

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 908 of 2019

[Arising out of Order dated 18th July 2019 passed by NCLT, New Delhi Bench in Company Petition No.(IB)-645(ND) 2019]

IN THE MATTER OF:

Ved Contracts Pvt. Ltd.

...Appellant

Versus

Pan Realtors Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr Amit Prabhat Deshpande, Advocate.

**For Respondent: Mr Alok Dhir, Ms Varsha Banerjee and
Mr Kunal Godhwani, Advocates.**

J U D G M E N T

[Per; V. P. Singh, Member (T)]

This appeal has been filed against the order dated 18th July 2019 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench, in Company Petition No. (IB)-645(ND) 2019 M/s Wed construction Pvt. Ltd. whereby the petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short **I&B Code**) has been rejected. Feeling aggrieved by the said order, the Appellant - 'Operational Creditor' has filed this Appeal.

Brief facts as stated by the 'Operational Creditor' is engaged in the business of construction and was awarded a contract by the 'Corporate Debtor to undertake civil construction of their project PAN OASIS at Sector 70 Noida. Four work orders were awarded to the Operational Creditor

between January 2010 and January 2014 under which the work was executed. The Corporate Debtor made part payment of the running bills raised and deducted TDS.

The 'Operational Creditor' claims that Rs. 16,83,03,963/- has been paid by the Corporate Debtor including TDS and WCT through cheques and RTGS. The bills of Rs. 2,41,58,130/- is due and payable against the 'Corporate Debtor'. The 'Corporate Debtor' had raised a debit note of Rs. 6,21,164/- which was never accepted by the Operational Creditor when the defaulted in making the payment, therefore, a demand notice under Section 8 of the Insolvency and Bankruptcy code, 2016 was issued on 5th January 2019 against the Corporate Debtor demanding the outstanding balance together with the interest accruing thereon as well as the GST and other charges payable. The demand notice was duly replied to by the Corporate Debtor.

The Adjudicating Authority has rejected the petition on the ground of 'pre-existing dispute' before the issuance of demand notice. We have heard the argument of both the parties and perused the record.

Learned counsel for the 'Corporate Debtor' submitted that the Operational Creditor' has not adhered to the specification of the work order. The demand raised in only in respect of the running and the final bills has neither been raised nor accepted by the Corporate Debtor. The contract stands concluded only on submission of the final bill duly approved and certified by them.

We have heard the arguments of the Learned Counsel for the parties and perused the record.

The Learned Counsel for the Operational Creditor has claimed Rs.2,41,58,130/- as outstanding amount towards Corporate Debtor including Rs.69,00,000/- as the retention amount. Learned Counsel for the Corporate Debtor disputed the allegations and submitted that Operational Creditor has not adhered to the specification of the work order. The demand raised is only in respect of the running bills and the final bills has neither been raised nor accepted by the Corporate Debtor. It is further, pleaded that the contract stands concluded only on submission of the final bill. The Corporate Debtor has also pleaded that there was pre-existing dispute before the issuance of the demand notice. Therefore, the petition under Section 9 is not maintainable on account of 'pre-existing dispute'. The Respondent has placed reliance on the *e-mail* communication dated 24th October 2018 copy of the *e-mail* is given as under: -

"From- Rahul Rajvanshi,

Dear Prashant,

With reference to trailing mail regarding updated payment to you (M/s. Ved Contracts), confirmation is still pending, please do the needful on a priority basis.

*Further; you have shared a statement "Claim PAN 3.10.2018" **without references and supporting documents, it seems to be totally baseless, please submit your claim with the***

consideration of work order's Terms & Conditions and mutually agreed, as following:

- *Final Bill certified Amount w.r.t. work order*
- *Payment Received in any Account*
- *Recovery against electricity*
- *Recovery against client supplied Machinery as Tower Crane, Boom place etc.*
- *Recovery against client supplied material as Bricks, Scaffolding **material, Sand, Badarpur etc.***
- *Recovery against client-supplied labour*
- *Debit against incomplete work which was executed by third party on your risk and cost*
- *Debit against quality.*
- *Tax deductions as per work done and payment.*
- *Recovery against reconciliation of material as per work order terms and condition.*
- *Balance (if any) will be considered at the time of finalisation.*

Up to Finalization of submitted bills, we negate your exaggerated claim. Any other information/detail required not stated as above will be intimated to you after received receipt of the above information.

This mail is without prejudice to all our rights which are hereby expressly reserved.

Thanks & Regards,

*Rahul Rajvanshi,
Sr. Manager-Billing & Contracts,
Pan Realtors Pvt. Ltd.
GH- 01, Sector- 70,
Noida, U.P.
M- 9560095584”.*

On perusal of the above email, correspondence dated 24th October 2018, it is clear that Corporate Debtor demanded certain documents to settle the claim dated 3rd October 2018 from the Operational Creditor. The details of the documents are mentioned in the email above.

It is also stated in the above email that “up to finalisation of submitted bills, we negate your exaggerated claim. Any other information/detail required not stated as above will be intimated to you after received receipt of the above information”.

Admittedly, notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) was issued against the Corporate Debtor on 5th January 2019, i.e. much before the issuance of demand notice. The Corporate Debtor raised an objection regarding alleged bills and stated that in the email dated 24th October 2018, the submitted bills are the exaggerated claim.

Thus, it is clear that before the issuance of the demand notice, there was a pre-existing dispute.

In 2018 (1) SCC 353 Mobilox Innovation Private Limited Vs. Kirusa Software Private Limited Hon’ble Supreme Court has laid down the test for

determination of existing dispute for admitting and rejecting the petition under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016.

Hon'ble Supreme Court has held that the Adjudicating Authority is to see at the stage of admitting/rejecting the application is whether there is plausible contention, which requires further investigation and that the dispute is not patently, feeble, legal arguments or assertion of facts, unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence, which is mere bluster. _____ However, in doing so, the authority does not need to be satisfied that the defence is likely to succeed. _____ So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

In the present case, applying the test of "existence of a dispute", without going into the merit of the dispute, it is apparent that the Corporate Debtor had raised a plausible contention to require further investigation, which was not a patently, feeble, legal arguments or an assertion of facts, unsupported by evidence. The defence was not spurious, mere bluster, plainly, frivolous or vexatious.

It is also apparent from the record that alleged demand of the Operational Creditor is only in respect of the running bills and the final bill has neither been raised nor accepted by the Corporate Debtor. The contract stands concluded only on submission of the final bill duly approved and certified by the Operational Creditor. In this Operational Creditor has not

filed any documents to show that the final bill was submitted regarding the alleged contract and the outstanding amount was also acknowledged by the Corporate Debtor. These email/communication submitted by the Corporate Debtor also shows that there was a pre-existing dispute, before issuance of the demand notice. Therefore, we are of the considered opinion that the Adjudicating Authority has rightly rejected the application filed under Section 9 of the I&B Code for initiation of the Corporate Insolvency Process. There is no need for interference in the order passed by the Adjudicating Authority. Thus, the appeal is rejected. No order as to cost.

[Justice Venugopal M.]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

[V. P. Singh]
Member (Technical)

NEW DELHI
03rd JANUARY, 2020

pks/md