NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.12 of 2019

IN THE MATTER OF:

Jakson Engineers Ltd. ...**Appellant**

Versus

Refex Energy Ltd. ...**Respondent**

Present:

For Appellant: **Shri Krishnendu Datta, Shri Divyam Agarwal, Ms. Pallavi Kumar, Shri Raghav Sabharwal and Ms. Mehak Khurana, Advocates**

For Respondent: **Shri Kumarpal Chopra and Shri Siddhartha Iyer, Advocates**

O R D E R

20.09.2019 The Appellant – M/s. Jakson Engineers Limited (Operational Creditor) filed an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code – in short) for initiation of Corporate Insolvency Resolution Process against M/s. Refex Energy Limited (Corporate Debtor). However, the Adjudicating Authority (National Company Law Tribunal, Division Bench, Chennai) by Impugned Order dated 31st October, 2018 rejected the Application under Section 9 on the ground that there is a dispute about quantum of debt.

Learned Counsel for the Appellant submits that even if the debt is disputed, the amount being much more than Rs.1 Lakh, it was incumbent on the part of the Adjudicating Authority to admit the Application in absence of any pre-existing dispute.

On the other hand, according to learned Counsel for the Corporate Debtor, there is a dispute about quantum of payment and that the amount as shown in the Demand Notice under Section 8(1) varied as the balance amount payable was only Rs.75,97,141/- which the Corporate Debtor intended to settle.

The Adjudicating Authority has noticed that there is a debt payable by the Corporate Debtor and the same is not barred by limitation as apparent from the Impugned Order as quoted below:-

> "*12. The Creditor relied upon a letter dated 08.12.2014 written by the Corporate Debtor on ₹1,73,61,691 as balance confirmation but when this Bench has gone through that letter, it appears that the Corporate Debtor wrote it to the Creditor sending cheques for an amount of ₹1,73,61,691, according to the Creditor those cheques were bounced but thereafter over a period of time, the Debtor sent emails requesting the Creditor to attend the defects and service requirement in respect of the PV Boxes supplied to the Debtor, finally on 24.02.2016 sent the mail stating that out of ₹1,73,47,141, the Debtor is to pay only ₹75,97,141, because the Debtor incurred expenditure on attending the defects on their own when the Creditor did not turned up despite being called upon the attend the defects and service required to be given by the Creditor. Since warranty coverage is there for about five years,*

> *though the Debtor admitted the debt claim in the year 2014 and sent cheques for the same, since the Creditor failed to comply with the warranty clause subsequent thereto, the Corporate Debtor sending such emails and finally saying that he is payable only ₹75,97,141 does not amount to either crystallization of debt or confirmation of debt. Out of all this correspondence, two things emanate, one is, the Creditor failed to comply with the warranty clauses, two is, the debt has not been crystalized between the parties as on the date Section 8 Notice was served upon the Debtor because the Debtor in the year 2016 itself sent email that the balance payable is only ₹75,97,141 and not the amount claimed by the Creditor as mentioned in the Company Petition.*
>
> *13. Of course, as to limitation is concerned, there are continuous issues between the parties, whereby we refrain ourselves from deciding this point so that if parties go before civil court, it could be thrashed out on examining the documents available, if required on evidence being adduced."*

It is observed that there being a dispute between the parties in respect of breach of warranty and defects clause, it was observed that the dispute is in existence. However, there is nothing on record to show that before issuance of Demand Notice under Section 8(1), any letter was issued by Corporate Debtor to show that there is an existence of dispute about Rs.75,97,141/-.

The learned Counsel for the Respondent referred to an e-mail dated 24th February, 2016 which reads as follows:-

Begin forwarded message:

From: Sundeep Gupta <sundeep.gupta@jakson.com>
Subject: Re: Refex- Jakson Accounts
Date: 24 February 2016 at 10:43:30 PM IST
To: Arun Mehta <arun@refexenergy.com>
Cc: Anil Jain <anil@refexenergy.com>, Ashish Sethi <ashish.sethi@jakson.com>, "Arun V. Jalan" <arun.jalan@jakson.com>, Rajesh Walia <rajesh.walia@jakson.com>, Dinesh Agarwal <dinesh@refexenergy.com>

Dear Arunji ,

As discussed with you last week in Delhi, we are not aware of the warranty failures and service issues being raised by you now as there is no communication from you in last few years . In fact I have personally sent many mails to you and Anilji in last few years for release of our outstanding payment and 'C' forms but you never reported any service issue or warranty issue to me . In fact I did not receive any response to any of mails .

You will appreciate that we supported you to the best of our abilities . You are also aware of the fact that we have lost heavily on account of stock depriciation (bought on your account) and loss of interest on delayed payments . The loss of stock itself will run into multiple of crores if we start computing the same.

I am very keen to close this matter amicably and start a new relationship with Refex but will not be able to accept any debit note or deduction on any account at this stage .

Regards,

Sundeep Gupta | Joint Managing Director | Jakson Group | www.jakson.com

On 24 Feb 2016, at 18:07, Arun Mehta <arun@refexenergy.com> wrote:

Dear Sundeepji,

Sorry could not send the mail to you last week itself.

But we have discussed this matter internally once again during the last two days. Apart from the Talcher and First RMU failure we have spent a lot of money on the servicing of PV boxes and failures of RMU's and their terminations etc. I am attaching the revised number. We are proposing to share some of the costs as per below:

Total Outstanding	**1,73,47,141**
Less - Talcher Tender	-40,00,000
RMU Cost to split - 1st RMU Failure	-10,00,000
2nd RMU Failure at NVR and cost of changing all the terminations as per Schneider's advice	-24,00,000
Missed Service Calls at NVR, Trimex, Topaz for past 14 months, replacement of batteries, UPS, transformer parts and Schneider service calls and payments- Refex will bear 50% of this as support to close this	- 47,00,000(23,50,000)
Total Payable	75,97,141

TRUE COPY

Please do let us know if we can close it at this.

Look forward to your revert.

However, from the said letter dated 24th February, 2016, we find that the Corporate Debtor in Reply to one Mr. Sandeep Gupta (Operational Creditor) has shown amount of Rs.75,97,141 as payable.

As we find that there is no dispute with regard to the aforesaid amount and it remaining outstanding and being more than Rs.1 Lakh, the Application under Section 9 was fit to be admitted.

For the aforesaid reasons, we set aside the Impugned Order dated 31st October, 2018 and remit the case to the Adjudicating Authority to admit the Application under Section 9 after Notice to the Respondent, so that the Respondent may get an opportunity to settle the matter prior to the admission of the Application.

The Appeal is allowed with aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/rs/sk