

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 108 of 2020

IN THE MATTER OF:

Sandeep Goel

...Appellant

Versus

Ahuja Cotspin Pvt. Ltd.

...Respondent

Present:

For Appellant : Though present, not marked appearance

ORDER

24.01.2020 Mr. Sandeep Goel, 'Sole proprietor' of 'NYSA Enterprises' moved an Application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016 (**'I&B Code'** for short) in Form 5 for initiation of the 'corporate insolvency resolution process' against M/s. Ahuja Cotspin Pvt. Ltd.

2. The Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh by judgement dated 25th November, 2019 admitted the Application on the ground that there is a pre-existing dispute. Learned counsel for the Appellant submitted that the dispute as raised by the 'Corporate Debtor' cannot be held to be a pre-existing dispute. He placed reliance on the decision of the Hon'ble Supreme Court in '**Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.** – (2018) 1 SCC 353.

3. From the record, we find that the notice was issued on 'M/s. Ahuja Cotspin Pvt. Ltd.' (Corporate Debtor). They took plea that the Demand Notice under Section 8(1) was issued on 8th September, 2017. In reply dated 21st December,

2017 to the Demand Notice, the 'Corporate Debtor' has pointed out the 'pre-existence' of the dispute.

4. From the record, we notice that the Appellant 'Nysa Enterprises' issued a notice under Section 434(1)(a) of the Companies Act, 1956 for winding up which was sent on 27th February, 2017 relating to clearance of the outstanding liability. In response thereto, by reply dated 31st March, 2017 'M/s. Ahuja Cotspin Pvt. Ltd.' specifically disputed regarding the delivery of goods. 'M/s. Ahuja Cotspin Pvt. Ltd.' sent message to Nysa that Nysa should first send the remaining booked material as per the contract and promise made thereafter. It was also highlighted that ultimately 'M/s. Ahuja Cotspin Pvt. Ltd.' resolved the matter through one Mr. Rakesh Rathi and after bargain, it was settled with Nysa that it will supply the material of 325 MT only to 'M/s. Ahuja Cotspin Pvt. Ltd.' with the previous booking rates but Nysa failed to make supply to 'M/s. Ahuja Cotspin Pvt. Ltd.' which resulted in huge loss of Rs. 4,00,00,000.

5. Learned counsel for the Appellant submitted that the Respondent duly admitted their liabilities to the tune of Rs. 28,17,421/- and once the liability was accepted, they cannot referred to any reply earlier sent. In '**Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.** - (2018) 1 SCC 353, the Hon'ble Supreme observed and held :

“51. 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.

6. The aforesaid observation of the Hon’ble Supreme Court has also relied upon by the learned counsel for the Appellant to suggest that it must bring to the notice that there is an existence of dispute or the fact that a suit or arbitration proceedings is pending between the parties.

7. All that the Adjudicating Authority is to see at this stage whether there is a plausible contention which requires further investigation and that the dispute is not a patently feasible legal arguments 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.

8. It is not in dispute that in reply to the earlier notice of 27.2.2017 issued by NYSA to 'M/s. Ahuja Cotspin Pvt. Ltd.' has alleged that on failure to supply the material to the extent of quality etc. has resulted in huge losses to the tune of Rupees Four Crores to 'M/s. Ahuja Cotspin Pvt. Ltd.' In one hand, the 'Corporate Debtor' has claimed loss of Rupees Four Crores, on the other hand has admitted the claim to the extent of Rs. 28,17,421/-, such being the position, it is difficult to find out whether there is a default or not. Admittedly, it is not in dispute that winding up notice sent by the Appellant on 27th February, 2017 and the aforesaid issue was raised by the 'Corporate Debtor' and they claimed the huge losses to the tune of Rupees Four Crores.

In the circumstances while we condone the delay of 15 days, we dismiss the appeal. No orders as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Shreesha Merla]
Member (Technical)

/ns/gc/