

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.427/2022 & IA Nos.1058 &
1059/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 30.06.2022 in CP(IB)
No.320/9/HDB/2021
passed by the ‘Adjudicating Authority’ (National Company Law
Tribunal, Hyderabad Bench, Hyderabad)

In the matter of:

Mr. V Venkata Satyanarayana,
5-4-12, Mentevari Thota,
Bhimavaram, West Godavari District,
Andhra Pradesh – 534 201.

... Appellant

V

1. M/s Pattabi Enterprise,
70-71, Hootagally Industrial Area,
Hootagally, Mysure,
Karnataka – 570 018.

2. Mayur Rajendrakumar Popat,
Interim Resolution Professional,
1-30-238/163, Telecom Colony,
Kanajiguda,
Hyderabad, Telangana – 500 015.

... Respondents

Present :

For Appellant : Mr. V Raghunath, Advocate

For Respondents : No representation

ORDER

(Virtual Mode)

13.12.2022 : Heard Mr. V Raghunath, the Learned Counsel for the
‘Appellant’, at the ‘Admission stage’, itself.

2. The ‘Appellant’ / ‘Suspended Board of Director’ of the ‘Corporate Debtor’ has focused the instant Comp. App. (AT)(CH)(Ins) No.427/2022, as an ‘Aggrieved Person’, on being dissatisfied with the ‘impugned order’ dated 30.06.2022 in CP(IB) No.320/9/HDB/2021, passed by the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad).

3. The ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad), while passing the ‘impugned order’ dated 30.06.2022, in CP(IB) No.320/9/HDB/2021 (filed by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’) at ‘Paragraph Nos.6 to 10’, had observed the following :-

6. *“The ledger account of the Corporate Debtor, in the books of account of the Operational Creditor, pertaining to a period from 01.04.2019 to 31.03.2020, exhibits an amount of Rs.2,36,39,065/- as being due to the Operational Creditor, from the Corporate Debtor. Further, the payment of Rs.50,00,000/- that the Corporate Debtor claims to have made, is recorded in the said ledger account.*

7. *The Corporate Debtor claims that the Petitioner has raised fictitious invoices, without supplying the goods, as mentioned therein. However, the numbered and dated invoices that have been listed out by the Corporate Debtor tally with those filed by the Petitioner, and are identical. Further, even assuming that the said invoices are fictitious, the Corporate Debtor has not stated*

the details of the purported invoices under which supply has been made and payment effected, as is claimed by it.

8. *Secondly, the Corporate Debtor, in its reply to the statutory demand notice of the Petitioner, stated that the goods supplied were made using poor quality paper and are not useful for the purpose of export packaging. There is nothing on record to suggest that the Corporate Debtor had communicated the same to the Petitioner, prior to the issuance of the demand notice. It appears that such a complaint about the quality of goods, possibly raised for the first time at such a stage, is a facade taken to avoid making the payments that are due to the Petitioner.*

9. *Thirdly, the Corporate Debtor claims that the material had been lying in its godowns, without being of any use and the Petitioner was asked several times to lift the goods and vacate the premises. While such an averment finds a place in the reply of the Corporate Debtor to the statutory demand notice of the Petitioner, no prior correspondence to that effect has been placed on record by the Corporate Debtor, in order to substantiate the claim, thereby hollowing the same.*

10. *Fourthly, with regard to the next defense employed by the Corporate Debtor, citing the filing of a complaint under Section 138 of the Negotiable Instruments Act, 1981, in the Court of the V Judicial Magistrate of First Class, Mysuru, it is settled that proceedings under Section 138 of the Negotiable Instruments Act, 1881, do not amount to a pre-existing dispute, and are, therefore, not an impediment to proceedings under Section 9 of the Code, 2016. We derive support from the ruling of the Hon'ble NCLAT in Sudhi Sachdev v. Appl Industries (Company Appeal (AT) (Insolvency) No.623/2018), in which it was held that*

pendency of a case under Section 138 of the Negotiable Instruments Act, 1881, actually amounts to admission of debt and not an existence of dispute.”

and ‘admitted’ and declared ‘Moratorium’ etc.

4. Assailing the ‘Validity’, / ‘Propriety’, / ‘Legality’ of the ‘impugned order’ in CP(IB) No.320/9/HDB/2021, passed by the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) dated 30.06.2022, the Learned Counsel for the ‘Appellant’ submits that the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad), had committed an ‘error’ in ‘admitting’ the ‘Application’, filed by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’, without appreciating the ‘real facts and circumstances’ of the ‘instant Case’.

5. According to the Learned Counsel for the ‘Appellant’, that the ‘Corporate Debtor’, had not ‘acknowledged’, the copies of ‘Bills’, submitted by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ and the ‘Delivery Challans’ or any ‘Acknowledgment’ about the ‘Delivery of the Goods’, covered under the purported ‘Bills’.

6. It is represented on behalf of the ‘Appellant’ that the ‘Corporate Debtor’ had acknowledged the ‘amounts’, claimed by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ and the ‘amounts’ claimed is not

‘entitled’ to ‘recover’ by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’. Added further, the ‘Balance Sheet’, etc., projected before the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) were not ‘acknowledged’ by the ‘Corporate Debtor’.

7. In this connection, this ‘Tribunal’, relevantly points out that according to the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’, it is a ‘Partnership Firm’, engaged in the business of ‘printing boxes’, ‘lamination boxes’, packaging material’ and other ‘allied activities’, having its ‘Registered Office at 70-71, Hootagally Industrial Area, Hootagally, Mysore, Karnataka.

8. The ‘Corporate Debtor’ is a ‘Private Limited Company’ and it is exporting the ‘sea food products’ and availed services of the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ for ‘packaging the materials’ and in this regard, there was an ‘understanding’ between the Parties, in terms of the ‘quotation’, furnished by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’, after which the ‘goods’ were supplied and ‘invoices’ were raised.

9. The clear cut stand of the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ is that ‘every invoice’ raised, till the date of filing of the ‘Application’, before the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) was accepted by the ‘Corporate Debtor’, without any ‘Demur’ or any ‘Dispute’. Apart from that,

the '1st Respondent' / 'Petitioner' / 'Operational Creditor' had credited the 'GST', on the account of the 'Corporate Debtor, in a 'timely manner' and kept sending 'by Post', the copy of the 'Account Statement' and further that the 'Corporate Debtor', had also 'acknowledged' the 'Balance' and 'E-mailed' the 'Ledger' to the '1st Respondent' / 'Petitioner' / 'Operational Creditor', clarifying the 'GST Credit' aspect.

10. The grievance of the '1st Respondent' / 'Petitioner' / 'Operational Creditor', before the 'Adjudicating Authority', (National Company Law Tribunal, Hyderabad Bench, Hyderabad) is that the 'Corporate Debtor' is liable to 'pay' to the 'seller' a total sum of Rs.2,90,30,715/- and in this regard the 'Corporate Debtor', had no intention to clear the 'Dues' and hence, the '1st Respondent' / 'Petitioner' / 'Operational Creditor' perforced to issue a 'Statutory Demand Notice', in directing the 'Corporate Debtor' to clear the 'outstanding sum' of Rs.2,90,30,715/-, being the 'Default sum', within 'Ten Days', of the receipt of the 'Demand Notice' sent to the 'Registered E-Mail Address of the Company', as well as to the 'E-mail address of its Director', as available on the 'Ministry of Corporate Affairs' website'.

11. Per contra, the 'Corporate Debtor', before the 'Adjudicating Authority', (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in its 'Reply', had averred that the 'Operational Creditor's claim' is mainly based on 'Nine Invoices', for supply of 'ply printed

corrugated boxes and laminated boxes and the 'Corporate Debtor' had not placed all the 'purchase orders', for supply of 'materials' to be supplied with the 'invoices' to the 'Corporate Debtor'.

12. The 'defence' projected before the 'Adjudicating Authority', (National Company Law Tribunal, Hyderabad Bench, Hyderabad) on behalf of the 'Corporate Debtor' is that the 1st Respondent' / 'Petitioner' / 'Operational Creditor' is claiming 'huge sum', without supply of 'Goods' and raised the 'amount', with 'Fictitious Invoices' and further, that the '1st Respondent' / 'Petitioner' / 'Operational Creditor', without supplying the 'Goods' had raised the 'invoices' only to bring the 'Company' into an 'insolvency'.

13. In regard to the 'Plea' of the 'poor quality of paper', the 'Corporate Debtor' had taken a stand, before the 'Adjudicating Authority', (National Company Law Tribunal, Hyderabad Bench, Hyderabad) that in the 'subject matter' in issue, there was a 'pre-existing dispute', in regard to the 'quantity and quality' of the goods supplied and that the time line, which are delivered to the 'Corporate Debtor' are not useful for 'accepted parties' and the time of the 'Corporate Debtor' was wasted, since the Goods sent by the 'Corporate Debtor' were not allowed for 'shipment'.

14. The stand taken by the 'Corporate Debtor', before the 'Adjudicating Authority', (National Company Law Tribunal, Hyderabad Bench, Hyderabad) is that the 'poor quality' of 'Boxes', were supplied by the 1st

Respondent’ / ‘Petitioner’ / ‘Operational Creditor’, which are of ‘no use’ for ‘exporting’ any kind of material, and they were ‘lying’ in the Godown, without any use.

15. Coming to the aspect of the Section 138 of the ‘Negotiable Instrument Act, Criminal Case, the ‘Corporate Debtor’ was summoned to the ‘Criminal Court’, ‘Mysuru’, based on the ‘false case’, filed by the ‘Operational Creditor’ and in fact, Mr. Nerella Mohan Rao, though was not a ‘Director of the Corporate Debtor’, his signatures were fabricated on the ‘Cheques’ of the ‘Corporate Debtor’ with the ‘forged signatures’ and the matter is pending as on date.

16. Lastly, in the ‘Reply’ before the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad), the ‘Corporate Debtor’ had come out with a ‘candid plea’ that there was a ‘pre-existing dispute’, and as such, the ‘Section 9’ Application filed by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ is not maintainable, *per se*, in the eye of ‘Law’.

17. It may not be out of place, for this ‘Tribunal’, to make a pertinent mention that in CP(IB) No.320/9/HDB/2021, the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ had averred that the ‘Operational Creditor’ had levied interest at the rate of 9% per annum, after giving ‘Credit’ period of ‘30 Days’, as agreed to, between the ‘Parties’ and in the ‘E-mail’ updated the ‘Ledger’, to the ‘Corporate Debtor’ and, in fact, in

spite of several requests made by the ‘Operational Creditor’ to the ‘Corporate Debtor’, the ‘Corporate Debtor’ had failed to ‘effect the payment’, but came out with a ‘false assurance’ and in ‘reality’, the payment was not effected.

18. This ‘Tribunal’, has ‘Heard’ the Learned Counsel for the ‘Appellant’ / ‘Suspended Board of Director’ of the ‘Corporate Debtor’ and ‘noted’ his contentions.

19. In so far as the ‘Ledger Account’ of the ‘Corporate Debtor’ in the ‘Books of Account’ of the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’, for the period from 01.04.2019 to 31.03.2020 is concerned, a sum of Rs.2,36,39,065/- is shown as a ‘sum due’ to the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ from the ‘Corporate Debtor’, although Rs.50,00,000/- was said to have been paid by the ‘Corporate Debtor’, the same was mentioned in the ‘Ledger Account’ of the Corporate Debtor.

20. A ‘Corporate Debtor’, in ‘Law’ is entitled to take all ‘available ‘Defences’ and the ‘Dispute’, purportedly raised by the ‘Corporate Debtor’ is not to be a ‘weak one’ or ‘near assertion of fact’ and that too ‘unsupported’ with any ‘satisfactory material’.

21. The very fact that a ‘criminal complaint’ before the Hon’ble Judicial Magistrate of First Class Court No.V, Mysuru, is filed by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ against the ‘Corporate Debtor’, that itself, will clearly, unerringly points out to the ‘Admission of

Debt’, and that will not point out an ‘existence of dispute’, as held by this ‘Tribunal’s Judgment’, in ‘*Sudhi Sachdev v. Appl Industries*’ (Comp. Appl. (AT) (Ins) No.623/2018, which has been rightly ‘quoted’ by the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in ‘Paragraph 10’ of the ‘impugned order’.

22. As regards the ‘quality of materials’, that was ‘supplied’ and the ‘supplied goods were lying in the Godown’, without any use, etc., this ‘Tribunal’, pertinently points out, that only in the ‘Reply’ of the ‘Corporate Debtor’ to the issuance of ‘Statutory Demand Notice’, the ‘quality’ aspect of ‘Goods’ was taken and on an earlier occasion there was ‘no correspondence’, that was ‘exchanged’ / ‘communicated’ between the parties or that was not placed before the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad), to support the ‘Claim’ of the ‘Corporate Debtor’.

23. Under the Insolvency & Bankruptcy Code, 2016, the aspect of existence of ‘Default’, takes a ‘prime seat’, and the reason supposed to be projected by the ‘concerned Party’ viz., ‘inability to pay’, is of ‘no avail. In a given case, if a ‘Debt’ is ‘Disputed’, yet, if the ‘amount’ is more than Rs.1,00,000/- (Rupees One Lakh Only), now Rs.1,00,00,000/- (Rupees One Crore Only) the same is ‘maintainable in Law’. No wonder, an ‘Adjudicating Authority’, (‘Tribunal’), is not ‘empowered’ to ‘decide’ the ‘Default Sum’.

24. A 'Corporate Debtor', is entitled in 'Law' to advance a 'Plea', that the 'Default' had not taken place and that 'Debt', including a 'Disputed Sum', is not 'Due'. A 'Debt' may not be 'Due', if it is 'not payable' in 'Law' or 'Fact'

25. A mere 'pendency' of a 'Civil Suit' or a 'Criminal Case', under Section 138 of the 'Negotiable Instrument Act', will not preclude an 'Applicant,' to seek an 'appropriate remedy', under the 'Insolvency & Bankruptcy Code, 2016', if he so desires / advised.

26. It cannot be forgotten that the 'Proceedings' in the 'Insolvency & Bankruptcy Code, 2016' are 'summary' in 'Nature', and it is not an 'adversarial in Character'. An 'Adjudicating Authority', ('Tribunal') is not a 'Civil Court', to decide about the 'Contract' entered into between the parties concerned.

27. Be that as it may, this 'Tribunal' relevantly points out that the 'Defence' to be taken by the 'Corporate Debtor' in a given Case, cannot be 'namesake one' / 'moonshine one' or an 'illusory one'. Further, on a careful consideration of the contentions advanced on behalf of the 'Appellant' / 'Suspended Board of Director' of the 'Corporate Debtor', and also this 'Tribunal', on going through the 'impugned order' dated 30.06.2022 in CP(IB) No.320/9/HDB/2021 passed by the 'Adjudicating Authority', (National Company Law Tribunal, Hyderabad Bench, Hyderabad), comes to an 'inevitable' and 'irresistible conclusion', that the

view arrived at by the ‘Adjudicating Authority’, (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in ‘Admitting’ the ‘Application’ filed by the ‘1st Respondent’ / ‘Petitioner’ / ‘Operational Creditor’ (under Section ‘9’ of the I&B Code, 2016 r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is ‘Free from any Legal Flaws’. Viewed in that perspective, the instant Comp. App. (AT)(CH)(Ins) No.427/2022 fails.

In fine, the instant Comp. App. (AT)(CH)(Ins) No.427/2022 is ‘dismissed’ without Costs. The connected pending IA/1058/2022 (For ‘Urgent Listing) and IA/1059/2022 (For ‘Stay’) are Closed.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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