

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**CHENNAI BENCH, CHENNAI**

**COMPANY APPEAL (AT)(CH)(INS) NO.243 OF 2021**

**(Under Section 61 of I&B Code, 2016)**

**(Arising out of the Order dated 15.03.2021 passed by the Adjudicating Authority, National Company Law Tribunal, Division Bench, Court No.1, Chennai, in CP/IB/23/CHE/2021).**

**In the matter of:**

METAL'S & METAL ELECTRIC PRIVATE LTD,  
104/A 6, Govindappa Naicken ST  
Madras 600001

Appellant

Vs

Goms Electricals Pvt Ltd,  
New No.43, Old No.113, First Main Road,  
R.K. Nagar,  
Mandaveli,  
Chennai 600028

Respondent

**Present:**

Mr. E.K. Legal-Mr. E.K. Kumaresan, Advocate for Dr. Kamlesh Vaidankar, Advocate for Appellant.

Mr. B. Ramana Kumar, Mr. Harish Kumar, Advocates for Respondent.

**JUSTICE M. VENUGOPAL, MEMBER (J)**

**PREFACE:**

The Appellant/Operational Creditor has filed the instant Company Appeal AT(CH)(Ins) No.243 of 2021 being aggrieved against the order dated 15.03.2021 in CP/IB/23/CHE/2021 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court No.1, Chennai).

2. The Adjudicating Authority (National Company Law Tribunal, Division Bench, Court No.1, Chennai) while passing the impugned order on 15.03.2021 in CP/IB/23/CHE/2921 had observed the following:-

*“It is evident on the face of the Petition that the amount claimed is in a sum of Rs.17,91,112/-. On and from 24.03.2020 the pecuniary jurisdiction for entertaining the Petition under the provisions of Sections 7, 9 and 10 of the IBC, 2016 stands in relation to threshold limits increased from Rs.1,00,000/- to Rs. 1,00,00,000/-. It is evident from the seal of the Registry affixed that the Petition has been filed on 12.03.2021 before this Tribunal much after 24.03.2020 being the date of increase of the threshold limit as already stand which has been increased from Rs.1,00,000/- to Rs.1,00,00,000/-.”*

and opined that in the circumstances, the ‘Tribunal’ has no jurisdiction to entertain the Petition and was constrained to dismiss the same for ‘lack of pecuniary jurisdiction’, but proceeded to observe that this will not detract the right of the Petitioner to proceed before the ‘Appropriate Forum’ as may be advised in relation to the claim.

### **APPELLANT’S SUBMISSIONS**

3. Challenging the dismissal of the application/petition in CP/IB/23/CHE/2021, passed by the ‘Adjudicating Authority’, (National Company Law Tribunal, Division Bench, Court No.1, Chennai), the Learned Counsel for the Appellant contends that the Appellant/Operational Creditor had sold and supplied the goods in question to the Respondent/Corporate Debtor and that the Respondent/Corporate Debtor had received, accepted and used those goods for its own purpose and that the ‘Corporate Debtor’ has never raised any ‘Dispute’ as to the quality or quantity of the material.

4. The Learned Counsel for the Appellant/Operational Creditor takes a plea that the 'Corporate Debtor' had not raised any 'Dispute' even after issuing the 'Demand Notice' and that the Corporate Debtor in its Reply letter dated 2.11.2020 had prayed for 5-6 months' time to pay the dues of Rs.12,54,232/- and that no 'Dispute' was raised as to the quality and quantity of goods supplied and instead prayed for sometime to clear the dues, as they were in a very bad financial position due to pandemic.

5. The Learned Counsel for the Appellant points out that the Appellant/Operational Creditor had filed the application/petition under Section 9 of the I&B Code, 209 because of the fact that the Respondent/Corporate Debtor had not made payment even after the Demand Notice and that the amount is in default from December, 2018, which is well within limitation to prefer the petition.

6. The Learned Counsel for the Appellant brings it to the notice of this 'Tribunal' that the Tribunal had dismissed the petition by virtue of the Notification No.S/01 2015E dated 24<sup>th</sup> March, 2020 issued by the Central Government through Ministry of Corporate Affairs stating that the Default sum falls below the limit of Rs.1,00,00,000/- as per Notification.

7. The grievance of the Appellant is that the amount in default is Rs.17,91,112/- and the correct interpretation of the Notification dated 24.03.2020 is that in case of 'Default' that takes place on or after 24.03.2020, the threshold limit shall be Rs.1,00,00,000/-. As such, if a 'Default' has been committed by a 'Corporate Debtor' before the issuance of the Notification i.e.

prior to 24.03.2020, then, for the purpose of initiation of CIRP under Section 9 of the I&B Code, the threshold limit shall be considered as Rs.1 lakh.

### **APPELLANT'S DECISION**

8. The Learned Counsel for the Appellant refers to the judgement of this Tribunal in Madhusudan Tantia Vs Amit Chauraria and Another (Vide Comp App (AT)(Ins) No.557/2020 dated 12.10.2020 wherein at paragraph 56 and 57 it is observed as under:-

*56. As far as the present case is concerned, this Tribunal, after carefully and with great circumspection, ongoing through the contents of the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India, whereby and whereunder the minimum amount of default limit was specified as Rs. one crore (obviously raising the minimum amount from Rs. one lakh to one crore) unerringly comes to a definite conclusion that the said notification is only 'Prospective in nature' and not a 'retrospective' one because of the simple reason the said notification does not in express term speaks about the applicability of 'retrospective' or 'retroactive' operation. Suffice it for this Tribunal to point out that from the tenor, spirit and the plain words employed in the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, one cannot infer an intention to take or make it retrospective as in this regard, the relevant words are conspicuously absent and besides there being no implicit inference to be drawn for such a construction in the context in issue. That apart, if the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is*

*made applicable to the pending applications of IBC (filed earlier to the notification in issue) it will create absurd results of wider implications / complications.*

*57. In view of the upshot and also this Tribunal, on a careful consideration of respective contentions advanced on either side and considering the facts and circumstances of the instant case in a conspectus fashion holds unhesitatingly that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is prospective in nature and it is not retrospective or retroactive in nature. Further, the said notification will not apply to the pending applications filed before the concerned 'Adjudicating Authority' (Authorities), under IBC (waiting for admission), prior to the issuance of the aforesaid notification, as opined by this Tribunal. Viewed in the above perspectives, the conclusion arrived at by the 'Adjudicating Authority' in the impugned order to the effect that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, shall be considered as prospective and not retrospective and the finding that there was no payment on the side of 'Corporate Debtor' after receipt of Demand Notice, no pre-existing dispute also alleged or proved and ultimately admitting the application filed by the 2nd Respondent / Operational Creditor are free from legal infirmities. Resultantly, the instant Appeal fails.*

9. The Learned Counsel for the Appellant contends that 'Adjudicating Authority' before passing the 'impugned order' had not provided a chance to the Appellant to present its case and had not referred to the judicial precedent

in regard to the question of law, thereby violating the principles of natural justice.

### **RESPONDENT'S CONTENTIONS**

10. The Learned Counsel for the Respondent submits that the 'Adjudicating Authority' had rightly observed that the case was filed on 12.03.2021, nearly one year after the amendment to Section 4 of Code which had raised the threshold limit for preferring an 'Application' under the Code to Rs.1,00,00,000/- and that the Petitioner/ Appellant had issued the Notice of Demand (Form 3) on 10.10.2020 and filed the Application in Form 5 before the 'Adjudicating Authority' on 12.03.2021 and that the 'impugned order' was passed on 15.03.2021 dismissing the Application for lack of 'pecuniary jurisdiction' and that the instant 'Appeal' was filed before this Tribunal on 26.7.2021.

11. The Learned Counsel for the Respondent contends that the issue of 'Prospective' and 'Retrospective' would not apply and that the Appellant/Applicant had mistaken the date on which the 'Debt' accrued with the date on which the Application was filed.

12. The Learned Counsel for the Respondent comes out with the plea that the date of initiation of 'CIRP proceedings' under Section 9 of the Code, shall be the date on which the application is made and that the date of 'default' does not come into question and ought not to be taken into consideration for anything but calculating the limitation period. In fact, Section 4 of the Code sets the minimum threshold, which an application can be made.

13. The Learned Counsel for the Respondent emphatically points out that the minimum threshold limit of Rs.1,00,00,000/- shall apply and that the application fails to fulfil the requirement of the Section 4 of the I&B Code.

**RESPONDENT'S DECISION:**

14. The Learned counsel for the Respondent refers to the judgement of this Tribunal in Jumbo Paper Products Vs. Hansraj Agro Fresh Pvt Ltd wherein it is observed that threshold limit of Rs.1,00,00,000/- will be applicable for an application filed under Section 7 or 9 on or after 24.03.2020, even if default was of a date, earlier than 24.03.2020.

15. The Learned Counsel for the Respondent adverts to the decision of Hon'ble High Court of Kerala in Tharaken Web Innovations Pvt Ltd V National Company Law Tribunal for the proposition that no application can be filed after 24.03.2020 with regard to a sum, where the default is less than Rs.1,00,00,000/-.

16. The Learned Counsel for the Respondent relies on the order of the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench, Court V) in SS Group Pvt Ltd V. Shiva Asphaltic Pvt Ltd wherein it is observed that the threshold limit of Rs.1 crore will be applicable for an application filed under Section 7 or 9 on or after 24.03.2020, even if, the 'Debt' is of a date earlier than 24.03.2020.

**THE HON'BLE SUPREME COURT DECISION**

17. It is worth recalling and recollecting the decision of the Hon'ble Supreme Court in the matter of Ramesh Kymal V. Siemens Ganesa Renewable

Power Pvt Ltd reported in MANU/SC/0061/2021 : (2021) 3 Supreme Court Cases Page No.224 at Spl Pages 235 and 237 wherein at paragraphs 28, 30, 33 and 34 it is observed as under:-

*“28. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25 March 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25 March 2020 outside the pale of protection because the application was filed before 5 June 2020.*

*30. Section 10A does not contain any requirement that the Adjudicating Authority must launch into an enquiry into whether, and if so to what extent, the financial health of the corporate debtor was affected by the onset of the Covid-19 pandemic. Parliament has stepped in legislatively because of the widespread distress caused by an unheralded public health crisis. It was cognizant of the fact that resolution applicants may not come forth to take up the process of the resolution of insolvencies (this as we have seen was referred to in the recitals to the Ordinance), which would lead to instances of the corporate debtors going under liquidation and no longer remaining a going concern. This would go against the very object of the IBC, as has been noted by a two-Judge bench of this Court in its judgment in Swiss Ribbons (P) Ltd V. Union of India 7.*

*33. The date of the initiation of the CIRP is the date on which a financial creditor, operational creditor or corporate applicant makes an application to the adjudicating authority for initiating the process. On the other hand, the insolvency commencement date is the date of the admission of the application. This distinction is also evident from the provisions of sub-section (6) of Section 7, sub-section (6) of Section 9 and sub-section (5) of Section 10. Section 7 deals with the initiation of the CIRP by a financial creditor; Section 8 provides for the insolvency resolution by an operational creditor; Section 9 provides for the application for initiation of the CIRP by an operational creditor; and Section 10 provides for the initiation of the CIRP by a corporate applicant.*

*34. NCLAT has explained the difference between the initiation of the CIRP and its commencement succinctly, when it observed:*

*“13. Reading the two definition clauses in juxtaposition, it emerges that while the first viz. 'initiation date' is referable to filing of application by the eligible applicant, the later viz. 'commencement*



*date' refers to passing of order of admission of application by the Adjudicating Authority. The 'initiation date' ascribes a role to the eligible applicant whereas the 'commencement date' rests upon exercise of power vested in the Adjudicating Authority. Adopting this interpretation would leave no scope for initiation of CIRP of a Corporate Debtor at the instance of eligible applicant in respect of Default arising on or after 25th March, 2020 as the provision engrafted in Section 10A clearly bars filing of such application by the eligible applicant for initiation of CIRP of Corporate Debtor in respect of such default. The bar created is retrospective as the cut-off date has been fixed as 25th March, 2020 while the newly inserted Section 10A introduced through the Ordinance has come into effect on 5th June, 2020. The object of the legislation has been to suspend operation of Sections 7, 9 & 10 in respect of defaults arising on or after 25th March, 2020 i.e. the date on which Nationwide lockdown was enforced disrupting normal business operations and impacting the economy globally. Indeed, the explanation removes the doubt by clarifying that such bar shall not operate in respect of any default committed prior to 25th March, 2020."*

### **APPRAISAL**

18. It is the stand of the Appellant/Applicant before the 'Adjudicating Authority' that it had sold and supplied the 'Goods' as an 'Operational Creditor' to the Respondent/ Corporate Debtor and that the Respondent/Corporate Debtor had received, accepted and utilised those 'Goods'. Furthermore, the Respondent/Corporate Debtor had never raised any 'Dispute' as to the 'quality' or 'quantity' of the material supplied.

19. The Appellant/Applicant in Form 3 under the caption Particulars of Operational Debt had mentioned the total sum of Debt as Rs.12,54,232/- alongwith interest @ 24% per annum, as per the outstanding invoice from the due date of outstanding invoices till the date of actual realisation. The sum claimed to be in default was Rs.17,91,112/- including a sum of Rs.5,36,880/- being the interest at 24% per annum, as per outstanding invoice from the due

date i.e. 29.12.2018 till 10.10.2020, in respect of the outstanding invoice dated 02.07.2018.

20. The Appellant/Applicant/Operational Creditor had issued a 'Demand Notice' dated 10.10.2020 as per Section 8 of the I&B Code, to the Respondent/Corporate Debtor and that no 'Dispute' was raised even after issuing of the 'Demand Notice.' In fact, the Respondent/Corporate Debtor, in its Reply dated 02.11.2020 had prayed for 5-6 months' time to pay the dues of Rs.12,54,232/-.

21. The clear cut stand of the Appellant/Applicant is that the notification dated 24.03.2020 issued by the Central Government does not save the Respondent/Corporate Debtor and in case of 'Default' that took place on or after 24.03.2020, the threshold limit shall be Rs.1,00,00,000/- and even if a 'Default' was committed by the Respondent/'Corporate Debtor', earlier to the notification i.e. prior to 24.03.2020 then, for initiating the 'Corporate Insolvency Resolution Process' under Section 9 of the I&B Code, the threshold limit shall be considered as Rs.100,000/- only.

22. The plea of the Appellant/Applicant is repelled by the Respondent/Corporate Debtor based on the ground that Section 4 of the I&B Code, is applicable, as it stood, on the date of 'application' and not on the date on which the 'Debt' became due.

23. In the present case, the 'Application' in Form 5 before the 'Adjudicating Authority' was filed by the Appellant/Applicant on 12.03.2021. The 'Notice of Demand' was issued by the Appellant/Applicant to the Respondent/Corporate Debtor on 10.10.2020. The Respondent/Corporate  
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Debtor had issued a Reply dated 02.11.2020 praying for 5-6 months' time to pay the dues in question.

24. It must be borne in mind that Section 4 of the I&B Code specifies the minimum threshold limit of Rs.1,00,00,000/- for the 'Default' and in fact, the Central Government had raised the limit from Rs.1,00,000/- to Rs.1,00,00,000/- as per notification dated 24.03.2020.

25. A mere running of the eye of the ingredients of Section 9 of the I&B Code makes it lucidly clear that the date of initiation of 'Corporate Insolvency Resolution Process' shall be on the date on which an application is made. To put it precisely, 'the date of default' is not to come into 'operative play' and the same ought not to be taken into account for anything but computing the period of limitation.

26. In the present case, the 'application' was made before the 'Adjudicating Authority' by the Applicant/Appellant which came to be listed on 12.03.2021, however, the 'Demand Notice' was issued on 10.02.2020, after the date of amendment to Section 4 of the Code.

27. In this connection, it is to be relevantly pointed out that a litigant has no vested right to choose a particular 'Forum', although he has an 'actionable right'. It cannot be gain said that a change in 'Law' is a 'procedural one' and a 'Litigant' is to adhere to the letter and spirit of the 'Law', without any deviation whatsoever, in the considered of this 'Tribunal'.

28. To be noted, the Appellant/Applicant in the application had claimed a sum of Rs.17,91,112/-. Indeed, the pecuniary jurisdiction for entertaining

an application under Section 7, 9 and 10 of the Code was increased to Rs.1 crore (from Rs.1 lakh) on and from 24.03.2020.

29. Based on the facts of the instant case on hand, even though the Appellant/Applicant had averred that Rs.17,91,112/- being the outstanding sum claimed in the Application (inclusive of the interest sum of Rs.5,36,880/- @ 24% per annum) from the due date i.e. 29.12.2018 till 10.10.2020, in regard to the outstanding invoice dated 02.07.2018 (as evident from the Demand Notice dated 10.10.2020), the threshold limit under Section 10A of the Code for initiation of CIRP is Rs.1 crore (vide Notification to Section 4 of the Code dated 24.03.2020), this 'Tribunal' taking note of the fact that the Section 4 of the Code which specifies the minimum threshold of Rs.1 crore, the same shall apply and since the sum claimed in the 'Application' was Rs.17,91,112/-, below the sum of Rs.1 crore and the present 'application' having been filed on 12.03.2021, before the 'Adjudicating Authority' after the Notification dated 24.3.2020 in and by which, the threshold limit was increased from Rs.1 lakh to Rs. 1 Crore, this 'Tribunal' comes to an inevitable, inescapable and consequent conclusion that the 'Application' filed by the 'Appellant' in CP/IB/23/CHE/2021 is not per se maintainable because of the lack of pecuniary jurisdiction to the 'Adjudicating Authority, (National Company Law Tribunal, Division Bench, Court No.1, Chennai). Looking it from that perspective, this 'Tribunal' unhesitatingly holds that the conclusion arrived at by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court No.1, Chennai) in not entertaining the CP

No.CP/IB/23/CHE/2021 and dismissing the same as a logical corollary are free from legal infirmities. Resultantly, the 'Appeal' is devoid of merits.

**RESULT**

In fine, the Company Appeal (AT)(CH\_(Ins) No.243/2021 is dismissed.

No costs.

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

**(Mr. Kanthi Narahari)**  
**Member (Technical)**

**24<sup>th</sup> February, 2022**  
**Bm/akc**