

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

Company Appeal (AT) (Insolvency) No. 1421 of 2023

In the matter of:

Lata Gole

....Appellant

Vs.

LCL Logistix (India) Pvt. Ltd. & Ors.

...Respondents

For Appellant

**Mr. Navin Pawha, Sr. Advocate with Mr. Arvind
Kumar Gupta, Mr. Shivank S. Singh, Advocates.**

For Respondents

ORDER

02.11.2023: Heard Learned Senior Counsel for the Appellant.

2. This Appeal has been filed against the order dated 20.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V, by which Section 9 Application filed by the Operational Creditor has been admitted.

3. Operational Creditor was engaged in the business of Sea freight, Air Freight, Container Freight, warehousing service, IATA agents and other business related to maritime and logistics industry. Corporate Debtor through the Director approached the Operational Creditor for providing them services for transporting goods and had made freight bookings of consignment of various shippers through the Operational Creditor. Invoices were issued by the Operational Creditor to the Corporate Debtor under which the amount credit period was 45 days. The payments were not made against the invoices, hence, the Demand Notice dated 31.08.2019 was issued under Section 8 and

thereafter the Application was filed by the Operational Creditor claiming total amount of Rs.1,72,65,837.38/- which included principal and interest. Reply to the Demand Notice was sent by the Corporate Debtor on 09.09.2019. However, after filing of Section 9 Application inspite of opportunity to the Corporate Debtor, no reply was filed by the Corporate Debtor. The Adjudicating Authority heard the parties and by impugned order admitted Section 9 Application.

4. Learned Counsel for the Appellant challenging the order contends that in the reply to Demand Notice, Corporate Debtor has raised several issues which fully proves pre-existing dispute and the mere fact that no reply was filed to Section 9 Application was not relevant and the Adjudicating Authority ought to have considered the reply to the demand notice dated 09.09.2019. It is further submitted that the credit period was provided of 45 days and before the expiry of credit period, the Operational Creditor deposited three cheques which were security cheques. A proceeding under Section 138 of the Negotiable Instrument Act has also been initiated by the Operational Creditor on account of dishonor of cheques. It is submitted that before 45 days, no debt shall become due.

5. We have considered the submissions of the Counsel for the Appellant and perused the record.

6. In paragraph 12 of the judgment, the Adjudicating Authority made following observations:-

“12. No reply was filed on behalf of the Corporate Debtor despite ample opportunity and vide order dated 18.05.2023 the right to file reply was forfeited.”

7. Insofar as the submission of the Appellant that reply to Demand Notice has not been adverted to, suffice it to say that the Adjudicating Authority has adverted to the reply to the Demand Notice in paragraph 15 of the judgment where following observations have been made:-

“15. The Petitioner has further proved on record the demand notice dated 31.08.2019 calling upon the Respondent to make the payment of the outstanding dues. In reply dated 09.09.2019 to the demand notice the Corporate Debtor has simply stated that the cheques given as security has been misused to launch criminal proceedings against the Corporate Debtor. It has also been claimed that the Petitioner illegally withheld some of the bills of lading pertaining to some consignments to harass and pressurize the Corporate Debtor. However, no substantive pre-existing dispute has been raised in reply to the demand notice.”

8. The Adjudicating Authority found that no substantive pre-existing dispute has been raised in reply to the Demand Notice and the issue raised has been adverted to.

9. The Learned Senior Counsel for the Appellant emphasize that no debt will become due prior to expiry of 45 days, hence, the whole proceedings are not in accordance with law.

10. In Demand Notice dated 31.08.2019, in particular of debt Column-2, following was stated:-

Particulars of Operational Debt		
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF DEFAULT IN TABULAR FORM)	Amount in default is Rs.1,72,65,837.38/- which includes Rs.1,70,10,110.49/- being the Principal amount as per the invoices issued along with Rs.2,55,726.89/- being contractual interest @24% from end of the credit period of 45 days and more particularly calculated in tabular form in the Annexure A attached to this Notice. The said Annexure A also contains the date on which the default occurred.

11. Along with the Demand Notice, Annexure statement of showing calculation of total debt has been mentioned. When we look into the invoices and the due date, Demand Notice was issued after expiry of due date in all the invoices. The statement filed along with the Demand Notice clearly indicates that most of the invoices were of June 2019; one was of 04.07.2019 and one was of 08.07.2019. Thus, 45 days of credit period came to an end with regard to all invoices which are part of the Demand Notice. Thus, the submission of the Appellant that no amount became due cannot be accepted.

12. Insofar as the submission that the cheques which were submitted in the Bank by the Operational Creditor were security cheques, these are the issues which need not be adverted to the present proceedings. Section 138

proceedings have already been initiated and that can be looked into in the said proceedings.

13. In view of the aforesaid, we do not find any error in the order of the Adjudicating Authority admitting Section 9 Application. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Anjali/nn