

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

**Company Appeal (AT) (Insolvency) No. 1244 of 2024**

**[Arising out of the Impugned Order dated 12.03.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-V in CP (IB) No. 707 of 2020]**

**In the matter of:**

**Ashoka Creations Limited**

Regd. Office at:

204, Eastern Building, 19 R N Mukherjee Road  
Kolkatta, West Bengal- 700001.

...Appellant

**Versus**

**Lykos India Private Limited**

Regd. Office at:

D-64, Defence Colony  
New Delhi- 110024.

...Respondent

**Present :**

For Appellant : Mr. Mohit Nandwani, Advocate.

For Respondent : Mr. Abhishek Anand and Ms. Avni Sharma, Advocates.

**J U D G M E N T**

**(Hybrid Mode)**

**[Per: Barun Mitra, Member (Technical)]**

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 12.03.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-

V) in CP (IB) 707/(ND)/2020. By the impugned order, the Adjudicating Authority has dismissed the Section 9 application filed by Ashoka Creations Limited-Operational Creditor seeking admission of the Corporate Debtor-Lykos India Pvt. Ltd. into Corporate Insolvency Resolution Process (**'CIRP'** in short). Aggrieved by the impugned order, the present appeal has been filed by the Appellant.

**2.** We have heard Shri Mohit Nandwani, Ld. Counsel appearing for the Appellant and Shri Abhishek Anand, Ld. Counsel representing the Corporate Debtor-Respondent.

**3.** Putting together the factual matrix of the case in brief, the Appellant-Operational Creditor had entered into a business relationship with the Respondent-Corporate Debtor by which the Operational Creditor purchased aluminium rods from the Corporate Debtor and sold copper cathodes to the Corporate Debtor. In this process, the Operational Creditor raised multiple invoices in respect of the cathode rods supplied to the Corporate Debtor. The Operational Creditor claimed that the Corporate Debtor had committed a default in the payment of Rs. 11.52 cr for the goods supplied including interest amount. The Operational Creditor issued the first demand notice under Section 8 of IBC on 18.10.2019 which was revised and resent on 22.10.2019. It is pertinent to note that in both the demand notices, the date of default remained unchanged, being 25.07.2016. The Corporate Debtor replied to the demand notice on 03.11.2019 denying any operational debt owed by it to the Operational Creditor besides raising certain disputes qua the payments claimed by the Operational Creditor, basis which the

Adjudicating Authority rejected the Section 9 application, leading to the filing of the present appeal by the Operational Creditor.

**4.** Making submissions on behalf of the Operational Creditor, the Ld. Counsel for the Appellant submitted that 11 invoices had been raised by the Appellant to the Corporate Debtor in respect of the goods supplied by them. Contending that while some of the invoices were paid while some remained unpaid, assertion was also made that the Corporate Debtor while making payments never linked payments to specific invoices but were chronologically allocated. Submitting that in Part IV of the Section 9 application, the detailed breakup of the invoices was provided, it was stated that the total amount due was Rs. 11.52 cr including interest @ 27%. In support of their contention that operational debt was due and payable by the Corporate Debtor, it was submitted that this fact was also acknowledged by the Corporate Debtor in their reply dated 03.11.2019 to the Section 8 demand notice by categorically admitting outstanding balance of Rs. 5.96 cr as on 31.03.2018 in respect of these invoices. By virtue of this admission, the period of limitation in respect of the invoices raised by the Operational Creditor got extended by three years in terms of Section 18 of the Limitation Act, 1963. It was therefore contended that the Adjudicating Authority had grossly erred in holding that the invoices raised by the Operational Creditor were barred by limitation. The Adjudicating Authority mistook that that the account maintained between the two parties was in the nature of invoice to invoice based account and not a running account which led to the wrong conclusion that the claims raised by the Operational Creditor were time-barred. It has been further contended that the

claim made by the Corporate Debtor when the matter came up for hearing before the Adjudicating Authority that it had no outstanding dues qua the Operational Creditor is incorrect. It was asserted that the claim of the Corporate Debtor that it had already paid Rs 5.96 cr to the Operational Creditor lacks credibility since the said amount was paid to some third entity-TDT Copper Ltd and not to the Operational Creditor. It was also pointed out that there were no documents or material placed by the Corporate Debtor to show any consent given by the Operational Creditor for the alleged transfer of Rs. 5.96 cr to TDT Copper Ltd. on their behalf or any acknowledgement of receipt from the Operational Creditor. Hence, this amount stood outstanding as debt both due and payable.

5. Repelling the above arguments raised by the Appellant, it has been contended by the Ld. Counsel for the Respondent that there were no outstanding claims of Operational Creditor. While admitting that the Operational Creditor had raised 11 invoices, it was denied that their accounts were based on running account basis. Submitting that payments were made by them on invoice to invoice basis, it was vehemently contended that there was no outstanding debt in respect of the first ten invoices. It was also submitted that payment of Rs.5.96 cr was also not outstanding as the said sum had already been transferred to the account of TDT Copper Ltd. which was a group company of the Operational Creditor. It was also submitted that Rs.5.96 cr had been transferred to the account of TDT Copper Ltd. at the request of the Operational Creditor vide their letter dated 13.06.2019 towards adjusting their outstanding balance. It was also contended that since the date

of default as pleaded by the Operational Creditor in the Section 9 application was 25.07.2016, it was rightly held by the Adjudicating Authority that all the above ten invoices which has been relied upon by the Appellant as the basis for their claim stood barred by limitation. As regards the 11<sup>th</sup> invoice no. 77 dated 30.01.2019, it was clarified that this invoice was for a purchase order of 25 MT of cathode rods against which only 14 MT had been supplied. Payment to the tune of 95% of the 14 MT of cathodes supplied had already been made. The remaining amount was due to be paid at the time of delivery of the remaining 11 MT of cathodes which had still not been supplied. Thus, even the remaining amount of 5% of the invoice of 30.01.2019 amounting Rs.3.76 lakhs was not due and payable. Thus, despite having received the 95% payment of the part goods supplied, the Appellant had misrepresented the total outstanding amount as Rs. 75.38 lakhs in Part-IV of the Section 9 application as due and payable. Contending that no debt and default within the meaning of IBC was in existence, it was strongly canvassed that the Adjudicating Authority had rightly appreciated the existence of a pre-existing dispute in respect of invoice no. 77 and in rejecting the Section 9 application.

**6.** We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully. The short issue for our consideration is whether payment in respect of the ten invoices raised by the Operational Creditor were time barred and whether there was any substance in the contention of the Corporate Debtor that there was a pre-existing dispute surrounding the debt claimed by the Operational Creditor in respect of the 11<sup>th</sup> invoice no. 77.

7. Coming first to the issue of limitation, we may first take notice of how the Adjudicating Authority has dealt with the matter. The relevant extracts of the impugned order are as extracted below:

*“8. The Operational Creditor had raised 11 invoices against the sale of Copper Cathodes during the period of 2016-2019 and received two payments of Rs. 48,38,903.92/- and Rs. 71,61,378/- on 19.10.2016 and 30.01.2019 respectively. As contended by the Corporate Debtor out of 11 invoices raised by the applicant, 10 invoices dated 25.07.2016, 27.08.2016, 09.09.2016 and 02.02.2017 are barred by Limitation and the claim in respect of the 11<sup>th</sup> Invoice dated 30.01.2019, is not due on account of Pre-existing dispute. Also, the date of default pleaded by the Applicant in Part IV of Form 5 as well as in Section 8 Demand Notice is 25.07.2016 and the present application has been filed on 04.03.2020.*

.....

*14. On the perusal of records before us, it is observed that the 10 invoices dated 25.07.2016, 27.08.2016, 09.09.2016 and 02.02.2017 are barred by limitation because as contended by the Operational Creditor, the accounts maintained between the Operational Creditor and the Corporate Debtor is not a running account as there was invoice to invoice payments made by the Corporate Debtor. As per the ledger Account annexed as Annexure-6 in main application it can be concluded that the account maintained by the Operational Creditor and Corporate Debtor is a mutual and but not running account evidencing inter se sales and purchase of copper and aluminium goods. The Corporate Debtor had made last payment of Rs. 71,61,378/- on 30.01.2019 which is particularly for Invoice 77. Further, if the account was a running account the amount of Rs. 71,61,378/- would be adjusted against the earlier invoices which were due for payment. We are persuaded with the contention of Corporate Debtor as substantiated by Bank Acknowledgement that the payment of Rs. 71,61,378/- was made against invoice no. 77, therefore we are of considered view that the account maintained by the parties are not running account.....”*

8. The issue for consideration before us is whether these invoices were barred by limitation and, if not, whether the debt arising from these invoices

were disputed or not. When we take a look at the material on record, there is no dispute over the fact that the Operational Creditor had sent demand notices to the Corporate Debtor on 18.10.2019 and 22.10.2019 in respect of 11 invoices and one debit note. All these 11 invoices including their date of issue and invoice amounts have been noted in the impugned order. These invoices are as reproduced below for easy reference:

<b>S. No.</b>	<b>Invoice No.</b>	<b>Date of Invoice</b>	<b>Amount (Rs.)</b>
1.	EX-OO1/16-17	25 07.2016	1,16,60,746/-
2.	EX-005/16-17	27 08.2016	85,30,182/-
3.	EX-006/16 17	27.08.2016	85,17,535/-
4.	EX/OO7/1017	27.08.2016	24,23.324/-
5.	EX-008/16 17	27.08.2016	12,21,701/ -
6.	EX-OO12/16-17	09 09.2016	83,48,933/-
7.	EX-O13/16-17	09.09.2016	83,88,998/-
8.	EX- 014 / 16-1 7	09.09.2016	32,93,418/-
9.	EX-068/ 16-17	02.02.2017	81,03,006/-
10.	EX-069/16-17	02.02.2017	40,29,258/-
11.	77	30.01.2019	75,38,292/-
12	Debit Note No. _____		1,12,578/-

**9.** It is the case of the Operational Creditor that all the 11 invoices have to be dealt together while looking into the aspect of limitation since the account between the two parties was based on a running account. Attention was in particular adverted to the reply of Corporate Debtor to the demand notice dated 03.11.2019 wherein it had categorically admitted outstanding balance

of Rs. 5.96 cr as on 31.03.2018. By virtue of this admission, it has been contended that the period of limitation in respect of the invoices raised by the Operational Creditor got extended by three years in terms of Section 18 of the Limitation Act, 1963. Furthermore, the claims against the 11<sup>th</sup> invoice no. 77 was also paid on 31.01.2019 which also extends the period of limitation.

**10.** We glean from material placed on record that the date of default pleaded in the Section 8 Demand Notice at page 68 of the Appeal Paper Book (**'APB'** in short) as well as in the Section 9 application at page 99 of the APB is shown as 25.07.2016. We also notice that 10 out of the 11 invoices were dated between 25.07.2016 and 02.02.2017. It is the case of the Corporate Debtor that even taking into account the date of the 10th invoice which was 02.02.2017, the claim against it stood barred on 01.02.2020 which pre-dated the filing of Section 9 application which happened to be 04.03.2020. Hence all the 10 invoices, except the 11<sup>th</sup> invoice no. 77, stood time barred. It is well acknowledged that the period of limitation for an application under Section 9 of IBC is undisputedly three years as prescribed by the Limitation Act. Since the date of default is the starting point for counting of limitation and such date of default having been specifically shown as 25.07.2016 in Part IV by the Appellant in respect of these 10 invoices, the limitation period of filing of Section 9 application clearly expired on 24.07.2019 while the Section 9 application was filed on 04.03.2020. Hence, we are also satisfied that the Adjudicating Authority did not commit any error in holding that the first ten invoices relied upon by the Appellant as the basis for their Section 9



application were all time-barred claims on which the incidence of debt and default could not be predicated.

**11.** This now brings us to the question as to whether the payment of Rs. 5.96 cr remained unpaid, as has been claimed by the Operational Creditor. It is the case of the Respondent that the Operational Creditor was suppressing the fact that the amount of Rs.5.96 cr had already been paid since the said amount was transferred to the account of TDT Copper Ltd. at the request of the Operational Creditor vide their letter dated 13.06.2019.

**12.** The Ld. Counsel for the Appellant contended that the letter of 13.06.2019 cannot be relied upon as it lacks authenticity since it was not written on the letterhead of the Operational Creditor. Moreover, it had been signed by the authorised signatory of a third entity, TDT Copper Ltd. and not by the Operational Creditor. It was also pointed out that there were no other documents to show any acknowledgement or consent given by the Operational Creditor to the Corporate Debtor for permitting the alleged transfer.

**13.** The Adjudicating Authority has also dealt with the letter dated 13.06.2019 and concluded that both parties were aware of the transfer and that the transfer was actuated by mutual consent. The relevant excerpts of the impugned order is as below:

*“17. The Corporate Debtor has denied that the payment for the invoices dated 25.07.2016, 27.08.2016, 09.09.2016, and 02.02.2017 is either due or in default. They have asserted that they transferred the due amount of Rs. 5,96,78,191.08/- to a third party, TDT Copper Ltd., based on a letter dated 13.06.2019. The Operational Creditor, however, contends that they did not authorize such a transfer to TDT Copper Ltd. The Corporate Debtor has presented a copy of the letter*

*dated 13.06.2019, which states, "with the consent of all the partners/ directors/ owners of both the companies, we hereby request you to kindly transfer this balance to the account of TDT Copper Ltd." Thus, the Operational Creditor did consent to the transfer. Furthermore, the email address copperpurchase@tdt.co.in, used to send the letter on 13.06.2019, was also used to issue Invoice 77 of 2019. This indicates that both the Operational Creditor and TDT Copper Ltd. were aware of and acknowledged the transfer. Therefore, it is inferred that both parties were aware of and consented to the transfer and the claim for the invoices dated 25.07.2016, 27.08.2016, 09.09.2016 and 02.02.2017 has been paid by the Corporate Debtor."*

- 14.** At this stage, before we come to our analysis, we would like to reproduce 13.06.2019 letter which is as extracted below:

*"The Finance Department,  
Lykos India Private Limited  
Mumbai*

*Subject: Transfer of Debit/ Credit balance*

*Dear Sir/Madam,*

*As per transactions history noted in the books of accounts between our company "Ashoka Creations Pvt. Ltd" and "Lykos India Private Limited". We have a debit balance of Inr 5,96,78,191.08 / - (Rupees Five Crore Ninety Six Lakh seventy Eight Thousand One Hundred Ninety One and Eight Paise only) as on 31.03.2018. This implies amount due from Lykos India Private Limited to be received to our account (TDT Copper Limited).*

*In this respect, with the consent of all the partners/directors/owners of both the companies, we hereby request you to kindly transfer this balance to the account of "TDT Copper Limited" and the transaction would be settled from that account itself.*

*Thanking You*

*Authorised Signatory, TDT Copper Ltd"*

- 15.** Reiterating their stand that there was no outstanding debt with respect to the said amount of Rs. 5.96 cr, it was submitted by the Corporate Debtor that perusal of the letter of 13.06.2019 clearly shows that the Operational

Creditor had requested the Corporate Debtor to transfer the balance to the account of TDT Copper Ltd., which was a group company of the Operational Creditor, to adjust their outstanding balance. It was further added that the letter itself admits that it was issued with the consent of all partners/directors/owners of both the companies which therefore shows that there was consensus between the two parties. Thus, when it had been agreed by all the parties that on the payment of Rs. 5.96 cr by the Corporate Debtor to TDT Copper Ltd. the outstanding balance of the Operational Creditor would become NIL, the Operational Creditor cannot now renege on this balance squaring off.

**16.** More importantly, the Ld. Counsel for the Respondent buttressing his arguments stated that the Appellant had deliberately suppressed placing of their ledger account before this Tribunal which clearly showed that the amount of Rs. 5.96 cr stood paid to them as on 01.04.2019. The copy of the ledger account is as placed below :-

**ASHOKA CREATIONS LIMITED**  
 Plot No.1044/1045  
 GIDC Waghodia, Vadodara  
 Gujarat-391760  
 Regd Office;- 204 Eastern Building  
 19, RN Mukharjee Road  
 Kolkata-700001  
CIN: U51909WB1988PTC045388  
**Lykos India Pvt Ltd.**  
 Ledger Account  
 37, Maha Gujrat Industrial Estate  
 Opp. Essdee Paints VIII: Moralya  
 Changodar Ahmedabad

1-Apr-2019 to 20-Feb-2020

Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-4-2019	Cr	Opening Balance		<b>5,96,78,191.08</b>	
	Dr	Closing Balance			5,96,78,191.08
				<u>5,96,78,191.08</u>	<u>5,96,78,191.08</u>

**17.** It was also vociferously contended by the Ld. Counsel for the Respondent that though this ledger account was filed by the Appellant before the Adjudicating Authority, the same was deliberately not made part of documents by the Appellant before this Tribunal. Hence, this ledger statement was placed before this Tribunal by the Respondent in their additional affidavit as already reproduced supra. When a pointed query was made by this Bench to the Ld. Counsel for the Appellant as to whether this statement was a part of the in pleadings before the Adjudicating Authority, the Ld. Counsel for the Appellant conceded that the ledger statement did form a part of their pleading before the Adjudicating Authority but has been omitted now. We clearly deprecate such conduct on the part of the Appellant to suppress material records to improve their case. This ledger statement persuasively removes all ambiguity from our minds that the amount of Rs. 5.96 cr claimed by the Operational Creditor as outstanding is bereft of any foundational basis and has been falsely trumped up by the Operational Creditor. We are fully convinced that the Corporate Debtor having already extinguished its liability of Rs. 5.96 cr, no debt is due and payable in respect of the first 10 invoices.

**18.** This now brings us to the other contention of the Operational Creditor that 11<sup>th</sup> invoice no. 77 dated 31.01.2019 was clearly not barred by limitation and that payment for the same has not been cleared by the Corporate Debtor and hence debt is due and payable. Per contra, the Corporate Debtor has advanced the argument that the Operational Creditor has suppressed the fact that the Corporate Debtor had raised a purchase order for 25 MT of copper cathodes on 31.03.2018 while placing the 11<sup>th</sup> invoice against which the

Operational Creditor could only deliver 14 MT of copper cathodes. The parties had thereafter agreed by email on 30.01.2019 that the Corporate Debtor would pay 95% of the invoice amount for the supply delivered. It was submitted that the remaining amount of 11<sup>th</sup> invoice is clearly not due and payable to the Operational Creditor and therefore this cannot be a debt or default within the meaning of IBC.

**19.** When we peruse the impugned order, we find that the Adjudicating Authority has duly considered whether there was any pre-existing dispute surrounding the 11<sup>th</sup> invoice. The findings contained in the impugned order is as extracted below:

*“18. The Corporate Debtor contended that there exists a pre-existing dispute between the Corporate Debtor and Operational Creditor with respect to delivery of 25MT Copper Cathodes for which only 14MT was delivered. However, this Adjudicating Authority is of the view that, to rely on the contention of Corporate Debtor, there must be a pre-existing dispute prior to issuance of demand notice. The invoice dated 30.01.2019 for Rs 75,38,292/- is placed on record wherein it is mentioned that the said invoice is particularly for supply of 14 MT Copper Cathodes. The Corporate Debtor asserted that the delivery of 14 MT of Copper Cathodes is pursuant to Purchase Order of 25MT of Copper Cathodes but only 14MT was delivered by the Operational Creditor. However, the Corporate Debtor has satisfied the payment with respect to invoice dated 30.01.2019 raised for 14MT to the extent of 95% and to substantiate the same the Corporate Debtor has placed on record the E-mail dated 30.01.2019 wherein it is mentioned that “Further, pls make a note that the payment will be 95% of the invoices” which was further acknowledged by the Operational Creditor vide email dated 30.01.2019. The Corporate Debtor in email dated 15.02.2019, which is placed on record as Annexure 4 requested the delivery of remaining quantity of Copper Cathodes to complete the transaction. It is stated that the balance would be paid on the delivery of remaining quantity of Copper Cathodes. Corporate Debtor has raised the dispute much prior to issuance of demand notice dated 18.10.2019 and 22.10.2019, thus, there exists a Pre-existing before the issuance of Demand Notice as per Section 8.*

19. The Hon'ble Supreme Court of India in the matter of **Innoventive Industries Limited vs. ICICI Bank, (2018) 1 SCC 407** interpreted the word 'due' as "payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date." In the present case, the dues as to Invoice 77 is Rs. 75,38,292/- and the Corporate Debtor had paid Rs. 71,61,378/- to the tune of 95% of invoice. As per the Annexure 4 & Annexure 8 of the Application, the Operational Creditor has acknowledged the email dated 30.01.2019 wherein the Corporate Debtor has asserted that the payment would be 95% of the invoices and remaining would be paid at the delivery of remaining quantity of Copper Cathodes. Therefore, the contention of the Corporate Debtor stands substantiated, that the extent of 5% of the invoice 77 is not due and payable as the applicant has never delivered the remaining 11 MT of the Copper Cathodes."

20. We have no reasons to disagree with the above findings of the Adjudicating Authority that the claim raised against the 11<sup>th</sup> invoice was disputed especially in the light of the fact that the Respondent has also placed ledger statement depicting receipt by the Operational Creditor of an amount of Rs.71.61 lakhs towards supply of 14 MT of cathodes as placed at page 10 in their Additional Affidavit. Despite having received the payment, it is clear that the Appellant has tried to misrepresent the total outstanding amount as Rs. 75.38 lakhs as due and payable under the 11<sup>th</sup> invoice no. 77 dated 31.01.2019 in Part-IV of the Section 9 application. Even when we see the reply of the Corporate Debtor to the Section 8 Demand Notice, we notice that the amounts claimed by the Appellant have been disputed by the Respondent. We are therefore satisfied that the Adjudicating Authority rightly applied the ratio of **Innoventive judgement supra** in deciding whether the amount under 11<sup>th</sup> invoice had become due and payable or not and basis that appreciated the existence of a pre-existing dispute in respect of the said invoice and factorising the same rejected the Section 9 application. Given the conspectus of facts in Company Appeal (AT) (Insolvency) No. 1244 of 2024

the present case, it is clear that the first ten invoices were clearly time-barred and the 11<sup>th</sup> invoice no. 77 stood disputed even before the issue of demand notice. We are therefore satisfied that the Adjudicating Authority did not commit any error in rejecting the Section 9 application.

**21.** In result, we find no good grounds to interfere with the impugned order. The Appeal lacks merit and stands dismissed. No costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Mr. Barun Mitra]**  
**Member (Technical)**

**[Mr. Arun Baroka]**  
**Member (Technical)**

**Place: New Delhi**  
**Date: 12.08.2024**

Harleen Kaur