

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

**Company Appeal (AT) (Insolvency) No. 798 of 2018**

**IN THE MATTER OF:**

Santosh Shinde .... Appellant

Vs

Fairmacs Shipping and  
Transport Services Pvt. Ltd. & Anr. .... Respondents

**Company Appeal (AT) (Insolvency) No. 46 of 2019**

**IN THE MATTER OF:**

Santosh Shinde .... Appellant

Vs

Fairmacs Shipping and  
Transport Services Pvt. .... Respondent

**Present:**

**For Appellant: Mr. Sameer Abhyankar, Mr. Amish Tandon  
and Mr. Ayush Beetro, Advocates.**

**For Respondents: Mr. K.P. Toms, Mr. Saswat Patnaik, Mr. Anil  
S. Bish and Mr. Kartik Anand, Advocates.**

**ORDER**

**29.04.2019** This Appeal is against the order dated 20<sup>th</sup> November, 2018 passed by the Adjudicating Authority (NCLT), Mumbai Bench admitting application under Section 9 filed by the Respondent – Fairmacs Shipping & Transport Services Pvt. Ltd. (Operational Creditor) against the ‘Corporate Debtor’.

2. Learned Counsel for the Appellant submits that there is a pre-existing dispute and for that the application under Section 9 was not maintainable.

Reliance has been placed on e-mails communicated between the parties including the e-mails dated 14<sup>th</sup> February, 2015 and 9<sup>th</sup> February, 2015.

3. Learned Counsel appearing on behalf of the Respondents submits that the aforesaid e-mails do not constitute any pre-existing dispute about the services rendered by the 'Operational Creditor'. It is also informed that admission notice under Section 8(1) was issued on 29<sup>th</sup> May, 2017, but the 'Corporate Debtor' has neither replied nor raised any dispute.

4. We have perused the e-mails referred by the Appellant, which read as below: -

*"From: Tejas Kharade [<mailto:exim@trimurticorns.com>]  
Sent: Saturday, February 14, 2015 10:25 AM  
To: 'Suresh Fairmacs'; 'Nilesh Bandi'  
Cc: 'Megha A Chandanshiv'; 'Santosh Shinde, C&MD'; 'Nitin Shinde'; 'globaltrade@trimurticorns.com'; 'Ashish Jawadekar'; 'CFOgroup@trimurticorns.com'; 'Shinde'  
Subject: RE: Invoice & Packing List – TSSC – Shipment – Trimurti – Inv No140*

*Dear All,*

*Detail argument about this Shipment going in the trailing mail:  
We sent the Checklist approval on 28.01.2015. Then we sent BG, EPCG & Affidavit along with all import document handed over to Mr. Yogesh on 06.02.2015, Same day @ 11.30 AM we sent scan copy send to you for cross check (before handover the docs). Then you confirmed sent document is not valid because clauses require change on 09.02.2015. Same day 3 Pm You have send the revised document set and say process. Again 10.02.2015 you have confirm format is not correct send revised & full document on 1.51 PM. Our bank is 40 KM from our office and the bank's closing time is 3.30 PM. Then we are requested*

*you to send the corrected documents through urgent priority because of this incorrect bg submit the then bank issue revised bg. You have send the incorrect docs on wrong address docket no.4457156044 docket received our office on 11.02.2015 time 3.23 PM. Same problem Our bank is 40 KM from our office and the bank's closing time is 3.30 PM. On 12<sup>th</sup> February you wasted my Petrol and time by not being able to explain the BG Clause to the bank manager at your end. Please advice now whose mistake is this? Our company is not going to bear this cost. It's solely your mistake that you didn't provided the correct information at the correct time. You cannot manage your work properly and you blame us for this is not acceptable. If you do not agree with me come to my office on Monday and we will sort this out with a meeting with CMD sir.*

*Thanks & Regards,  
Tejas Kharade  
Export Executive  
Trimurti Corns Agro Foods Pvt. Ltd.  
2A/64, Hindustan Estate,  
Opp. Joggers Park,  
Kalyani Ngr,  
Pune 06."*

*"From: Tejas Kharade  
[<<mailto:exim@trimurticorns.com>><mailto:exim@trimurticorns.com>]*

*Sent: Monday, February 09, 2015 1:02 PM  
To: 'Suresh Fairmacs'; 'Nilesh Bandi'  
Cc: 'Santosh Shinde, C&MD'; 'Nitin Shinde'; 'Shinde';  
<<mailto:globaltrade@trimurticorns.com>>  
[lobaltrade@trimurticorns.com](mailto:lobaltrade@trimurticorns.com): 'Ashish Jawadekar';  
<<mailto:CFOgroup@trimurticorns.com>>  
[CFOgroup@trimurticorns.com](mailto:CFOgroup@trimurticorns.com)*

*Subject: RE: Invoice & Packing List – TSSC – Shipment – Trimurti – Inv No140*

*Importance: High Dear Suresh  
Ref Inv no : 140, Dtd 20.01.2015*

*We have send Bank Guarantee & EPCG bond as you explained which were 100 % duty for attached format we process document as per your suggestion. Today your are explaining that Bank Guarantee & EPCG bond say 15 %. You said Custom required Bank Guarantee & EPCG bond 100 % for clearance part Who will bear the cost of my wasted employee, conveyance, legalization & Bank Guarantee charges & demurrage detention is different part Whole & sole responsibly would be your not us CMD Sir & CFO Please advice above mentioned issue.*

*Thanks & Regards*

*Tejas Kharade Exim Executive 8600041294*

*Trimurti Corns Agro Foods Pvt. Ltd.*

*2A/64, Hindustan Estate,*

*Opp. Joggers Park,*

*Kalyani Ngr, Pune 06.*

*<<http://www.trimurticorns.com>> [www.trimurticorns.com](http://www.trimurticorns.com)*

5. Learned Counsel for the Appellant agreed that there is no separate agreement existing between the parties, but according to him the Bank Guarantee and the Custom Clearance matter was to be dealt by the 'Operational Creditor'. Bank Guarantee was required by the 'Corporate Debtor' for participation in the Export Promotion Capital Goods Scheme (EPCG Scheme). Though, submissions have been made, but it is not disputed that the Custom Clearance etc., which are required to be made by the 'Operational Creditor' were cleared and the services were rendered by the Respondents. Thus, we find that there is no dispute about deficiency of service rendered by the Respondents. So far as, clearance of Bank Guarantee for the purpose of EPCG Scheme is concerned, there is nothing on the record to suggest that such job was entrusted to the Respondents and they failed to do so. In absence of any such agreement placed on record, it cannot be held that apart from the services rendered, this is also the job to be performed by

the 'Operational Creditor' to get the money cleared from the 'Corporate Debtor'.

6. This apart, we have also noticed that stand taken by the Respondents that the Bank Guarantee and the Scheme related to some other work and not connected with the services rendered by the Appellant.

7. Thus, in the absence of any pre-existing dispute, the Adjudicating Authority has rightly admitted the application under Section 9 and for that no interference is called for. The Appeal is accordingly dismissed.

8. In view of the order passed, for the same ground, we also reject the Company Appeal (AT) Insolvency No.46 of 2019. Both the Appeals are dismissed. No cost.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice A.I.S. Cheema]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

Ash/GC