

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 71 of 2021

IN THE MATTER OF:

KPN Travels India Limited,

No. 23 B Rajaji Street, Swarnapuri,

Salem, Tamil Nadu – 636004

Also at: No. 2, Raja Rajeswari Nagar

Pondicherry – 11

...Appellant.

Versus

TVS Automobile Solutions Pvt. Ltd.,

Represented by its Company Secretary & AVP Legal

Mr. M.K. Rama Krishna,

Office at 1st Floor, Kochar Bliss,

Supe A8 and A9

Thiru Vi. Ka. Industrial Estate,

Guindy, Chennai 600032

...Respondent.

Present:

**For Appellant: Mr. E. Omprakash, Sr. Advocate with
Ms. Madhusmita Bora, Advocates.**

For Respondent: Mr. Krishna Srinivasan, Advocate.

ORDER
(Virtual Mode)

19.03.2021 Heard Learned Counsel for the parties.

2. This Appeal has been filed by the Appellant who is arrayed as Corporate Debtor before the Adjudicating Authority in IBA/393/2020 filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC in short) by the Respondent – Operational Creditor. The matter had come up before the Adjudicating Authority

(National Company Law Tribunal, Special Bench, Court-1, Chennai) and the Adjudicating Authority on 04th December, 2020 passed the following order:

“Learned Sr. Counsel for Applicant Mr. Krishna Srinivasan and Learned Counsel for Respondent Mr. Narasimha Varman are present through video conferencing platform.

IBA/393/2020 is the main Application taken up for hearing. Learned Counsel for the Respondent seeks time to file counter. Learned Counsel for Respondent states that the Sr. Counsel Mr. Om Prakash is leading in this matter.

Meanwhile, Learned Counsel for the Petitioner states that the Respondent Company is a Travel Agent Company owning more than 200 vehicles, for transportation purposes. The Corporate Debtor is disposing of its movable and immovable assets, and creating third party encumbrances. We have heard both the parties.

*The Respondent shall file the list of assets, vehicles and other details of the Corporate Debtor before the next date of hearing and the **Respondent shall not sell any of the movable or immovable assets of the Respondent Company till the disposal of the IBA/393/2020.***

List this matter on 05.01.2021 for hearing and counter to be filed by the Respondent.

The Registry is directed to post this order through e-mail to both the parties immediately.”

3. The present Appeal has been filed being aggrieved by such Order.
4. The Learned Counsel for the Appellant submits that before this Order was passed, on earlier occasion, on 16th October, 2020 there was an Order (Page 41)

where the Operational Creditor was given certain directions to produce ledger Accounts etc. It is stated that thereafter there was yet another Order passed on 22nd October, 2020 (Page 43) where the Adjudicating Authority recorded that the Operational Creditor did not comply with the directions which were given on the earlier occasion.

5. Learned Counsel states that thereafter suddenly in the Newspaper there was a news as can be seen Annexure A-5-Page 45. On the subsequent date, the present Impugned Order came to be passed. The Learned Counsel submits that the Adjudicating Authority should not have passed such Order directing that the Appellant shall not sell any movable or immovable assets.

6. The Learned Counsel submits that it is not a case that the Appellant is selling or intends to sell any of the movable or immovable assets. But that passing of such Order, has affected the business and the Banks are not co-operating.

7. It appears that later, on 05th January, 2021, when the matter had come up before the Adjudicating Authority, the difficulty Corporate Debtor (Appellant) was facing, was expressed before the Adjudicating Authority and the Adjudicating Authority recorded the submissions of the parties as under:

“Learned Sr. Counsel for the Corporate Debtor also represents that in relation to the order dated 04.12.2020, let there be a clarification that the ordinary course of business of the Corporate Debtor should not be affected in view of the said order to which Learned Sr. Counsel for the Petitioner represents that the Petitioner should not stand in the way as

the restraint order is pertaining only to the sale of the movable and immovable assets of the Corporate Debtor and that the Corporate Debtor is free to carry on its day to day transactions in relation to the ordinary course of this business behoving its Memorandum of Association for which it has been incorporated.”

8. The Learned Counsel for the Appellant states that although such statement has been recorded, the Adjudicating Authority did not express any of its own views.

9. We find that the present Appeal is against an Interim Order and the statement made by the Operational Creditor is already recorded as noted above. It goes without saying that it would be expected from the Respondent Operational Creditor to stand by statement made and not to create any difficulties in the day to day business of the Corporate Debtor. We expect and request the Adjudicating Authority to decide the Application under Section 9 itself at the earliest, one way or the other.

With these observations, the present Appeal stands disposed of.

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

[Dr. Alok Srivastava]
Member (Technical)

Basant B./nn.