NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 726 of 2024

[Arising out of the Common Order dated 22.02.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench in Company Petition No.141 of 2018]

IN THE MATTER OF:

Lyka Labs Ltd.
A public limited company,
Having its Registered Office at:
4801/B and 4802/A, GIDC Industrial Estate
Ankleshwar – 393002. **...Appellant**

Versus

Modi Lifecare Industries Ltd.,
A public limited company,
Having its Registered Office address at:
27, GIDC, Opp. Creta Cold Station
Near Torrent Power Substation
Odhav, Ahmedabad – 382415. **...Respondent**

Present:

For Appellant : Mr. Rahul Rai, Mr. Jatin Bhardwaj and Mr. Ramit Rana, Advocates

For Respondents : Mr. Lakshay Sharma, Advocate

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal has been filed by Lyka Labs Ltd. ("Appellant") under Section 61 of the Insolvency & Bankruptcy Code, 2016 ("Code") against the Order dated 22nd February 2024 ("Impugned Order") passed by the Hon'ble National Company Law Tribunal at Ahmedabad ("Adjudicating Authority") in Company Petition No. 141 of 2018 ("Company Petition") - Lyka Labs Limited vs. Modi Lifecare Industries Limited.

Brief facts of the case

2. The Appellant has come in appeal against the rejection of the Company Petition No. 141/2018. The Appellant contends that a Technical Guidance Agreement (TG Agreement) was executed between the Appellant and the Respondent on 14.09.2012 as per which the Respondent i.e. Modi Lifecare Industries Ltd. had agreed to pay royalty fees for printing on its labels and cartons that the products were manufactured under the technical guidance of the Appellant i.e. Lyka Labs Ltd. As per Clause 1D of this Agreement, the Respondent would be liable to pay a minimum royalty fees of ₹1 Crore per annum or 5% of its total sales value, whichever was higher for the period ending 2013. Furthermore, Respondent was liable to pay a minimum royalty fees of ₹2 Crores per annum or 5% of the total sales value, whichever was higher for the period 1st December 2013 till 30th November 2014. The Respondent - Modi Lifecare Industries Ltd. had promised to pay a minimum sum of ₹3 Crores to the Appellant for the period 14th September 2012 till 30th November 2014. And if the total sales per annum were higher than the Respondent was liable to pay 5% of the total sales invoices and this agreement was valid for five years from the date of execution of the TG Agreement.

3. Soon thereafter, due to financial difficulty being faced by the Respondent i.e. Modi Lifecare Industries Ltd. it was agreed that:

> "a. Out of the sum of ₹1,00,00,000/- payable by 30th November 2013, a sum of ₹60,00,000/- would be deferred and paid in instalments between 1st December 2013 and 30th November 2015;
>
> b. A minimum royalty fee of ₹1,30,00,000/- was to be paid for the period 1st December 2013 to 30th November 2014, or 5% of the total sales, whichever was higher;

c. A minimum royalty fee of ₹2,30,00,000/- was to be paid for the period 1st December 2014 to 30th November 2015, or 5% of the total sales, whichever was higher."

4. The Appellant claims that the Respondent had agreed to pay minimum guaranteed amount for at least three years and this amount was payable irrespective of the actual sales generated by the Respondent and was not contingent upon the issuance of any invoices. Thereafter, Appellant followed up with various letters demanding for balance sum outstanding towards royalty fees as per letters dated 18.05.2017, 28.06.2017 and 25.07.2017. The Respondent in its response dated 31.07.2017 referred to a liability of ₹63,00,000/- (approx.) for the first year when the Appellant and Respondent had been in business. The Respondent also claimed that the TG Agreement had been continued to be on actual basis, in complete ignorance of the letter dated 02.08.2013. But this letter admits and acknowledges the liability to pay the outstanding royalty dues for the Financial Year 2013-14. The Appellant once again reiterated the terms of the letter 02.08.2013, in its letter dated 14.09.2017. The Respondent i.e. Modi Lifecare Industries Ltd. replied by letter dated 30.09.2017 but maintained a silence of the terms of the letter dated 02.08.2013. The Respondent contended that an oral agreement had been arrived that that royalty would be paid only on actual basis.

5. Thereafter the Appellant issued a demand notice dated 10.10.2017 in Form-3 under Rule 5 of the Code. As there was no requirement to annex invoices as per the TG Agreement, they were not enclosed. The Respondent refused to accept or reply the demand notice, therefore the Appellant

approached the Adjudicating Authority vide Company Petition dated 27.02.2018.

6. The Adjudicating Authority by an order dated 20.11.2019 rejected the Company Petition, which was challenged before this Appellate Tribunal and by an order dated 16.03.2023, the matter was remanded back to the Adjudicating Authority for fresh consideration.

7. Once again by the impugned order of the Adjudicating Authority rejected the Company Petition.

Submissions of the Appellant

8. The present dispute pertains to the Technical Guidance Agreement ("TG Agreement") dated 14th September 2012 (@ 94-102 of the Appeal) executed between the Appellant (Lyka Labs) and the Respondent (Modi Lifecare). Clause 10 of the TG Agreement explicitly stipulated that the Respondent would be liable to pay a minimum royalty fee to the Appellant. The Respondent severely defaulted on these payments, forcing the Appellant to initiate Corporate Insolvency Resolution Process (CIRP) via a Section 9 application under the Insolvency and Bankruptcy Code, 2016 ("IBC"). Without prejudice to any other argument of the Appellant, it is humbly submitted that the debt towards the Respondent arises in favor of the Appellant from the TG Agreement, and the NCLT cannot go into the question whether by act or omission anything else was agreed or not. It is an admitted fact that the TG Agreement was executed and that the same is the only document executed inter-se the parties and admittedly payments have not been made as per the TG Agreement. It is a settled law that Court cannot override the express terms of the contract and

that Commercial Contracts are to be construed strictly **(Maharashtra State Electricity Distribution Co. Ltd. Vs. Ratnagiri Gas & Power Ltd. 2023 SCC Online SC 1462)**.

9. Even otherwise, in the present matter, there is clear acknowledgement of debt over and above the threshold of Rs. 1 lakh, on part of Respondent, as evident in the correspondence dated 31.07.2017 (@ 83-84 of the Appeal) and correspondence dated 30.09.2017 (PG @ 87-88 of the Appeal), addressed by the Respondent to the Appellant. In the said communications, the Respondent clearly stated and admitted that the pendency of the royalty payment as discussed was to the tune of Rs. 63 Lakhs. While the Appellant had claimed a different, higher outstanding amount, this factual divergence clearly establishes that the ongoing discussions and disputes between the parties were strictly confined to the quantum of the debt, and never regarding the existence of the debt itself. Furthermore, in the same letter, the Respondent has acknowledged that their contention that it was agreed to not pay the fixed Royalty Fees was never formalized. Therefore, the condition in the TG Agreement for payment of fixed royalty fee (Clause D @ 96 of the appeal) was never modified and the Respondent was liable to pay the fixed Royalty fee and as per which the due payment was Rs. 5,95,04,537/- (@ 92-93 for calculation of debt).

10. The admitted liability of Rs. 63 Lakhs is undeniably well above the statutory threshold limit of Rs. 1 Lakh which was applicable at the time of filing the Section 9 petition. It is a well-settled ruling under IBC jurisprudence that the Hon'ble Adjudicating Authority (NCLT) is not required to act as a civil

court to crystalize the exact quantum of the debt. The limited statutory mandate under Section 9 is only to ascertain whether an operational debt exists and whether the default amount is above the Rs. 1 Lakh threshold. Since the Respondent explicitly admitted to a pendency of Rs. 63 Lakhs, the requirements for admission under Section 9 stand fully satisfied.

11. The Hon'ble NCLT erroneously dismissed the Appellant's Section 9 application purely on the technical ground that the Appellant failed to annex invoices to the Demand Notice. It was pointed out that under Rule 5 of the IBC, Form 3 does not mandate the annexing of invoices. Furthermore, the Appellant was not contractually required to issue invoices for the Minimum Guaranteed royalty fee under the TG Agreement.

12. Even for the instances where invoices were actually raised by Lyka Labs (on an actual sales basis), the required payments were still not made by Modi Lifecare. The Respondent cannot use the procedural guise of non-annexation of invoices in Form 3 to evade insolvency when they have demonstrably defaulted on actual invoices raised by the Appellant. The absence of invoices in the demand notice should not have been a basis for dismissing the Application.

13. The existence of an operational debt and a default exceeding Rs. 1 Lakh is an admitted, undeniable position. The Adjudicating Authority overstepped its jurisdiction by delving into the exact quantification of the debt and mistakenly dismissed the petition on the hyper-technical ground of missing invoices, ignoring the settled legal propositions and the unrefuted fact that actual invoices raised were also left unpaid.

Submissions of the Respondent

14. The present Appeal has been filed by the Appellant challenging the order dated 22.02.2024 passed by the National Company Law Tribunal, Ahmedabad Bench, whereby the application filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") came to be rejected. The Impugned Order correctly records that the alleged operational debt is disputed and incapable of triggering insolvency proceedings. The present Appeal, therefore, deserves to be dismissed.

15. The claim of the Appellant arises out of a Technical Guidance Agreement dated 14.09.2012 executed between the parties relating to the payment of royalty. The material on record clearly demonstrates that disputes between the parties existed much prior to the issuance of the demand notice dated 10.10.2017. The Respondent had addressed a detailed reply dated 31.07.2017 and 30.09.2017 disputing the royalty calculations and specifically pointing out that royalty was payable on the basis of "actual sales" and further attached the sample invoices issued by the appellant themselves. In the same letter, the Appellant was asked to get in touch with the Respondent for resolving book entry issue, which the appellant failed to do. The correspondence exchanged between the parties further demonstrates that royalty had consistently been calculated on an actual sales basis and the Appellant itself had issued invoices reflecting such computation. These documents clearly establish that the liability itself was disputed well before the issuance of the demand notice. In such circumstances, the application under Section 9 was rightly rejected by the Adjudicating Authority as the

existence of a pre-existing dispute bars the initiation of insolvency proceedings.

16. The Appellant's own case demonstrates the absence of any crystallised operational debt. While the Appellant has alleged that invoices could not be raised due to non-submission of sales figures by the Respondent, the Respondent had placed on record sample invoices issued by the Appellant, which clearly demonstrate that royalty had been charged on the basis of actual sales. Significantly, the Appellant did not dispute the issuance of these invoices and admitted the same during the course of proceedings before the Tribunal. Despite such admission, the Appellant failed to annex these invoices along with the Section 9 application and sought to proceed on the basis of unsubstantiated claims. In the absence of a clear and undisputed liability, the alleged claim cannot constitute an operational debt capable of triggering insolvency proceedings.

17. In all the letters, there are different demands and no period whatsoever, as claimed by the appellant herein has mentioned in any of the letters. The respondent points out that within a short span of 5 months, the appellant has claimed from the respondent as alleged balance royalty fee 3 different amounts, namely: (a) during the meeting on 03.04.2017 Rs. 63 lakh approx. (b) the in letter dated 18.05.2017, 28.06.2017 and 25.07.2017 Rs. 84,72,740/-; and (c) in the demand notice dated 14.09.2017 and 10.10.2017 Rs. 5,95,04,537/- which is beyond comprehension.

18. The figures as mentioned in letters mentioned in letters at serial (b) above do not match any figure as mentioned in demand notices as mentioned

in serial (c). Figure mentioned in serial (a) finds no mention in any of the correspondences, nor in Annexure I of the demand notice. The appellant is just trying to extort money from the Respondent, which he is not entitled to in law.

19. The Appellant's pleadings further demonstrate that the claim is essentially in the nature of damages arising from an alleged breach of contract. In Form-5 filed before the Adjudicating Authority, the Appellant relied upon Sections 37 and 73 of the Indian Contract Act, 1872, to support its claim. A claim under Section 73 of the Contract Act is in the nature of unliquidated damages arising from breach of contractual obligations. Such claims necessarily require adjudication of contractual rights and liabilities and cannot be treated as an operational debt within the meaning of Sections 3(11) and 5(21) of the IBC. Insolvency proceedings are not intended to determine claims for unliquidated damages, and the Appellant's attempt to invoke the IBC for such purposes is therefore misconceived.

20. The demand notice dated 10.10.2017 issued by the Appellant is also legally defective. The Appellant issued the notice in Form-3 but failed to annex documents evidencing the existence of operational debt. Where the claim arises from invoices, the operational creditor is required to issue the demand notice together with such invoices or supporting documents. In the present case, the Appellant admittedly had issued invoices in the past but deliberately chose not to annex them with the demand notice. The failure to comply with the statutory requirement renders the demand notice itself defective, and the proceedings under Section 9 were therefore rightly rejected.

21. A substantial part of the claim sought to be raised by the Appellant relates to the period between 2012 and March 2015, whereas the application under Section 9 was filed only on 08.03.2018. In view of Section 238A of the IBC read with Article 137 of the Limitation Act, 1963, such claims are clearly barred by limitation and could not have formed the basis of insolvency proceedings.

22. The Appellant has further attempted to argue that since the Respondent had allegedly admitted liability exceeding ₹1 lakh, the petition ought to have been admitted. This submission is wholly misconceived. The monetary threshold prescribed under Section 4 of the IBC is merely jurisdictional and does not dispense with the fundamental requirement under Section 9 that the operational debt must be undisputed. Even assuming, without admitting, that some amount may have been payable, the existence of a substantial dispute regarding the underlying claim clearly bars the initiation of insolvency proceedings.

23. The present proceedings are therefore nothing but an attempt to convert a contractual dispute into insolvency proceedings for the purpose of recovery. It is well settled that the Insolvency and Bankruptcy Code cannot be invoked as a substitute for recovery proceedings and cannot be used as a pressure tactic to enforce disputed contractual claims.

24. The Insolvency and Bankruptcy Code, 2016, is not intended to penalise solvent and financially sound companies, nor is it meant to be invoked as a coercive mechanism for recovery of disputed dues. The Respondent is a going

concern, actively carrying on its business operations, and its financial statements, placed on record, clearly demonstrate that it possesses assets far exceeding the alleged dues claimed by the Appellant. There is no material whatsoever to suggest that the Respondent is unable to pay its debts or is commercially insolvent. In such circumstances, the invocation of insolvency proceedings is wholly misconceived and contrary to the very object of the Code, which is the resolution of insolvency and not recovery or enforcement of disputed claims. The Hon'ble Supreme Court in **Swiss Ribbons Pvt Ltd v. Union of India** has emphasised that the IBC is a beneficial legislation aimed at the resolution of stressed assets and not intended to be used as a substitute for debt recovery proceedings. The present attempt of the Appellant to push a solvent and operational company into insolvency proceedings is therefore an abuse of the process of law and deserves to be rejected on this ground alone.

25. In view of the above facts and circumstances, the order dated 22.02.2024 passed by the National Company Law Tribunal rejecting the Section 9 application is fully justified and does not warrant any interference by this Hon'ble Appellate Tribunal. The present Appeal is devoid of merit and deserves to be dismissed and uphold the order dated 22.02.2024 passed by the Adjudicating Authority, along with such further orders as this Hon'ble Tribunal may deem fit in the interests of justice.

Appraisal

26. We have heard both sides and also perused the material placed on record.

27. We find that Technical Guidance Agreement has been signed between the Lyka Labs Ltd. and Modi Lifecare Industries Ltd. A minimum royalty fees was to be paid for which the records exist. The Respondent has also acknowledged / admitted the liability of about ₹63,00,000/- at page 83 in the APB in the letter dated 31st July 2017, which is a letter from the respondent Modi Lifecare Industries Ltd. to M/s Lyka Labs, the appellant.

28. The impugned order has returned a finding that the demand notice under section 8 issued by the appellant-operational creditor upon the corporate debtor was not a valid demand notice, as the appellant had not supplied the respondent-CD with a copy of the various invoices for the amount claimed in the application. The respondent also argues on the similar line. On the other hand, the contention of the appellant has been that if the transaction does not involve the generation of invoices, then only the documents which are required to prove the existence of the operational debt and the amount in default are required to be submitted. In this case, the terms of the technical guidance agreement dated 14th September 2012, made it clear that invoices would not always be an essential part of the transaction. The respondent was liable to pay a minimum amount towards royalty fees for every period of 12 months or 5% of its total sales value, whichever was higher. We also note that there were no terms under the technical guidance agreement which made it mandatory for the appellant to raise an invoice at the end of every period/block of 12 months, even for the minimum royalty fees payable. We note that the computation of the royalty fee payable by the respondent emanates from the technical guidance agreement itself. Further, the technical guidance agreement did not cast any liability upon the appellant

to raise invoices upon the respondent for making it liable to pay the minimum royalty fees to the appellant. We therefore find that the contention that the demand notice was defective because invoices had not been annexed is incorrect, and the finding of the adjudicating authority relating to this issue cannot be sustained.

29. The Adjudicating Authority has relied upon Rule 5 of the IBBI (Application to Adjudicating Authority) Rule 2016 and has concluded that, since invoices were not enclosed, therefore the application is defective. The relevant rule is extracted as below:

"**Demand notice by operational creditor**

(1) An operational creditor shall deliver to the corporate debtor the following documents namely

a) a demand notice in Form 3; or

b) a copy of an invoice together with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor by either of the following methods:

a) at the registered office by hand, or by registered post or speed post with acknowledgement due; or

b) by electronic mail to a whole-time director, designated partner, or key managerial personnel (if any) of the corporate debtor.

(3) A copy of the demand notice or the invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any. "

A plain reading of the above rule indicates that it is not necessary that the copies of the invoice have to be attached. A copy of the demand notice which clearly establishes the operational debt or the demand is more than sufficient. In this case, the technical guidance agreement which allowed payment to be

made by the operational creditor was more than sufficient, and therefore the argument that invoices were not attached is unsustainable.

30. The adjudicating authority has also relied on the judgment of this Appellate Tribunal in **M/s Agarwal Vineers vs. Fundtonic Service Pvt. Ltd., Co. Appeal (AT) (Insolvency) No. 968 of 2020**, wherein it was held that, unless the operational creditor, along with its application, furnishes a copy of the invoices, the bank statements, and the financial accounts, the adjudicating authority is empowered to reject an incomplete application. We find that the facts in the present case are distinguishable, as the demand is based on the technical guidance agreement, and even if the invoices were not raised, the technical guidance provided for the payment to be made at frequent intervals. Therefore, we find that the above judgment is not applicable in the present facts and circumstances of the case.

31. The appellant has also brought to our notice that it was unable to raise invoices, as the respondent failed to fulfill its obligation of furnishing sales figures duly certified by a chartered accountant to the appellant. The appellant also brings to our notice that the appellant was in the practice of regularly raising invoices upon the respondent based on actual sales figures. When the sales figures were not being shared, the appellant had not been able to raise invoices. The main contention of the appellant is that under the technical guidance agreement, the respondent was liable to pay a minimum amount towards royalty fees to the appellant or 5% of its total sales value, whichever was higher.

32. The appellant also brings to our notice that there is a *claim* that has arisen in favor of the appellant, as understood under the Code. This claim has given rise to an *operational debt* and this debt is a duly crystallized. It also brings to our notice that the appellant has referred to Section 37 and/or 73 of the Indian Contract in their Section 9 petition. But, this does not alter these incontrovertible conclusions.

33. The appellant has also relied upon **Consolidated Constructions Consortium Ltd. versus Hitro Energy Solutions Pvt. Ltd. (2022) 7 Supreme Court cases 164**, in which it has been clearly ruled that *"..a Demand Notice for an Operational Debt by an Operational Creditor does not necessarily need to be accompanied by an invoice, but it may be sent where such debt arises under a "provision of law or contract or other document" and for which documents can be attached along with the Demand Notice."* (para 29). This judgment fully supports the case of the Appellant and negates the argument which has been pursued by both the respondent as well as has been accepted by the Adjudicating Authority.

34. The appellant has also relied upon another judgment of this Appellate Tribunal in **Neeraj Jain v. Cloud Walker Streaming Technologies Pvt. Ltd. and another [Company Appeal (AT) (Insolvency) No. 1354 of 2019].** In this judgment, it was held that: *".. it is also made clear that, for filing an application under Section 9 of the Insolvency and Bankruptcy Code 2016, in case the demand notice is delivered in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, then the submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, provided the documents to prove the existence of operational debt*

and the amount in default are attached with the application." [Para 49]. This judgment also supports the case of the appellant and clearly establishes that the invoices are not necessary and in the present facts and the circumstances of the case the technical guidance agreement helps to establish the operational debt.

35. Thus, in the facts and circumstances of the present case, we find that in the present Section 9 proceedings, except for accounts reconciliation for which the correspondence was going on between the two parties, there is no pre-existing dispute between them. The Respondent contends that the royalty fees was to be paid 5% on the actual basis and furthermore the Appellant has not provided any invoices to back up his claim. This has been refuted by the Appellant by saying that the TG Agreement did not provide for any invoices and the original agreement had fixed royalty fees to be paid. We also note that the respondent, in its letter dated 31st July 2017, has conveyed to the appellant that, with reference to the demand of Rs. 63 lakhs approximately the CFO or auditor could be in touch with them and therefore, there is an acceptance of the amount of rupees 63 lakhs, approximately.

36. We further do not find that the appellant has filed the petition to harass and/or embarrass and/or humiliate the respondent, as the petition is based on material facts as noted by us here in. We find that the respondent has not disputed that there was a default of an operational debt which is in excess of Rs 1 lakh. Further, the Respondent has proceeded on the basis that the Section 9 petition is liable to be dismissed because copies of demand invoices were not attached with the demand notice issued under Section 8 of the Code. We find that both these things have been found to be not sustainable, and

thus the facts and the legal position is are very much against the respondent. Further, we find no justification in the argument of the respondent that the appellant was not very clear vis-a-vis the alleged amount due and payable by the respondent. The primary issue which arises for consideration in the adjudication of a Section 9 petition is whether or not there has been a default on an operational debt in excess of Rs 1 lakh prior to an increase in the threshold to Rs 1 crore.

37. Thus. we find that debt and default is admitted. And in turn we find that the conditions for initiation of Section 9 i.e. the existence of the debt and default is satisfied. Therefore, we are inclined to allow the Appeal.

Order

38. In the facts and circumstances and as analyzed here in earlier, the impugned order is set aside and the Respondent is permitted to deposit the claim amount of ₹63,00,000/- within next 30 days of the pronouncement of this order and in case, it is not paid the Adjudicating Authority may issue the orders for admitting the Respondent into insolvency under Section 9 of the Code. Accordingly, the Appeal is disposed of and all related IAs are disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi.
May 19, 2026.
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