

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.694 of 2019

IN THE MATTER OF:

Sushil Trading Company

...Appellant

Versus

International Mega Food Park Ltd. & Anr.

...Respondents

For Appellant: Shri Rakesh Kumar, Shri Dhruv Gupta and Shri Sahil Dhawan, Advocates

For Respondents: Dr. Rajansh Thukral and Dr. Surekha Thukral, Advocates

ORDER

04.12.2019 Heard Counsel for the Appellant - Sushil Trading Company who it is stated, filed CA Nos.185/2019 & 288/2019 in CP(IB) No.174/Chd/CHD/2018 before the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) in CIRP proceedings which have been initiated against the Corporate Debtor - International Mega Food Park Ltd. The Appellant claimed that it had entered into a Job Work Agreement dated 17th September, 2018 (Page - 285) under which Agreement, the Appellant was to supply butter to the Respondent - Corporate Debtor and the Corporate Debtor was to convert the same into ghee and return the same to the Appellant against charges to be incurred for the conversion. The produce was to be returned packed in packing material of the brand - "Janta Dairy" ghee which the Appellant uses. Thus, it is stated that the Appellant had supplied butter and it was converted into ghee and the articles were lying with

the Corporate Debtor which belonged to the Appellant and it was the property of the Appellant lying with the Corporate Debtor when the CIRP proceedings got initiated on 28th February, 2019. The learned Counsel for the Appellant relied on Explanation below Section 18 to state that when the Interim Resolution Professional performs his duties, it is necessary for the IRP to segregate the assets which are owned by the third party. The learned Counsel submitted that the Application had come up before the Adjudicating Authority but the Authority wrongly held that it was not a transaction of job work but that there was sale of butter to the Corporate Debtor. The learned Counsel referred to the Job Work Agreement (Annexure A-5 – Page 285 at para – 3.5) to claim that there was arrangement to do the job and Appellant was to pay for the job work within 10 days from receipt of the invoice. The learned Counsel referred to earlier Order dated 5th April, 2019 passed by the Adjudicating Authority (Annexure A-11 – Page 349) to support above claim from Para – 4 of that Order where the butter supplied was allowed to be returned to the Appellant deducting only cold storage charges. It is argued that the RP at that time did not claim return of price if the butter had been sold to the Corporate Debtor. Reliance is placed on document dated 22nd January, 2019 which is on the Letterhead of Corporate Debtor (Annexure A-7 – Page 318) to state that the document shows both the parties recording as to proceeding done and the packing charges and job work charges, etc. On the basis of such documents, the learned Counsel submits that Adjudicating Authority should have accepted that the completed produce belonged to the Appellant and it should have been allowed to be returned to the Appellant. It is argued that during pendency of the matter before Adjudicating Authority

and the present Appeal, the produce has been sold off during CIRP process so that the same does not get spoilt.

2. We have heard the learned Counsel for the Respondent – RP also. It is stated by the learned Counsel that in this matter when the CIRP proceeding was admitted on 28th February, 2019, the Order (Page 91 at Page 103 in para - 27) had noted and recorded contents showing suspected fraud. The learned Counsel further referred to the document of Job Work Agreement which shows that the stamp paper has been purchased in Rajasthan and the Notary Agreement was executed and notarized in Chandigarh. The Counsel states that in Chandigarh, there is provision of e-stamp papers and it may not be possible for a party to back date a document. Thus he says the document is doubtful. It is further stated that the butter which was allowed to be returned as referred to in the Order dated 5th April, 2019 was spoilt butter which had been supplied and only because that was allowed to be returned would not mean that it had not been purchased. Being spoilt supply, it had to be returned.

3. We have gone through the record. The learned Adjudicating Authority has painstakingly referred to various documents from the record to show that in the records of the Corporate Debtor, the concerned transactions were referred as that of sale and purchase. It would be appropriate to reproduce para – 15 of the Impugned Order which reads as under:-

“15. In the light of the factual matrix narrated above, a legal question has been raised that whether the finished goods in possession of the Corporate Debtor should be treated as **transaction of sale & purchase**

or should be considered as **supply for job work** and should not be allowed to be returned on commencement of “Moratorium”? On one hand the Ld. RP has taken the shelter of the provisions of Section 14(1)(d) of the IBC, but on the other hand the Applicant has placed reliance on the Explanation under Section 18(1)(f) of IBC. **At the outset, at this juncture, in our opinion the facts and circumstances of the case lead us to hold that the provisions of Section 18 are appropriate to address the legal issues in hand** vis a vis to determine the question of ‘ownership’. The transaction between the applicant and respondent are in the nature of **sale and purchase**. Reliance is placed on the following documents (Diary No.1801 dated 08.04.2019):

- i. Copies of Tax Invoices raised by the applicant in the name of the Corporate Debtor in respect of sales made by the applicant to the corporate debtor in accordance with the CGST Act, 2017 for the period from 01.04.2018 to 28.02.2019 are attached as Annexure R-4.
- ii. Copies of Tax Invoices raised by the corporate debtor in the name of the applicant representing sale of goods from the corporate debtor to the applicant in accordance with the provisions of CGST Act, 2017 for the period from 01.04.2018 to 28.02.2019 are attached as Annexure R-5.
- iii. Copies of E-way bills issued by the corporate debtor in respect of the transposition of material at the time of the sale of goods are attached as Annexure R-6.
- iv. A copy of the ledger account of the applicant as per the books of the corporate debtor for the period from 01.04.2017 to 31.03.2019 showing sale/purchase entries made in the books of accounts of CD Company are attached as Annexure R-7.
- v. Copy of the ledger account of the applicant and relied upon by the applicant in support of the present application is already placed on record by the applicant as Annexure A-3 and the answering respondent also

relies upon the same and a copy thereof is attached as Annexure R-8.

- vi. Copy of the stock statement in respect of stock and book debts receivables statement as on 31.03.2018, 30.09.2018 and 31.10.2018 as submitted to the IDBI bank Limited by the corporate debtor and found available in record of the corporate debtor are attached as Annexure R-9.
- vii. Copy of the printing of the packing material, as purchased by the respondent in the name of the applicant is attached as Annexure R-10.
- viii. Copy of the voucher showing payment or price of the packing material by the applicant to the Corporate Debtor is attached as Annexure R-11.
- ix. Copy of the GST return of the corporate debtor showing the credit of GST taken by the applicant on sale of goods is attached as Annexure R-12.”

4. The learned Adjudicating Authority has further discussed the matter in para – 18 of the Judgement and giving good reasons finally concluded that the Application of the Appellant deserved to be dismissed. During CIRP proceeding. Resolution Professional is bound to go by the records of the Corporate Debtor. The learned Counsel for the RP has referred to the document at Page – 111 which is from the ledger of Corporate Debtor relating to the dues of the Appellant which gives particulars of the transactions of sales and purchases and in which the dues shown payable to the Appellant as on the date of CIRP process was Rs.2,46,49,333.34.

5. We are not interfering with the Impugned Order but we permit the Appellant to file claim for dues, if any, with the RP, if it is not already filed, and the RP may examine and collate the same as per law.

The Appeal is disposed of accordingly. No costs.

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

[Kanthi Narahari]
Member (Technical)

[V.P. Singh]
Member (Technical)

/rs/md