

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 520 of 2020

IN THE MATTER OF:

Naveen Kumar Jha

...Appellant

Versus

Radstad Indian Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Dhaval Deshpande, Advocate**

For Respondents : **Ms. Madhu Juneja, Interim Resolution Professional**

O R D E R
(Through Virtual Mode)

08.06.2020

I.A. No. 1329/2020

Heard the learned counsel for the Appellant. We are convinced that the certified copy has been obtained by the Appellant only after 'Interim Resolution Professional' informed the 'Corporate Debtor' of making public announcement vide *email* dated 20th January, 2020. Reckoned from such date, though the appeal filed on 5th March, 2020 falls beyond the prescribed period of 30 days but is within the extended period of 45 days.

Having regard to the ground projected i.e. knowledge obtained by the 'Corporate Debtor' in respect of the impugned order only after receiving of the aforesaid *email*, the appeal having been filed within the extended period, the condonation of delay being within the permitted extended timelines, is allowed.

I.A. No. 1329/2020 stands disposed of

Mr. Naveen Kumar Jha, member of the suspended Board of Directors of Dalmia Biz Medicare Ltd. (Corporate Debtor) has filed the instant appeal assailing the impugned order dated 13th January, 2020 by virtue whereof application filed by 'M/s. Ranstad India Pvt. Limited' ('Operational Creditor')/Respondent No. 1 under Section 9 of the 'Insolvency and Bankruptcy Code, 2016' ('I&B Code', for short) has been admitted by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench with consequential orders in the form of moratorium and appointment of the 'Interim Resolution Professional'.

The main ground urged in this appeal is that there was a pre-existing dispute with regard to quality and the Adjudicating Authority did not afford opportunity of filing reply to the 'Corporate Debtor' and passed the impugned order *ex parte* thereby disregarding the rules of natural justice.

Heard the learned counsel for the Appellant and perused the record on the file.

It emerges from the record that the 'Operational Creditor' rendered services to the 'Corporate Debtor' in pursuance of the 'Memorandum of Understanding' (MOU) reached between the parties. Some invoices were raised by the 'Operational Creditor' upon the 'Corporate Debtor' in June, 2017 amounting to Rs. 20,20,349.13 but the payment was not forthcoming. The 'Corporate Debtor' approached the 'Operational Creditor' in July, 2017 with detailed payment plan, in pursuance whereof the outstanding dues were agreed to be cleared in six equal monthly instalments of Rs. 2,57,627.33 each from July, 2017 to December, 2017 on the dates agreed. However, the 'Corporate Debtor' deposited only three out

of the six agreed instalments leaving outstanding dues of Rs.7,72,882/-. The demand notice was served by the 'Operational Creditor' in terms of Section 8(1) of the 'I&B Code' which was responded to and in reply the 'Corporate Debtor' raised the plea of outstanding liability not being in the nature of operational debt on the score that the services rendered were not upto mark.

Confronted with this factual aspect of the matter and on a specific query put to the learned counsel for the Appellant as to how deficiency in quality or the services rendered not being up to mark would depart from the nature of the debt being considered as 'operational debt', learned counsel for the Appellant submitted that the Adjudicating Authority did not provide opportunity to the 'Corporate Debtor' to file reply and address the arguments. It is further submitted that had such opportunity been provided, the 'Corporate Debtor' would have been able to lay the relevant material before the Adjudicating Authority in support of its plea of pre-existing dispute in regard to deficiency in service/quality.

However, we are not impressed with this argument. It emerges from the record that the 'Corporate Debtor' though tried to raise a dispute qua quality of services rendered in reply to its 'Demand Notice', same were not substantiated by filing reply and producing the relevant record before the Adjudicating Authority. It further comes to fore from the record that the Adjudicating Authority had put the 'Corporate Debtor' on notice and despite the 'Corporate Debtor' being represented by the counsel, no reply was filed. It further emerges from the record that the 'Corporate Debtor' was set *ex parte* on 8th August, 2019 and the impugned order came to be passed on 13th January, 2020. There was a

gap of more than five months in between and no endeavour was made by the 'Corporate Debtor' to seek setting aside of the *ex parte* order or seek leave to file reply. In this circumstance, it is futile on the part of the learned counsel for the Appellant to contend that since the matter had been reserved for orders, there was no occasion for the 'Corporate Debtor' to seek setting aside of the *ex parte* order.

On consideration of the entire gamut of the controversy sought to be raised, we find that the appeal is devoid of merit. Learned counsel for the Appellant has not been able to demonstrate that there was any correspondence/ e-mail/representation on behalf of the 'Corporate Debtor' intimating the 'Operational Creditor' that the services rendered were not upto mark or the quality of services was impaired. The reply to 'Demand Notice' raising such issue for the first time cannot be said to be raising a genuine and bona fide dispute which was pre-existing i.e. prior to the issuance of the Demand Notice. No conclusion, other than the one that the defence is spurious, is available in the given circumstances of the case. We find no legal infirmity in the impugned order commencing the 'corporate insolvency resolution process' against the 'Corporate Debtor'. The appeal is accordingly dismissed.

Before parting, we would like to place on record the development in the case. We are informed by Ms. Madhu Juneja, 'Interim Resolution Professional' that the 'Committee of Creditors' has been constituted and Respondent No. 1 is the sole creditor from whom the claim has been received. Mr. Deshpande, learned counsel for the Appellant submitted that the Appellant wants to settle the claim of Respondent No. 1 (Operational Creditor). We make it clear that

disposal of this appeal shall not be construed as an impediment for the 'Corporate Debtor' to settle the claim of the Financial Creditor through the mechanism provided under Section 12A of the 'I&B Code'.

With these observations, the appeal is dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Jarat Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

/ns/RR/