

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1520 of 2019

IN THE MATTER OF:

Simran Kaur

...Appellant

Vs

Haiko Logistic India Pvt. Ltd.

....Respondent

Present:

**For Appellant: Mr. Abhirup Dasgupta, Mr. Ishaan Duggal and
 Mr. Amit Anand, Advocates.**

For Respondent:

O R D E R

06.01.2020: Respondent – ‘Haiko Logistics India Pvt. Ltd.’ (Operational Creditor) filed application under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) against M/s Datawind Innovations Pvt. Ltd.’ (Corporate Debtor), which having admitted by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Chandigarh by impugned order dated 13th November, 2019, the Appellant – Shareholder has preferred this appeal.

Learned counsel for the Appellant submits that there is a pre-existing dispute about short supply and referred to emails dated 14th/15th September, 2019 (page 66), 12th October, 2016 (page 67-68) and 6th February, 2017 (page 69), as extracted below:-

ANNEXURE A-2

66

Wed 9/14/2016 3:59 AM

Baldeep Singh baldeep@datawind.com wrote to Mamta <mailto:mamta.delt@hailo-logistics.com>

Dear Mamta,

Please update on the status of this shipment.

Warm Regards :-

Baldeep Singh
Asst. Vice President Logistics.
Datawind Innovations Pvt Ltd.
M : 98761-54226
Email : baldeep@datawind.com

DATAWIND

Thu 9/15/2016 4:31 AM

Baldeep Singh baldeep@datawind.com wrote to Mamta <mailto:mamta.delt@hailo-logistics.com>

Dear Mamta,

Please advise and move the shipment on urgent basis.

Warm Regards :-

Baldeep Singh
Asst. Vice President Logistics.
Datawind Innovations Pvt Ltd.
M : 98768-13513
Email : baldeep@datawind.com

DATAWIND



Wed 10/12/2016 5:15 AM

Baldeep Singh baldeep@datawind.com wrote to Ajit

Dear Ajit,

Please share the landing date of these batteries as we receive the pre-alert on dated 6th Oct.

What is the issue why the airlines not able to move them??

Warm Regards :-

Baldeep Singh
Asst. Vice President Logistics.
Datawind Innovations Pvt Ltd.
M : 98768-13513
Email : baldeep@datawind.com

DATAWIND



From: Baldeep Singh [<mailto:baldeep@datawind.com>]
Sent: Wednesday, October 12, 2016 5:20 PM
To: 'Parminder Singh' <parminder.s@datawindcorp.com>; 'Ajit Singh' <ajit@haikologistics.com>; 'Anoop Bisht' <anoop.del@haikologistics.com>; 'Sujit Roy' <sujit.bvd@haikologistics.com>; shekhar.chakraborty@haikologistics.com; rahul.dhar@haikologistics.com; vivek.del@haikologistics.com; manoj.gupta@haikologistics.com
Cc: payneet@datawindcorp.com
Subject: RE: DSR

Dear Ajit,

Seriously tell me where are these shipments now / Are they were in planning or not

Warm Regards :-

Baldeep Singh
Asst. Vice President Logistics.
Datawind Innovations Pvt Ltd.
M : 98768-13513
Email : baldeep@datawind.com

DATAWIND



From: Parminder Singh [<mailto:parminder.s@datawindcorp.com>]
Sent: Wednesday, October 12, 2016 4:45 PM
To: 'Ajit Singh'; 'Anoop Bisht'; 'Sujit Roy'; shekhar.chakraborty@haikologistics.com; rahul.dhar@haikologistics.com; vivek.del@haikologistics.com; manoj.gupta@haikologistics.com
Cc: 'Baldeep Singh'
Subject: RE: DSR

Hi Ajit,

67

68

Cargo delivered to you 14 days before (29-09-2016) at Hongkong. Many flights came to Chennai in 14 days. Were you not got the space on any flight? Or all were cancelled?

I want these shipments by next (THU) flight positively.

Regards :-
Parminder Singh
Associate VP
Exim & Accessories
+91 9560954800

DATAWIND 

From: Parminder Singh [mailto:parminder.s@datawindcorp.com]
Sent: Wednesday, October 12, 2016 4:03 PM
To: 'Ajit Singh' <ajit@haikologistics.com>; 'Anoop Bishr' <anoop.del@haikologistics.com>;
'Sujit Roy' <sujit.hyd@haikologistics.com>; shekharchaki@haikologistics.com;
rahuldhar@haikologistics.com; vivek.del@haikologistics.com; manojgupta@haikologistics.com
Cc: Baldeep Singh <baldeep@datawind.com>
Subject: RE: DSR

Hi Ajit,

After discussed with Mr.Eric (Eagle Trans), Mr.Rahul confirmed me (on 06-10-2016) to deliver the battery shipments by Saturday (08-10-2016) positively. But now you saying We are pushing them and they assure us to move it by SAT. what is this ?

Regards :-
Parminder Singh
Associate VP
Exim & Accessories
+91 9560954800

DATAWIND 

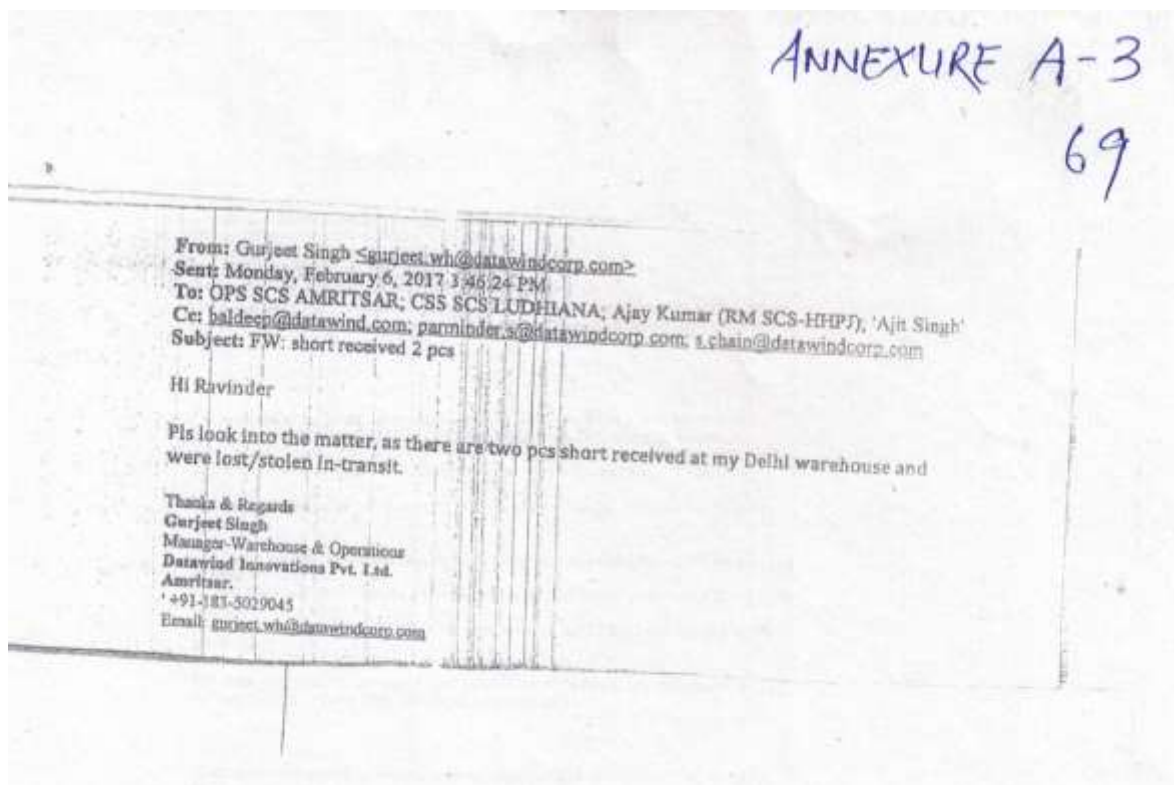
From: Parminder Singh [mailto:parminder.s@datawindcorp.com]
Sent: Wednesday, October 12, 2016 9:30 AM
To: 'Anoop Bishr' <anoop.del@haikologistics.com>; 'Sujit Roy' <sujit.hyd@haikologistics.com>; shekharchaki@haikologistics.com; 'Ajit Singh' <ajit@haikologistics.com>; rahuldhar@haikologistics.com; vivek.del@haikologistics.com; manojgupta@haikologistics.com
Cc: Baldeep Singh <baldeep@datawind.com>
Subject: RE: DSR

Hi Haiko Team,

Why are you not responding?

Dear Mr.Manoj : Please intervene.

Regards :-
Parminder Singh
Associate VP
Exim & Accessories
+91 9560954800



However, from the aforesaid record we do not find any dispute regarding quality of goods supplied or services as alleged by the Corporate Debtor.

Learned counsel appearing on behalf of the Appellant submits that it is a logistics company, therefore delay in supply or loss of material amounts to existence of dispute. However, such submission cannot be accepted there being a debt payable more than Rs.1 Lakh and there being no dispute relating to quality of goods or service. If there is a delay in supply or loss of goods, a person may avail appropriate remedy form appropriate court of law but it cannot be a ground for rejection of an application under Section 9.

Learned counsel for the Appellant submits that even prior to issuance of demand notice under Section 8(1) on 19th December, 2017 a suit was filed by the Operational Creditor against the Corporate Debtor which was withdrawn on 20th January, 2018 from the court of Hon'ble Additional District Judge, New Delhi (page 100) and thereafter a fresh demand notice was issued under Section 8(1) on 9th May, 2018. It was submitted that the Adjudicating Authority has failed to consider that a suit was preferred and then withdrawn, which shows a pre-existing dispute.

Let notice be issued on Respondent by Speed Post. Requisites alongwith process fee be filed by tomorrow. If the Appellant provides email address of the Respondent, let notice be also issued through email.

Post the case 'for orders' on **4th February, 2020** for disposal.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk