

Insolvency and Bankruptcy Board of India

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22nd May, 2023

Subject: Judgment¹ dated 16th May 2023 of National Company Law Appellate Tribunal, Principal Bench in the matter of Gurudeo Exports Corporation Private Limited (“GECPL”) and Ors. Vs. Akash Singhal, Liquidator of Amira Pure Foods Pvt. Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 301 of 2021& IA No. 701, 702 & 703 of 2021

I. Brief Background

Amira Pure Foods Pvt. Ltd., Corporate Debtor (CD) was dealing in cleaning, sorting and packing the rice. On the basis of oral understanding between the appellants and the CD, the latter used to retain 3% percentage of rice and 97% of the processed rice would be returned to the appellants who had procured raw material from various suppliers. As the CD failed to return the stocks of rice to the appellants herein, claims were filed before the resolution professional (RP) who had rejected their claims during the process, as their claims could not be verified from various documents including material receipt notes, correspondence exchanged between the parties.

An application under section 60 (5) (c) of the Code was filed by the appellants herein namely Gurudeo Exports Corporation Private Limited (“GECPL”) and three others against the rejection of their claim. Adjudicating Authority (AA), dismissed the said application for want of any material evidence. The appellants have filed a joint appeal against the RP of Amira Pure Foods Private Limited before the National Company Law Appellate Tribunal (NCLAT).

II Issues

Whether RP can reject the claims on the basis of ‘lack of documentary proofs’?

III Observation

The NCLAT while dismissing the appeal observed that the appellants have not disputed about the absence of invoice of job work and also admitted they had not recorded the payment of job work in the relevant audited books of account. Further, considering the fact that there is no evidence indicating payment of service tax or GST or TDS under Income Tax Act, and other supporting documents, claim of the appellants could not be considered. It held that the proceedings under the Code are summary in nature and not like Civil Courts ascertaining facts based on examination and cross examination. Trade practices carried on earlier occasion based on oral agreement and sometimes violating the relevant law viz., Companies Act, 2013, GST or TDS under Income Tax Act, cannot be accepted at the resolution / liquidation stage unless the claims are real and based on solid documentary evidence and in accordance with law. It further held that claims based on indirect or circumstantial or secondary evidence cannot be allowed in the processes under the Code.

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