**Para 12:** *We have seen the Judgements relied on by the learned Counsel for the Respondent. Appellant is not relying merely on TDS deducted to make claim. The liability is claimed on the basis of invoices raised and permitted by Section 9(3) of IBC. Reliance is placed on invoices and documents relied on in Section 9 Application.*

*Para 13: We do not find that there was any pre-existing dispute raised by Respondent and we hold that the Section 9 Application was wrongly rejected.*

*Para 14: No other shortcoming in the Section 9 Application has been pointed out in the Impugned Order. As such, Impugned Order is set aside. Appeal is allowed. We remit back the matter to the Adjudicating Authority. The parties are directed to appear before the Adjudicating Authority on 3rd February, 2020. The Adjudicating Authority will admit the Section 9 Application and pass further necessary orders under the provisions of IBC. Before the Adjudicating Authority passes order of admission, if the Respondent settles the dispute with the Appellant, the Adjudicating Authority in that case may pass suitable orders accordingly”.*

The Learned Counsel for the ‘Appellant’/ ‘Petitioner’, after citing the aforesaid ‘Order’ of this ‘Tribunal’, in Company Appeal (AT) (CH) (Ins) No. 1142 of 2019, between ‘iValue Advisors Pvt. Ltd. Vs Srinagar Banihal Expressway Ltd.’, vehemently comes out with a ‘Plea’ that the ‘Facts’ and ‘Circumstances’ of the instant ‘Appeal’, i.e., Company Appeal (AT) (CH) (Ins) No. 94 of 2023, are quite similar to the ‘Facts’ and ‘Circumstances’ of the case in Company Appeal (AT) (CH) (Ins) No. 1142 of 2019, decided by National Company Law Appellate Tribunal, New Delhi (‘Three Member

Bench'), dated 13/01/2020 with all 'Vigour' and 'Validity', in the instant Case.

This 'Tribunal', has heard the Learned Counsel for the 'Appellant'/ 'Petitioner'/ 'Operational Creditor' and noted the 'Contents', advanced, on behalf of the 'Appellant', and also borne in mind, the 'Order', dated 13/01/2020, passed by this 'Tribunal', in Company Appeal (AT) (CH) (Ins) No. 1142 of 2019.

**Appraisal:**

A Cursory glance of Part IV of Form No. 5, filed by the 'Appellant'/ 'Petitioner'/ 'Operational Creditor', clearly indicates that the outstanding sum of Rs. 1,91,55,230 (One Crore Ninety One Lakhs Fifty Five Thousand Two Hundred and Thirty Only) and the 'Interest', was at 24 %, per Annum, on the said 'Principal Sum', of Rs. 1,91,55,230 (One Crore Ninety One Lakhs Fifty Five Thousand Two Hundred and Thirty Only), from September 2018 to 31/03/2022, amounting to Rs. 1,75,19,991(One Crore Seventy Five Lakhs Nineteen Thousand Nine Hundred and Ninety One) and the date which fell due was Rs. 3,66,75,221(Three Crore Sixty Six Lakhs Seventy Five Thousand Two Hundred and Twenty One Only). Also that, the 'Appellant'/ 'Petitioner', in Part IV of the Form No. 5, before the 'Adjudicating Authority'/ 'Tribunal', had averred that the 'Debt', fell due on 05/09/2018, when the 'First Invoice', fell due and payable.

The other fact that emanates from Form No. 5, preferred by the 'Petitioner'/ 'Appellant'/ 'Operational Creditor', is that according to the 'Petitioner'/ 'Appellant'/ 'Operational Creditor', had raised more than '1716 Invoices', for a total value of Rs. 6,82,66,341(Six Crores Eighty Two Lakhs Sixty Six Thousand Three Hundred and Forty One Only) and that the 'Respondent'/ 'Corporate Debtor', had effected the payment amounting to Rs. 4,91,11,111 (Four Crores Ninety One Lakhs Eleven Thousand Hundred and Eleven Only), leaving a balance of Rs.1,91,55,230 (One Crore Ninety One Lakhs Fifty Five Thousand Two Hundred and Thirty Only). In fact, the last demand, according to the 'Appellant'/ 'Petitioner'/ 'Operational Creditor', was made by the 'Respondent'/ 'Corporate Debtor', on 23/06/2020.

The Learned Counsel for the 'Petitioner'/ 'Appellant'/ 'Operational Creditor', comes out with a 'Plea' that the 'Adjudicating Authority'/ 'National Company Law Tribunal, Division Bench-I, Chennai' had merely placed 'Reliance', upon the reference, under Section 18 of the 'Micro, Small and Medium Enterprises Development Act, 2006', dated 07/10/2020, made by the 'Petitioner'/ 'Appellant'/ 'Operational Creditor', addressed to the 'Chairperson' of the 'Micro, Small and Medium Enterprises Facilitation Council, Puducherry' and that itself, will not be a 'Decisive Factor', for the 'Petitioner'/ 'Appellant'/ 'Operational Creditor', for the 'Adjudicating

Authority’/ ‘National Company Law Tribunal, Division Bench-I, Chennai’, to arrive at a ‘Conclusion’ that there was a ‘Dispute’/ amounting to Pre existing dispute, coming within the Definition of the Dispute, as per Section 5(6) of the Insolvency and Bankruptcy Code, 2016.

The Learned Counsel for the ‘Appellant’/ ‘Petitioner’/ ‘Operational Creditor’, made a fervent earnest endeavour to point out that in Company Appeal (AT) (CH) (Ins) No. 1142 of 2019, dated 13/01/2020, at Paragraph 10, the ‘Three Member Bench’ of this ‘Tribunal’, is observed as under:

**Para 10:** *“Thus the Context of the word dispute in Section 18, takes colour from Section 17 of MSME Act. It is different from context of Section 5(6), read with Section 8 of the Insolvency and Bankruptcy Code, 2016”.*

Be that as it may. as far as the instant Case is concerned, it transpires from the ‘Impugned Order’, passed by the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Division Bench – I, Chennai’, that the ‘Respondent’/ ‘Corporate Debtor’ had projected a ‘Counter’/ ‘Response’, before it whereby and whereunder, it was averred that the ‘Petitioner’/ ‘Appellant’/ ‘Operational Creditor’, had invoked Section 18 of the ‘MSME Act, 2006’, for recovering, all the dues, allegedly payable by the ‘Respondent’/ ‘Corporate Debtor’, to the ‘Appellant’/ ‘Petitioner’/ ‘Operational Creditor’. Furthermore, in the ‘Impugned Order’, it was made mentioned that Section 18 of the ‘MSME Act’, specifically empowers the

‘Facilitation Council’, to entertain any dispute between the Parties for any amount that falls due, under Section 16 and 17 of the said Act.

Not resting with the above, a Perusal of the ‘Ingredients’ of Section 18(3) of the ‘MSME Act’, unerringly, points out and also empowers that the ‘Facilitation Council’, to arbitrate the ‘dispute’, under the ‘Provisions of the Arbitration’.

In the Instant case, the very fact that the ‘Petitioner’/ ‘Appellant’/ ‘Operational Creditor’, had approached the ‘Chairperson’ of ‘Micro, Small Enterprises Facilitation Council, Puducherry’, to reference dated 07/10/2020, in regard to the non payment of amount, as per the provisions of Section 15 of the ‘Micro Small and Medium Enterprises Act, 2006’, by the ‘Respondent’/ ‘Corporate Debtor’, itself indicates that there has been a ‘Dispute’, and in fact, that the amount which was not paid, is now the subject matter of ‘Controversy’/ ‘the issue being pending for Resolution’, one way or the other, before the said ‘Authority’, viz, ‘Chairperson’ of the ‘Micro Small Enterprises Facilitation Council, Puducherry’. Viewed in that perspective and also this ‘Tribunal’, taking into account, the entire ‘gamut of the facts and circumstances’ of the instant case, in an ‘Holistic Fashion’, comes to an ‘Irresistible’ and ‘Inescapable’ ‘Conclusion’ that the view arrived at, by the ‘Adjudicating Authority’, ultimately, in the instant Case, that there is a ‘Pre existing dispute’, and by placing reliance upon the

principles laid down by the Hon'ble Supreme Court of India in 'Mobilox Innovations Pvt. Ltd. V Kirusa Software Pvt. Ltd.' Reported in 2017, 1 SCC Online SC 353, is free from any 'Legal' Infirmities', in the eye of 'Law'. Resultantly, the 'Appeal', sans 'Merits'.

In fine, the instant Comp App (AT) (CH) (Ins) No. 94/2023, 'Dismissed'. 'No Costs'. Connected Pending IA No. 331 of 2023, is 'Closed'.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

SPR/TM