NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 23 of 2021

IN THE MATTER OF:

M/s. Hira International Ltd.
Office:
147, Tukoganj Road,
Dewas – 455001 (M.P.)
Email: hira.international10@gmail.com
Mob: +91 9826072377 **...Appellant.**

Versus

M/s. Girdharilal Sugar & Allied Industries Ltd.
Registered Officer:
45/47-A, Industrial Aria No. 1,
A.B. Road,
Dewas - 455001 (M.P.)
Email: preind2002@yahoo.com
Mob.: +91 9009527111 **...Respondent.**

For Appellant: Mr. Vijayesh Atre, Advocate.
For Respondent: Ms. Himani Chouhan, Advocate.

ORDER
(Virtual Mode)

02.08.2021 This Appeal has been filed by the Appellant-Operational Creditor against the Impugned Dismissed Order dated 08.12.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench, Ahmedabad in TP/MP/182 of 2019 [CP (IB) No. 591/9/NCLT/AHM/2019].

2. The Application under Section 9 of IBC was filed by the Appellant-Operational Creditor against Respondent- "M/s. Girdharilal Sugar and Allied Industries Ltd."- the Corporate Debtor. The Appellant filed the Application against the Corporate Debtor claiming outstanding Operational Dues of Rs. 59,75,055/-. The Appellant claims that the Appellant had supplied Soya Bean to the Corporate Debtor as per the commercial arrangement and the supply was made as per Bills in July, 2015.

3. The Application under Section 9 of IBC of the Appellant came to be dismissed by the Adjudicating Authority holding that the debt was time-barred. Thus the present Appeal.

4. We have heard the Learned Counsel for the Appellant as well as the Learned Counsel for the Respondent and perused the Record.

5. The Learned Counsel for the Appellant referred to the reasons as to why the Adjudicating Authority dismissed the Application. The concerned paragraphs from the Impugned Order may be reproduced for reference:

> *"4. We have considered submissions made on behalf of both the sides and material available on record. It is not in dispute that all the supply has been made by the Operational Creditor in the month of July 2015. It is also not in dispute that the Operational Creditor is operating in business to business segment i.e. it is not in case where such supplies are being made to numbers of clients on specific date or from different locations. Therefore, we do not find any substance in the claim of the Operational Creditor that date of Invoice and number of Invoice could not matched. Even, otherwise, the supply has been made in the month of July 2015, as stated earlier, and the application has been filed on July 18, 2019, hence, aspect of limitation is to be seen.*
>
> *5. In this regard, reliance has been placed on payment of Rs. 2.00 Lacs claimed to have been received from the Corporate Debtor on 24.11.2017, however, from perusal of the record Bank statement of the Operational Creditor with ICICI Bank, it is noted that the said amount has been received form* ***M/s. Premier Nutritions*** *and not the Corporate Debtor. No material has been brought on record to show that name of the Corporate Debtor has been changed. In view of the fact that the Corporate Debtor has attached its Annual report for 2018-19 in the name and style of* ***M/s. Girdharilal Sugar and Allied Industries Limited.,*** *the name of the Corporate Debtor remained the same. Therefore, the said payment could not be said to have been made by the Corporate Debtor. Even otherwise a paltry payment, assuming to have been made by the Corporate Debtor, cannot extend the limitation period for all debts as each supply is an independent contract. The said petition is, therefore, not maintainable. Accordingly, the same is dismissed on the ground of limitation as well as on merit*

on consideration of facts regarding authenticity and validity of the Invoices so raised.

In the result, application under Section 9 stands dismissed and disposed of accordingly.

6. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order."

Referring to the above observations of the Adjudicating Authority, the Learned Counsel for the Appellant has taken us to Page 220 and 221 of this Appeal Paper Book where in the Registration Certificate of Corporate Debtor for GST, the Legal Name of the Corporate Debtor and Trade Name of the Corporate Debtor have been reflected. The Learned Counsel pointed out that the Legal Name of the Corporate Debtor which is given in the Registration Certificate is "Girdharilal Sugar and Allied Industries Limited" and the Trade Name of the Corporate Debtor for the Purpose of GST recorded is "Primier Nutritions Prop Girdharilal Sugar and Allied Indu". The Learned Counsel submits that the Trade Name is only for the purpose of using it for the Unit of the Corporate Debtor whose Legal Name is recorded and both are same entity. The Learned Counsel thus submits that the Adjudicating Authority confused itself while making the observations as seen in Paragraph 5 (Supra) to say that the payment made was not by the Corporate Debtor.

6. The Learned Counsel after referring to the above documents has pointed out that if the Section 9 Application is perused (Annexure A-4 Page 41 @ 44) the Appellant had pointed out in Part-IV of the Application that the last bill was of 28.07.2015 and that the Corporate Debtor made RTGS Payment on 24th November, 2017. The RTGS payment can be seen in the Bank Statement of ICICI Bank which is at Annexure A-4, Page 190. This Bank

Statement issued to the Appellant shows at Entry No. 127 payment of Rs. 2 Lacs by the Corporate Debtor to the Appellant. The name used for the purpose of making the payment was "Premier Nutritions". We find considering the GST Registration Certificate, it must be said that the payment was made by the Corporate Debtor on 24th November, 2017. The Learned Counsel then submits that the Section 9 Application was filed on 17.07.2019 and thus the Application was within Limitation.

7. The Learned Counsel for the Respondent referred to the detail Reply which was filed by the Corporate Debtor copy of which is at Page 223. Learned Counsel for the Respondent has also argued on similar lines as mentioned in the Reply which was filed before the Adjudicating Authority that the Corporate Debtor was in financial crisis and that its Account had been declared Non-Performing Assets and that the Corporate Debtor was not having any profit in the business.

8. Considering the submissions made by the Learned Counsel for the Appellant, it does appear that from the last bill dated 28.07.2015 if the payment made on 24th November, 2017 is considered and then filing of the Application on 17.07.2019 under Section 9 of IBC is seen, the debt cannot be claimed to be time-barred. We do not agree with the Adjudicating Authority to refer the amount as paltry payment. For the purposes of Section 19 of the Limitation Act, the extent of amount would not be relevant and Part-payment if made would have to be taken into account. Section 19 of Limitation Act does not create distinction on the basis of quantum of payment.

9. The Learned Counsel for the Appellant has then referred to Paragraph 2 of the Impugned Order where the Adjudicating Authority expressed doubt

with regard to the Invoices to observe that the subsequent date Invoice for a prior transaction is there. The Adjudicating Authority had observed as under:

> *"2. (2) The Learned Counsel for the Operational Creditor appeared and narrated the basic facts. A query was raised as regard to the discrepancy in the number of Invoice and date of Invoice i.e. Invoice No. 304 was shown to have been issued on 25.07.2015, whereas, Invoice No. 274,275 and 276 have been issued on 28.07.2015. The Learned Counsel submitted that two sales counters were maintained and because of that it happened. Learned Counsel drawn our attention to Form 3 duly served on the Corporate Debtor. It was also brought to our notice that no dispute, had been raised and only plea which was taken by the Corporate Debtor was that they had discontinued this business and they could not pay the outstanding amount due to financial constraints."*

The Learned Counsel submits that the concerned Invoices are on record as can be seen at Page 109. It is argued that in the particular season of Soya Bean it is common for the Operational Creditor to have different sale counters and such sequences of the Invoice number cannot be subject of suspicion and it does not make any difference. The Learned Counsel also points out Document at Page 115 to submit that the Corporate Debtor had received the goods mentioned and even in the Reply Corporate Debtor did not raise any such disputes and thus the Adjudicating Authority unnecessarily expressed suspicion on record to the Invoices which were not necessary when the Corporate Debtor was not disputing the same.

10. Having heard Learned Counsel for the Appellant and Learned Counsel for the Respondent and perusing record, the doubt raised by the Adjudicating Authority with regard to the invoices, we will ignore.

11. There is nothing shown that the Application under Section 9 of IBC was in any other manner incomplete.

12. For the above reasons, the Appeal is allowed. The Impugned Order is quashed and set aside. The matter is remitted back to the Adjudicating Authority. The matter may be placed before the Adjudicating Authority on 17th August, 2021. The Adjudicating Authority will admit the Application and pass the necessary consequential orders on Admission (unless the Corporate Debtor and Appellant settle the dues before the Adjudicating Authority passes formal orders of Admission of Application).

13. Parties to appear before the Adjudicating Authority on 17.08.2021. Appeal is disposed accordingly. No order as to costs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Basant B./gc.