NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1573 of 2023

IN THE MATTER OF:

Akash Deep **...Appellant(s)**
Suspended Director of Khati Solutions Pvt. Ltd.

Versus

Evlion Technologies Pvt. Ltd. &Anr. **...Respondent(s)**
Present:

For Appellant **:** Mr. Vishal Ganda, Mr. AyandebMitra, Mr. Srijan Jain, Advocates.
For Respondents **:**

O R D E R
(Hybrid Mode)

09.09.2024: Heard Counsel for the Appellant. This appeal has been filed against the order passed by the Adjudicating Authority dated 09.11.2023 by which order Section 9 application filed by Respondent Operational Creditor has been admitted. Counsel for the Appellant challenging the order submitted that the amount claimed of Rs. 1,00,54,000/- was out of only Proforma Invoices and two Tax invoices were issued was only of Rs. 31,860/- and Rs. 16,520/-.

2. It is submitted that there was pre-existing dispute between the parties due to which even the tax invoices were not paid. However, the appellant could not appear since notices were not served. In this appeal notices were issued to the Respondent by publication and the notices have been published in the newspaper on 18.04.2024. This Tribunal had already

passed order on 20.05.2024 to proceed ex-parte against Respondent No. 1. Order dated 20.05.2024 is as follows:

> *"On 18.04.2024, the Appellant was permitted to take steps for service of notice by publication in two newspapers i.e., Business Standard and DainikJagaran for the purposes of substituted service on Respondent No.1. It is submitted at the instance of the Appellant that notice was published in two newspapers. Affidavit of service in this regard having been filed, service is complete.*
> *No one put in appearance for Respondent No.1. Respondent No.2 appeared in person.*
> *Service for Respondent No.1 being effected and since no one appeared, Respondent No.1 is set ex-parte.*
> *List this appeal on* ***25.07.2024"****.*

3. IRP has also appeared. We have considered the submissions of Counsel for the Appellant. Operational Creditor has not appeared and the appeal proceeded ex-parte against the Operational Creditor. The Adjudicating Authority in paragraph 2.(v) has noticed about the proforma invoices as follows:

> *2.(v) That the Operational Creditor on 10.09.2022 issued Proforma Invoice No. EV-PI-100922-KSPL-1 for remaining 250 Units of Battery Packs for an amount of Rs. 1,00,54,000/-. The Operational Creditor issued a tax invoice for an amount of Rs. 31,860 on 31.05.2022 and on 08.06.2022 the Operational Creditor issued tax invoice for an amount of Rs. 16,520/-. However, no payment was made by the corporate debtor against the said invoices for a total amount of Rs. 1,00,36,380/-.*

4. Ld. Counsel for the Appellant has also refer to the emails which are much before the issuance of demand notice. Appellant however could not appear before the Adjudicating Authority and the case proceeded ex-parte against the appellant.

5. In the facts of the present case, we are of the view that the ends of justice we served in. Setting aside the order and remitting the matter for a fresh consideration before the Adjudicating Authority with liberty to the appellant to file a reply within three weeks from today. Let Appellant file a Reply within three weeks. Adjudicating Authority may hear the application a fresh after giving a notice to the operational creditor also.

6. IRP is at liberty to make an application before the Adjudicating Authority for his payments of expenses.

7. The appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

sr/nn