

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Division Bench)

Item No.-211
IB-629/ND/2021
IA/4514/2023

IN THE MATTER OF:

Ingram Micro India Pvt. Ltd.

Vs.

Bathla Teletech Pvt. Ltd.

....Applicant

.....Respondent

SECTION

U/s 9 of the IBC

Order delivered on 10.11.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

IA/4514/2023

Order pronounced in open court vide separate sheets. IA/4514/2023 in IB-629/ND/2021 is **allowed**.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI
I.A. 4514/2023
IN
COMPANY PETITION (IB) No.629/ND/2021**

Application under Rule 11 of NCLT Rules, 2016

In the matter of:

INGRAM MICRO INDIA PRIVATE LIMITED

Having its registered office at 5th floor,
Empire Plaza, building A. LBS Marg,
Vikhroli West Mumbai,
Maharashtra-400083

...OPERATIONAL CREDITOR

Versus

BATHLA TELETECH PRIVATE LIMITED

having its registered office at 258,
Gujrawala Town, Part-iii,
New Delhi-110009.

...CORPORATE DEBTOR

And in the matter of

BATHLA TELETECH PRIVATE LIMITED

....APPLICANT

versus

INGRAM MICRO INDIA PVT. LTD.

....RESPONDENT

Order Pronounced on: 10.11.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Adv. Mr. Sudhir Kumar, Mr. Siddharth Kumar,
Mr. Nagendra Pal

For the Respondent : Mr. Gaurav Mitra, Ms. Lavanya, Mr. Bhavya,

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. The instant application is filed by Bathla Teletech Private Limited (hereinafter referred as 'Applicant'/Corporate Debtor) under Rule 11 of the National Company Law Tribunal, 2016 before this tribunal seeking to place additional documents for the purposes of adjudication of the main petition i.e IB-629/ND/2021.

Averment by the Applicant/Corporate Debtor

2. Applicant submitted that the the amount claimed as due against the applicant/Corporate Debtor in the main petition i.e IB-629/ND/2021 has a pre-existing dispute. It is submitted that the Operational Creditor/Respondent had filed a Petition under section 11, Arbitration and Conciliation Act, 1996 before the Delhi high Court registered as Arb.P.1225/2022, whereby the hon'ble

court vide order dated 20.01.2023 had appointed a Sole Arbitrator namely Mr Justice Pradeep Nandarjog (Retd. Chief Justice of Bombay High Court) to adjudicate the disputes between Bathla Teletech Pvt Ltd and Apple India Pvt Ltd.

- 3.** It further submitted that the Apple India Pvt Ltd (i.e a third party) has filed an application under section 16(3) of Arbitration and Conciliation Act, 1996 (for brevity “A&C, 1996”) seeking rejection of Applicant/Corporate Debtor claim and statement of defence in which they have made contentions that the claim of Bathla Teletech Pvt Ltd i.e Applicant/Corporate Debtor lies with Ingram Micro Tech Pvt ltd i.e Respondent/Operational Creditor and not with Apple India Private Limited. Copy of the application file under section 16(3) of A&C, 1996 is annexed as Annexure-A with the present Application.
- 4.** Applicant submitted that the statement of defence and the application application under section 16(3) of Arbitration and Conciliation Act, 1996 filed by Apple India Private Limited needs to be placed on record for fair jurisdiction of the present matter. Copy of the Statement of Defence is annexed as Annexure –B with the present Application.
- 5.** Applicant submitted that statement of defence and the application of 16(3) of Arbitration and Conciliation Act,1996 has been been filed by Apple India Pvt Ltd were not in existence at the time of filing of Reply by the Applicant/Corporate Debtor in the main petition and have recently been filed by

Apple India Pvt Ltd on 1.7.2023, which is the reason the Applicant could not file it with the reply in the main petition i.e IB-629/ND/2021.

Reply of the Respondent/Operational Creditor:-

6. Per contra, the respondent through his reply submitted that present Application being 1.A./4514/ 2023 is illegal, unreasonable and unjustified as the alleged two sets of additional documents sought to be placed on record by the Applicant/Corporate Debtor pertains to the records of an altogether different arbitration matter exclusively going on between the Corporate Debtor and a third party i.e Apple India Pvt. Ltd. being titled as "Bathla Teletech Pvt. Ltd. Vs. Apple India Pvt. Ltd." before Mr. .Js Pradeep Nandrajog (retd.) Ld. Sole Arbitrator and the Respondent/Operational Creditor is not a party in the said arbitration proceeding. Thus, the present Applications deserves outright dismissal with exemplary costs.
7. Respondent submitted that the present Application, the Applicant seeks to place on record the alleged two sets of additional documents, which are as under:
 - i. Application dated 30.06.2023 filed by a third party Apple India Pvt. Ltd. under Section 16(3) of the Arbitration & Conciliation Act, 1996 with enclosed documents from Annexure RD-1 to Annexure RD-20 (running in 201 Pages) annexed with the Arbitration Application before the Ld. Sole Arbitrator.; and

ii. Statement of Defence dated 28.06.2023 filed by the third party Apple India Pvt. Ltd. (running in 55 Pages) annexed with the Arbitration Application before the Ld. Sole Arbitrator.

- 8.** It is also relevant to point out that the Application dated 30.06.2023 filed by a third party i.e Apple India Pvt. Ltd. under Section 16(3) of the Arbitration & Conciliation Act, 1996, contains 20 enclosed documents from Annexure RD-1 to Annexure RD-20 and the Operational creditor is not even a signatory to any of the Apple Authorised Reseller Agreements being annexed as Annexure RD-1, Annexure RD-2, Annexure RD-9 Annexure RD-11, Annexure RD-13, Annexure RD-15, Annexure RD-17 and Annexure RD-18, with the Arbitration Application.
- 9.** The Respondent submitted that the present Application is also liable to be dismissed being highly illegal, misconceived and unfounded in the light of the fact that on the previous occasion, similar attempt of the Corporate Debtor seeking to place on record the Report of the Local Commissioner dated 07.06.2022 relating to the subject matter of the same dispute between the same parties i.e., the Corporate Debtor and Apple India Pvt Ltd, has been denounced and deprecated by this Hon'ble Tribunal, while dismissing the I.A. No. 4884/2022 filed by the Corporate Debtor, vide its Order dated 03.03.2023. Copy of the Order dated 03.03.2023 annexed as Annexure –A with the reply of the present Application.
- 10.** Respondent further submitted that the present Application is not maintainable being filed contrary to the mandate of the IBC Code, 2016 and various judicial

pronouncements of the Hon'ble National Company Law Appellate Tribunal and this Hon'ble Tribunal which specifically hold that no documents of a later date after the date of issuing of the Demand Notice under Section 8 of the IBC Code, 2016 shall be allowed to be placed on record much less be allowed to be referred to suggest existence of an alleged "pre-existing dispute". Further the Respondent submitted that the Application under Section 16(3) of the Arbitration & Conciliation Act, 1996 filed by a third party Apple India Pvt. Ltd. in an arbitration proceeding, which now, sought to be placed on record is dated 30.06.2023, similarly, Statement of Defence filed by the third party Apple India Pvt. Ltd. in the arbitration proceeding is dated 28.06.2023. Therefore, both these set of documents having opted to be placed on record now at this belated stage, much after the date of the Demand Notice dated 07.08.2021 and filing of Application under Section 9 of the IBC Code, 2016 dated 24.09.2021. Thus, the present Application is not maintainable and deserves to be dismissed.

- 11.** Respondent submitted that the instant Application seeking to place on record the alleged additional documents deserves outright dismissal in the light of the fact that the present insolvency proceeding initiated by the Operational Creditor arise out of an entirely different Contract i.e.. the Sales Terms and Conditions of each of the invoices duly received by the Corporate Debtor as well as the additional/ standard/ detailed Sales Terms & Conditions dated 25.02.2021 shared/ executed by the Corporate Debtor in favour of the Operational Creditor/Respondent. Respondent further submitted that the subject matter of

the alleged additional documents are based out of an entirely distinct Contracts being various Apple Authorized Reseller Agreements exclusively entered between the Corporate Debtor and a third party entity namely, M/s Apple India Pvt. Ltd. and the Operational Creditor is not at all a party to the such Apple Authorized Reseller Agreements.

Analysis and Findings

- 12.** We have heard the Ld. Counsels for the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been perused.
- 13.** Sans irrelevant facts, adverting to the factual matrix of the present case, the main Company Application i.e., C.P.(IB)629/ND/2021 is filed under Section 9 of the IBC seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor having defaulted in the payment of the Operational Creditor due and payable to the Operational Creditor. The Corporate Debtor had filed the instant application on 22.08.2023 for taking the following documents on record:-
 - i. ANNEXURE A – copy of the Application filed on 30.06.2023 by Apple India Private Limited under section 16 (3) of the Arbitration & Conciliation Act, 1996.
 - ii. ANNEXURE B – the copy of the statement of defence dated 28.06.2023 filed by the Apple India Private Limited before the Ld. Sole Arbitrator.

14. It is often said that procedure is the handmaid of justice. The Hon“ble Supreme Court in Judgement SUGANDHI (dead) by Lrs. & ANR. Versus P. RAJKUMAR;[Civil Appeal No.3427 OF 2020] observed that:-

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon the procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of documents under sub-rule(3).”

15. From the records, we observe that the Applicant/Corporate Debtor had submitted its reply to the main Company Application (C.P./629/ND/2021) on 05.04.2022 whereas the additional documents sought to be relied upon are related to the year 2023. It would not be wrong to say that the documents sought to be placed on record did not exist at the time of filing the reply in the main Applicatiion by the Applicant/Corporate Debtor.

16. The Rule 11 of the National Company Law Tribunal (NCLT) Rules, 2016 vest the inherent powers to the Tribunal to meet the ends of justice. Further, the Hon“ble Supreme Court in the matter of Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr. 2021 SCC OnLine SC 543 held that “*there is no bar*

in law to the amendment of pleadings in an application filed under IBC, 2016 or to the filing of additional documents, apart from those initially filed along with application.”

- 17.** Therefore, we are of the view that in the interest of justice liberty can be granted to the applicant to file these additional documents in the main Company Application, with a copy of the respondent. However, the relevancy of these additional documents would be examined in conjunction with the main Application i.e (C.P./629/ND/2022) while deciding the same on merits.
- 18.** IA- 4514/2023 in IB-629/ND/2021 is accordingly allowed. Documents filed along with this IA are taken on record.
- 19.** In terms of the above, IA- 4514/2023 in IB-629/ND/2021 stands disposed off.

Let a copy of order be served to parties.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)