

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 338 of 2020**

[Arising out of Order dated 20<sup>th</sup> January, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P. (I.B) No. 82/NCLT/AHM/2018]

**IN THE MATTER OF:**

**Narendrabhai Shah,**

Director Pioneer Globex Pvt. Ltd.  
Residing At: 173/B, Jainam,  
Vijaynagar, Bhavnagar - 364002.

**...Appellant**

**Versus**

**LIM FA PTE Ltd.**

Having its office at:  
284, Jalan Besar,  
Singapore – 208947

Having Corresponding Address at:  
B/501, Mohan Villa, Bajaj Road  
Vile Parle (West), Mumbai – 400056.

**...Respondent No. 1**

**Shri Sunil Kumar Agarwal,**

Tower 6/603 Devnandan Heights,  
Near Poddar School, New D. G. Road,  
Chandkheda,  
Ahmedabad - 382424

**...Respondent No. 2**

**For Appellant: Mr. Abhijeet Sinha and Ms. Pratiksha Sharma,  
Advocates.**

**For Respondent: Mr. Vijay M Chauhan and Mr. Sahil Mahajan,  
Advocates for R-1.  
Mr. Sumit Kansal, Advocate for R-2.**

*Cont'd..../*

**J U D G M E N T**  
**[20.09.2021]**

**A. I. S. Cheema, J.**

The Appellant – Director of the Corporate Debtor – ‘Pioneer Globex Private Limited’ has filed this appeal being aggrieved by the orders dated 20.01.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P. (I.B) No. 82/NCLT/AHM/2018. The Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (for short ‘IBC’) was filed by Respondent No. 1 – ‘M/s Lim Fa Pte Ltd.’ – Operational Creditor against the Corporate Debtor. The Operational Creditor claimed before the Adjudicating Authority that it is a Company incorporated under the laws of Singapore and inter alia carrying on business in metal scrap. Operational Creditor claimed that it had entered into a contract dated 01.03.2016 (Appeal page 90) with the Corporate Debtor and had supplied metal scarp through shipment from Poland to Nhava Sheva Port in India and issued invoices. It is claimed that inspite of repeated requests and reminders Corporate Debtor avoided to pay the due amount of CFR value USD 2,17,682.10/- Operational Creditor also claimed interest on the amount in default. Operational Creditor claimed that it sent demand notice dated 11.12.2017 (Appeal page 87) alongwith Annexures mentioned to the Corporate Debtor but the debt was not cleared. Operational Creditor further pointed out before the Adjudicating Authority the

following documents filed with the Application under Section 9. Para 7 of the impugned order reads as under:

*“In support of its claim, the petitioner has submitted the following documents:-*

<i>Sl. No.</i>	<i>Particulars</i>	<i>Page No.</i>
01	<i>Application by operational creditor – form 5</i>	<i>1-5</i>
02	<i>Copy of computation of amount and date of default</i>	<i>5</i>
03	<i>Copy of master date of respondent</i>	<i>6</i>
04	<i>Annexure – I copy of demand notice along with annexure annexed therein</i>	<i>7-16</i>
05	<i>Copy of postal receipt and track report obtained from Indian Postal Dept.</i>	<i>19-24</i>
06	<i>Annexure-II – copy of affidavit</i>	<i>19-24</i>
	<i>IA – copy of the sales contract</i>	<i>25</i>
	<i>IB – copy of bill of lading, packing list, certificate of origin, certificate of weight and declaration</i>	<i>26-31</i>
	<i>IC – copy of letter dated 14.05.2016</i>	<i>32</i>
	<i>ID – copies of letter dated 20.07.2012, 23.08.2016 and 27.06.2016</i>	<i>33-35</i>
	<i>IE – copies of email</i>	<i>36-37</i>
07	<i>Board resolution</i>	<i>39</i>

2. The Corporate Debtor claimed before the Adjudicating Authority by way of reply that the Application filed was without proper authority; that notice dated 11.12.2017 could not be treated as demand notice; that relevant document confirming non-payment has not been filed; and that there were no agreement with regard to rate of interest.

3. The Adjudicating Authority regarding dispute of non-filing of document confirming no payment (Section 9 (3) (e) of IBC) and that interest was not agreed

to, has not held to be favouring the Corporate Debtor. The counsel for the parties while making submissions, did not argue on these grounds. However, the Counsel for the Appellant has argued with regard to the claim of the Corporate Debtor before Adjudicating Authority that the metal scrap said to have been sent through Bill of Lading No. AMRUIN863194 or Invoice No. PC/LF/101/16, said to be carrying the metal scrap, was not received by Corporate Debtor. Corporate Debtor claimed before the Adjudicating Authority that it verified from the Commissioner of Nhava Sheva Port with regard to Bill of Lading dated 16.04.2018 but reply was not yet received.

4. The Adjudicating Authority referred to the resolution passed in the meeting of Board of Directors dated 04.12.2017 and which had been filed with the Application, authorising Mr. Pratik D. Shah as the authorised representative of the Company to file the Company Petition and held that the Application filed could not be said to be bad in law. The Adjudicating Authority also referred to the notice dated 11.12.2017 (Appeal page 87) and recorded that the notice making demand was supported by the required documents which were annexed with the notice (Appeal page 87 at 89) and referring to the documents held that the notice qualified to be demand notice under the IBC. The objection of not filing document confirming no payment was discarded for reasons mentioned in Para 17 of the impugned order. As regards interest, Adjudicating Authority referring to the Interest Act, 1978 and observed that there was nothing to show that it was agreed that there would be no charging of interest. Thus, the defence

on this count was discarded. These grounds are not agitated in arguments before us. Even otherwise we do not find force in these grounds and find reasons recorded by the Adjudicating Authority to be well founded.

5. As regards the dispute raised by the Appellant of non-receipt of the metal scrap, impugned order Para 20 to 22 read as follows:

*“20. The respondent has denied having received metal scrap through bill of lading No. AMRUIN863194 of invoice No. PC/LF/101/16 carrying metal scrap. The appeal further states that, none of the documents referred to by the applicant evidence delivery of goods and the email correspondence produced by the applicant are misconceived and intentionally placed with the present petition.*

*21. On perusal of the records it is found that, prior to filing of the instant application, the respondent has never questioned about the delivery of goods in the communication made between the respondent and the applicant. That itself shows that the claim made by the respondent that no goods have been delivered to them is misleading, more so when all the documents like sales contract, tax invoice, bill of lading, packing list, certificate of origin, certificate of weight and declaration annexed to the application at page 10-16 bear stamp and signature of the respondent which shows that the respondent had received delivery of such goods.*

*22. On perusal of the record it is found that the petition is complete in all respect.”*

6. Thus, the Adjudicating Authority admitted the Application.

7. One grievance of the Appellant is that the Corporate Debtor had filed I.A. No. 678/2019 (Appeal page 136-Annexure A-8) making 'Nhava Sheva Port Authorities' as respondent to claim that the said authority had not given documents regarding delivery of the goods was not duly decided. The Appellant has referred to impugned order Para 25 where it was observed that the I.A. does not merit any consideration.

8. In the course of the Appeal the Appellant was given opportunity and the Appellant has with Dy. No. 25367 and 26409 filed documents and Convenience Compilation - Dy. No. 27238 and referred to screenshots from the 'icegate website' to argue that the goods were not received by the Corporate Debtor but the same were delivered to someone else.

9. Against this Learned Counsel for the Respondent – Operational Creditor has supported the impugned order referring to the documents as were filed before the Adjudicating Authority, which had been filed with the Appeal and culled out into Convenience Compilation filed vide Dy. No. 27150. The Learned Counsel for the Operational Creditor is supporting the impugned orders passed and claims that the Appeal should be dismissed.

10. We are taking up the arguments raised by the Learned Counsel for the Appellant with regard to authority of Mr. Pratik D. Shah who filed the Application as authorised signatory of the Operational Creditor Company. The application is signed by Mr. Pratik D. Shah supported by affidavit. The Learned Counsel for the Appellant referred to Annexure A10 (page 148) pursis which was filed by Operational Creditor alongwith copy of Circular Resolution dated 04.12.2017 (Appeal page 149). It is signed by two Directors of the Operational Creditor. The arguments of the Learned Counsel for the Appellant is that it being a Foreign Company the document does not show that it has been apostilled or that it has been notarized. The Learned Counsel states that it is a plain paper resolution without signature and does not even bear stamp of the Company. What we find is that apart from this document there was another document dated 04.12.2017 filed by the Operational Creditor with tittle "TO WHOMSOEVER IT MAY CONCERN". The document (at Appeal page 119) is signed and bears stamp of the Operational Creditor. The document refers to the Board Resolution dated 04.12.2017 (Appeal page 149) and that the Board of Directors have authorised Mr. Pratik D. Shah as authorised representative of the Operational Creditor to file legal proceedings against the Corporate Debtor – 'Pioneer Globex Pvt. Ltd.'. The Adjudicating Authority has relied on such document and accepted that filing of Application could not be said to be bad.

11. Learned Counsel for the Appellant relied on Section 85 of the Indian Evidence Act, 1872, which reads as follows:

**“85. Presumption as to powers-of-attorney.** — *The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, <sup>1</sup>[Indian] Consul or Vice-Consul, or representative<sup>2</sup> \*\*\* of the <sup>3</sup>[Central Government], was so executed and authenticated.”*

12. Learned Counsel for the Appellant then relied on judgment in the matter of *“Jaldhi Overseas Pvt. Ltd. vs. Bhushan Poer & Steel Limited”, 2017 SCCOnline Cal 4414* to argue that unless the document executed in a Foreign Country is apostilled, the same cannot be accepted in evidence. Perusal of the judgment in the matter of *‘Jaldhi Overseas Pvt. Ltd.’* (supra) shows that it related to enforcement of a foreign award. Dispute raised was that the execution application had not been notarised in the proper manner as required under the law. In that matter the execution was witnessed by a Notary Public of Singapore. In para 60 of the judgment the Hon’ble High Court found that and in that case Court was satisfied that appropriate procedure for notarial attestation on the Power of Attorney had been duly and validly done. It is apparent that matter of *‘Jaldhi Overseas Pvt. Ltd.’* related to execution of Power of Attorney. In the present matter, we are concerned with the Directors of the Company passing resolution in favour of a person to act as Authorised Representative of the Company. Section 85 of the Evidence Act relates to documents purporting to be Power of Attorney. When such document is authenticated by any Notary Public, any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of Central

Government presumption regarding execution and authentication arises. The Learned Counsel for the Operational Creditor has pointed out that the Operational Creditor has two Directors and both the Directors signed the Circular Resolution, copy of which is at Annexure A10 and thus it is stated by him that there is no defect in giving authority to Mr. Pratik D. Shah. In fact, record further shows that Mr. Pratik Shah was even earlier following up with Corporate Debtor when dues of Corporate Debtor had not been cleared.

13. We find ourselves in agreement with the Learned Counsel for the Operational Creditor. It is not that anybody has come on behalf of Operational Creditor to object to the manner in which the resolution was passed. On the basis of technicalities raised by the Corporate Debtor we do not find that much weight can be given to the argument raised on this count.

14. As regards the dispute raised with regard to the notice under Section 8 of IBC. The Notice is dated 11.12.2017 at Appeal page 87 to 89. The dispute raised is that this notice is not in format and as required under Section 8 read with Rule 5(a) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 ('Rules' in short). There is Form 3 below the Rules with regard to the format. We have perused the format and particulars recorded in the notice dated 11.12.2017, which annexed copy of the sales contract, copy of tax invoice, copy of bill of lading, packing list, certificate of origin, certificate of weight and declaration as well as list of invoice alongwith interest calculation. Basic requirements of Section 8(1) are as follows:

*“8. (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.”*

15. The Notice more than enough meets the requirements of Section 8(1). For mere technicality that the notice should purport to be in the format (although sufficiently meeting the requirements of the format) we do not want to ascribe undue weight to such argument which is mere technicality.

16. Learned Counsel for the Appellant has argued that the Operational Creditor attached various documents regarding loading of the goods for shipment to prove dispatch but however document of delivery to the Corporate Debtor has not been proved. We have gone through the record and the Additional Documents filed by the Appellant. The Learned Counsel for the Operational Creditor referred to the documents filed with the Appeal (which were filed with the Application under Section 9 of IBC), copies of which have also been filed with the Convenience Compilation Dy. No. 27150 by the Respondent.

17. The Counsel for the Respondent submitted that firstly there is Sales Contract dated 01.03.2016 (Appeal page 90) which is document with regard to the agreement between the parties. Then reference is made to the Tax Invoice (Appeal page 91). The Learned Counsel pointed out that this Tax Invoice is not only signed by the Operational Creditor but even the Director of Corporate Debtor signed this document. Reference is also made to the Bill of Lading (Appeal page

92) to submit that the Bill of Lading as per requirement of the Corporate Debtor was made, "To order" as regards the consignee. The Learned Counsel for the Operational Creditor has read this document Bill of Lading having B/L No. AMRUIN863194 with document at page 112 of the Appeal where on the letter head of the Corporate Debtor Director, Hardik Shah verified the same Bill of Lading for quality and quantity of goods 'that has been shipped'. The Bill of Lading is dated 04.05.2016 and letter issued by the Director of Corporate Debtor is dated 14.05.2016. The document may be reproduced. The same reads as under:-

*"I HARDIK SHAH a director in M/s Pioneer Globex Private Limited declare and state as under:-*

- 1. I hereby confirm that the consignment bearing BL No. AMRUIN863194 concerning METAL SCRAP material before its shipment has been duly verified by the authorized representatives of our Company and Company is satisfied as to the quality and quantity that has been shipped. The company will not be raising objections concerning the quality and/or quantity of the said material so shipped hereafter*
- 2. The writing shall be binding upon Company and its Successors and assigns.*

*Place : Mumbai*

*Dated : 14/05/2016*

*For Pioneer Globex Pvt. Ltd.*

*Director"*

18. Thus, it is argued by the Learned Counsel for the Operational Creditor that the Bill of Lading was duly acknowledged as well as shipment was acknowledged. The Counsel also referred to Packing List (Appeal page 93), Certificate of Origin (Appeal page 94), Certificate of Weight (Appeal page 95) and Declaration (Appeal page 96) all dated 17.04.2016 which bear stamps and signatures not only of the Operational Creditor but also of the Corporate Debtor.

19. As regards the strenuous argument made by Learned Counsel for the Appellant to show that the material under Bill of Lading was delivered to someone else, Learned Counsel for the Operational Creditor rightly pointed out terms of Bill of Lading. The Convenience Compilation filed by Respondent vide Dy. No. 27150 has alongwith the Bill of Lading dated 04.05.2016 fine print terms. Typed copy of the same has also been filed, which is at page 30 and term 4(1) may be reproduced:

**“4. NEGOTIABILITY AND TITLE TO THE GOODS**

*(1) This Bill of Lading shall be non-negotiable unless made out “to order” in which event shall be negotiable and shall constitute title to the Goods and the holder shall be entitled to receive or to transfer the Goods herein described.”*

20. Thus, it is argued by the Learned Counsel for the Operational Creditor that when the Corporate Debtor wanted the goods to be sent “To order”, the Bill of Lading was negotiable and once it is negotiable and there are documents to show

acknowledgement of Bill of Lading by the Corporate Debtor, rest is matter within knowledge of the Corporate Debtor as to how the Corporate Debtor has further negotiated the Bill of Lading. We find substance in the argument of Learned Counsel for the Operational Creditor. Thus, we discard the argument by Learned Counsel for the Appellant that the Corporate Debtor did not receive the value of the goods.

21. Learned Counsel for the Respondent pointed out reminders sent by the Operational Creditor to the Corporate Debtor on 20.07.2016, 23.08.2016 and 27.06.2017 (Copies at page 113 to 115 of the Appeal). The document dated 27.06.2017 sent to the Corporate Debtor mentions that despite regular and intense follow up by Deepak Shah and Pratik Shah, outstanding amounts have not been paid. The letter was addressed to Hardik Shah as well as the Appellant – Narendra Shah for the Corporate Debtor.

22. The Counsel for the Respondent – Operational Creditor has referred to email dated 12.10.2016 sent by Mr. Hardik Shah to [info@pratikcorporation.com](mailto:info@pratikcorporation.com), who was in contact with the Corporate Debtor for payments on behalf of the Operational Creditor. The email reads as follows:

*“From: hardik SHAH [hardikshah\\_us@yahoo.com](mailto:hardikshah_us@yahoo.com);  
To: [info@pratikcorporation.com](mailto:info@pratikcorporation.com);  
Subject: Regarding payment  
Sent: Tue, Oct 11, 2016 1:03:45 PM*

*Dear all*

*Regarding the problems that have been created in Limfa due to the delay in the payment we sincerely apologise for*

*that. As of we have tried out level best and come up with a solution in which we will be clearing the payment in 3 parts in one month where we will be doing a transaction of goods worth 1 m in one month and every transaction of 3pp k we will be cutting of 100 k so at the end of the month we will be reducing almost 300 k. And so our limit will be reduced to 2 m from 2.3 m. Kindly support us for the same so we can move the business ahead and looking for a healthy relation for future with your good company. Looking for a positive response from ur side.*

*Thanks  
Hardik Shah*

*Sent from my iPhone”*

23. In addition to above Learned Counsel for Operational Creditor pointed out document at page 117 of the Appeal dated 18.10.2016 vide which document Hardik Shah sent message forwarded by Kshitij Shah to [info@pratikcorporation.com](mailto:info@pratikcorporation.com). The Learned Counsel for the Operational Creditor pointed out that in this email also the dues payable by the Corporate Debtor were acknowledged. The Learned Counsel for the Operational Creditor rightly argued that if the Corporate Debtor had not received the goods, there were no reasons for the Director of the Corporate Debtor to accept that they will be clearing the payments, as seen in the email dated 12.10.2016.

24. We find that the Adjudicating Authority has rightly found that there are dues outstanding which attract Section 9 of IBC. The Appellant is trying to confuse by referring to portal of 'Icegate' but when there are documents in

favour of the Operational Creditor as discussed above, we do not find that Appellant is able to show that the goods were not received and that the Corporate Debtor did not have any liability to pay. We do not find any fault with the impugned order admitting the Application under Section 9.

25. In the course of Appeal, Learned Counsel for the Appellant also tried to refer to documents at page 118 – ‘VALIKPATRA’ in favour of Advocate ‘Minesh J. Soni’, who appeared for the Operational Creditor before Adjudicating Authority. The Learned Counsel argued that the document purports to have been signed by Manager of Respondent Bank, which was not the case. We do not find that any such ground was raised before the Adjudicating Authority questioning the power given to the Advocate by the authorised person. At stage of Appeal, we will not give weight to this in absence of ground being raised before the Adjudicating Authority. If pointed out, it was a curable defect.

26. We do not find that there is any substance in the Appeal. Appeal is dismissed. No orders as to costs.

**[Justice A.I.S. Cheema]  
The Officiating Chairperson**

**[V. P. Singh]  
Member (Technical)**

Archana