

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

**Company Appeal (AT) (Insolvency) No. 1520 of 2019**

(Arising out of Impugned Order dated 13.11.2019 passed by the Adjudicating Authority/National Company Law Tribunal, Chandigarh Bench, Chandigarh in CP(IB) No. 311/CHD/PB/2018)

**In the matter of**

**Simran Kaur** **... Appellant**  
**Shareholder of M/s. Datawind Innovations**  
**Private Limited**  
**Having her address at:**  
**195, Ajit Nagar,**  
**Amritsar,**  
**Punjab - 143022**

**Versus**

**M/s. Haiko Logistics India Pvt. Ltd.** **... Respondent No. 1**  
**Having its Office at:**  
**A-133, Street No. 4,**  
**Mahipalpur Extension,**  
**New Delhi-110037**

**Mr. Arvind Kumar,** **... Respondent No. 2**  
**Resolution Professional of**  
**M/s. Datawind Innovations Pvt. Ltd.**  
**# 303, 3<sup>rd</sup> Floor, Plot No. D-190,**  
**Ind. Area, Phase -8B, Sector -74,**  
**SAS Nagar, Mohali, Punjab – 160071.**

**Present:**

**For Appellant: Mr. Abhirup Dasgupta, Mr. Ishann Duggal and**  
**Mr. Virti Gujral, Ms. Bhawana Sharma,**  
**Advocates**

**For Respondent: Mr. Udit Mishra and Mr. Pulkit Deora,  
Advocate for R-1.**

**Mr. Nitin Kant Setia, Advocate for R-2.**

**Judgment**

(Date: 16.4.2021)

**{Per: Dr.Alok Srivastava, Member (T)}**

The present appeal has been preferred by Simran Kaur, claiming to be a shareholder of the Corporate Debtor M/s. Datawind Innovations Pvt. Ltd., under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called IBC) aggrieved by the Order dated 13.11.2019 (hereinafter called Impugned Order) delivered by the Adjudicating Authority, National Company Law Tribunal, Chandigarh (hereinafter called Adjudicating Authority) in CP (IB) No. 311/CHD/PB/2018. By this order, the Adjudicating Authority has ordered for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. It is the case of Appellant that the Adjudicating Authority has overlooked certain pre-existing disputes while adjudicating the application of the Operational Creditor filed under Section 9 of the IBC. The brief facts of the case as presented by Appellant and the

Respondent No. 1 are that they had business dealings wherein the Respondent No. 1 (Operational Creditor) provided freight forwarding services for import of goods and related services to the Corporate Debtor. As part of their business dealing, the Corporate Debtor availed freight forwarding services from the Operational Creditor during the period 26.08.2016 till 8.12.2016. It is claimed by the Appellant that disputes arose between the Corporate Debtor and the Operational Creditor regarding freight forwarding of certain goods booked by the Corporate Debtor, whose total value was Rs.97,09,700/-. She has stated that goods sent through the Operational Creditor reached their destination after inexplicable delay while some goods were never delivered at their destination. It is alleged by the Appellant that the Respondent No. 1 Company is fully responsible for delays in delivering of goods and loss of some goods in transit.

3. It is claimed by the Respondent No. 1 that certain invoices raised by the Operational Creditor for freight forwarding were paid by the Corporate Debtor while some others remained pending for payment. The Operational Creditor filed a Civil Suit No. 819/2017 before Civil Judge-4, Patiala House Courts, New Delhi for recovery of the said amount. Subsequently the Operational Creditor issued

a demand notice to the Corporate Debtor under Section 8 of the IBC on 19.12.2017 seeking payment of pending dues amounting to Rs.86,07,122/-. The Corporate Debtor replied to the notice vide letter dated 6.1.2018 stating that the pendency of a civil suit relating to the same matter in a civil court is in the nature of a pre-existing dispute between the Operational Creditor and the Corporate Debtor, and hence the said notice should be withdrawn. Thereafter the Operational Creditor sought to withdraw the Civil Suit No. 819/2017 which was permitted by Additional District Judge-04, Patiala House Courts, New Delhi vide order dated 20.01.2018.

4. The Company Petition No. 71/CHD/PB/2018 under Section 9 of the IBC, which had been filed by the Operational Creditor, was also sought to be withdrawn by the Operational Creditor. The Adjudicating Authority permitted withdrawal of this petition vide order dated 26.3.2018 with liberty granted to the Operational Creditor to file fresh petition with better particulars later.

5. A fresh demand notice dated 09.05.2018 under Section 8 of the IBC was sent by the Operational Creditor to the Corporate Debtor demanding payment of Rs.86,07,122/- which was due and

payable to him as operational debt. The Corporate Debtor replied to the demand notice through letter dated 22.5.2018 claiming that the Operational Creditor was supposed to provide professional logistics services for handling valuable import shipment of the Corporate Debtor. Such services were not provided by the Operational Creditor, and more specifically, there were issues with regard to loss of goods in transit and delays in shipment, due to which the Corporate Debtor suffered a loss of Rs. 27,20,556/-.

6. Dissatisfied by response of the Corporate Debtor to the demand notice, the Operational Creditor filed an application under Section 9 of the IBC, which was admitted by the Adjudicating Authority after due consideration and Corporate Insolvency Resolution Process was initiated vide the Impugned Order dated 13.11.2019.

7. During the hearing of the appeal, Respondent No.1 submitted his reply to the appeal memo, whereupon a rejoinder was filed by the Appellant. Both parties filed written submissions alongwith copies of judgments in support of their respective contentions. Upon direction by this Tribunal, The Respondent No. 1 filed an affidavit alongwith copy of Suit No. 819/2017 filed by the

Operational Creditor against the Corporate Debtor and a copy of the order dated 20.01.2018 of the Additional District Judge-04, Patiala House, New Delhi permitting withdrawal of the said civil suit with liberty granted to the plaintiff to file appropriate proceedings, if any, before the concerned court.

8. In the arguments, the Learned Counsel for the Appellant has stated that there is a catena of e-mails sent by the Corporate Debtor to Operational Creditor (attached at pp. 66-69 of the Appeal) which make the point of delay in shipment of goods by the freight forwarder (Operational Creditor) and the shortage of goods delivered at its Delhi warehouse abundantly clear. The Learned Counsel has also referred to e-mail communications sent by the Corporate Debtor (attached at pp. 91-94 of the Appeal) wherein losses suffered by the Corporate Debtor due to delay in shipment has been shown as the reason for the Corporate Debtor's inability to make pending payments of certain invoices. He has also referred to the e-mail sent to the Metropolitan Police in UK (attached at pp. 70-73 of the Appeal) wherein a complaint regarding missing cargo was made by the Corporate Debtor on 2.6.2018, almost one and a half year after the alleged loss. The Learned Counsel for Appellant has pointed out that the Adjudicating Authority has not considered

these disputes as pre-existing disputes while adjudicating the application of the Operational Creditor in the Impugned Order.

9. The Learned Counsel for Respondent No.1 has stated that though the Appellant has claimed to be a shareholder in the Corporate Debtor Company, she has not provided any evidence of the same. Therefore, she does not have a right to prefer this appeal. The appeal, therefore, should be dismissed only on this ground at the threshold. The Learned Counsel has further claimed that though the Corporate Debtor was represented by its authorised representative Rupinder Singh before the Adjudicating Authority, he has chosen not to file any appeal against the Impugned Order.

10. The Learned Counsel for Respondent No. 1 has also urged that there is no pre-existing dispute in the matter and e-mails shown by the Appellant to support her case were mostly sent after the Section 8 notice was sent and hence are just an afterthought to build up her case. He has also claimed that the correspondence between the Metropolitan Police in UK and the Corporate Debtor is not in nature of FIR, but is a mere complaint, which was made in 2018, much after the alleged loss of goods. Finally, the Learned

Counsel has claimed that the Operational Creditor is just a freight forwarder, who is not responsible for any loss of goods in passage or for their delayed delivery. He has said that the dispute has no connection with the performance of the service that is in the control of the freight forwarder and hence the operational debt is due and payable to him. Therefore, there is no infirmity in the Impugned Order and the appeal deserves to be dismissed.

11. We have perused the documents submitted by all the parties and the Impugned Order. We have also carefully considered the arguments put forth by the parties in support of their respective cases and the written submissions filed by them.

12. The first question that is looked into by us is whether the Appellant has any *locus standi* to prefer this appeal, and whether the appeal is maintainable on this ground, as has been urged by the Respondent No. 1.

13. The Appellant has claimed to be a shareholder having 0.1% shares of the Corporate Debtor in para 1(ii) of the appeal. Later in the same appeal, in para 7(i), the Appellant has stated that she is a shareholder having 0.6% shares of the Corporate Debtor, M/s.



Datawind Innovations Private Ltd. Thus even the extent of shareholding claimed by the Appellant in the Corporate Debtor is not expressed unambiguously. Moreover, the Appellant has not provided any evidence of her being a shareholder in the Corporate Debtor Company in the form of share certificate or any other document. This issue has been raised by the Respondent No.1 in his reply affidavit and oral arguments wherein he has questioned the *locus standi* of the Appellant for filing the appeal and has pleaded that she has to be put to strict proof of her dealing vis-à-vis the Corporate Debtor. He has also stated that the Appellant was not authorized by the Corporate Debtor to represent it before either the Adjudicating Authority or before this Appellate Tribunal. In any pleadings or her written submissions, the Appellant has not ventured to submit any proof of her being a shareholder in the Corporate Debtor, moreso when this issue has been raised by the Respondent No. 1. This is a requirement under Section 61(1) of the IBC for preferring an appeal. The text of Section 61(1) of the IBC is reproduced hereunder:-

**“61. Appeals and Appellate Authority. – (1)**  
*Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating*

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*Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

*XXXXXXXXXXXXXXXXXXXXXXX”*

14. In view of the provision under Section 61(1) of IBC that any person aggrieved by the order of the Adjudicating Authority may prefer an appeal, the Appellant has not been able to show as to how she is aggrieved by the Impugned Order and is an interested party for preferring this appeal. Moreover, since the authorised representative of the Corporate Debtor in the matter that was filed before the Adjudicating Authority has chosen not to file any appeal against the Impugned Order it was necessary for the Appellant to establish her *locus standi* for filing this appeal.

15. In the light of the above discussion, at the threshold, we find that the Appellant is unable to establish how she is aggrieved by the Impugned Order, and, therefore, her *locus standi* in filing this appeal. The appeal is thus not maintainable as it doesn't satisfy the criterion for preferring an appeal, as set out in Section 61(1) of the IBC. All the other issues raised by the Appellant become infructuous and it is not necessary to consider them.

16. We, therefore, find no reason to interfere with the Impugned Order dated 13.11.2019 in CP (IB) No. 311/CHD/PB/2018 passed by the Adjudicating Authority. The appeal is, therefore, dismissed with no order regarding costs.

**(Justice A I S Cheema)**  
**Member (Judicial)**

**(Dr. Alok Srivastava)**  
**Member (Technical)**

New Delhi  
16<sup>th</sup> April, 2021

/aks/