NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 306 of 2017

IN THE MATTER OF:

Varda Spining & Weaving Mills Pvt. Ltd. ...Appellant

Versus

Jindal Cotex Ltd. ...Respondent

Present:

For Appellant : **Shri Arvind Kr. Gupta, Ms. Purti Marwaha Gupta and Ms. Henna George, Advocates**

For Respondent : **Shri Ahsan Ahmad and Shri Rohit Chaudhary, Advocates**

O R D E R

08.12.2017 The appellant (Operational Creditor) preferred an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I & B Code') for initiation of 'Insolvency Resolution Process' of the respondent – 'Jindal Cotex Ltd.'. Having noticed that there is an 'existence of dispute' between the parties, the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Chandigarh by the impugned order dated 25th October, 2017 rejected the application No. CP(IB) No. 63/Chd/Pb/2017.

2. Learned counsel appearing on behalf of the appellant –Operational Creditor submitted that a notice dated 21st July, 2016 to the respondent – 'Corporate Debtor' under Section 433 and 434 of the Companies Act, 1956 informing that out of total outstanding amount of Rs.12,26,05,047/-, the

respondent has made part payment of Rs.4,10,07,375/- and there is still outstanding dues of Rs.8,15,97,672/- as on 21.08.2014. In reply to such notice the Corporate Debtor informed that no further amount is payable to the Operational Creditor and the amount already paid is full and final. According to the learned counsel for the appellant the dispute as alleged is not based on any evidence. However, if it is accepted that a sum of Rs. 4 crores has been received by the appellant, which according to respondent is full and final, is not entertained by the Adjudicating Authority.

4. Similar issue fell for consideration before the Hon'ble Supreme Court in '*Mobilox Innovations Private Ltd. vs. Kirusa Software Pvt. Ltd.' – 2017 SCC ONLINE SC 1154* wherein the Hon'ble Supreme Court observed as follows:

> "40. *It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an*

anomalous situation would arise if it is not read as "or". If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an arbitral tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an arbitral tribunal or a court for upto three years, such persons would be outside the purview of Section 8(2) leading to bankruptcy proceedings commencing against them. Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended. We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties."

While observing so, the Hon'ble Supreme Court further held that :

> *"44. This being the case, is it not open to the adjudicating authority to then go into whether a dispute does or does not exist?"*

The Hon'ble Supreme Court further observed that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility, as quoted below:

> "54. *It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact 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 Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

5. In the present case as we find that there is an 'existence of dispute' and notice of dispute has been received by the 'Operational Creditor', we uphold the impugned order passed by the Adjudicating Authority. We find no merit in this appeal. The appeal is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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

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