NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 686 of 2018

[Arising out of order dated 10th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, in Company Petition No. (IB)920(ND)2018]

IN THE MATTER OF:

Mr. Amanpreet Singh Bawa
Director and shareholder of
M/s Satkar Container Lines Pvt. Ltd.
Son of Sh. Manmohan Singh Bawa,
R/o H-14, First Floor, Kailash Colony,
New Delhi – 110048.

....Appellant

Vs

1. Kandla International Container Terminal Pvt. Ltd.,
8 Balaji Estate, Ground Floor,
Guru Ravidas Marg, Kalkaji,
New Delhi – 110019.

2. Satkar Container Lines Pvt. Ltd.
Having its office at,
CIN U74900MH1998PLC116838
B-72, 2nd Floor, Rohit House,
Vishwakarma Colony,
Tughlakabad, M. B. Road,
New Delhi - 110044.

....Respondents

Present:

For Appellant: Mr. Ashim Vachher and Mr. Vaibhav Daba, Advocates.

For Respondents: Mr. Varun Singh, Mr. Gaurav Nair and Ms. Pranati Bhatnagar, Advocates for R-1.

J U D G M E N T

BANSI LAL BHAT, J.

Respondent – Operational Creditor's application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor - 'M/s Satkar Container Lines Pvt. Ltd.' came to be admitted by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, in terms of its order dated 10th October, 2018 with slapping of moratorium and appointment of Interim Resolution Professional as a necessary sequel thereto. Aggrieved thereof the Appellant 'Amanpreet Singh Bawa', Director and Shareholder of the Corporate Debtor has filed the present appeal assailing the order of admission of application under Section 9 of the I&B Code on the grounds that the impugned order was passed without service of notice upon the Corporate Debtor and that the Corporate Debtor had raised dispute with the Operational Creditor as regards the invoice on the basis of which initiation of Corporate Insolvency Resolution was sought.

2. Heard learned counsel for the parties and perused the record.

3. Initiation of Corporate Insolvency Resolution Process at the instance of an Operational Creditor is provided for under the provision engrafted in Section 9 of the I&B Code, whereunder an Operational Creditor may file an application before the Adjudicating Authority for initiating a Corporate Insolvency Resolution Process after complying with the statutory requirements of Section 8. Dwelling on the scope of this provision in "***Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407**", the Hon'ble Apex Court observed as under:

> *"**29.** The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code."*

In a later judgment titled in *"**Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.**,* (2018) 1 SCC 353", the Hon'ble Apex Court further observed as under:-

> *"**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."

4. The undisputed facts leading to initiation of Corporate Insolvency Resolution Process may briefly be noticed. The Corporate Debtor, claiming to be a part of a group of companies engaged in the business of logistics and freight forwarding, availed of the services of Operational Creditor engaged in business of providing storage and handling activities for containers. This happened in year 2017-18. On the basis of invoices raised and account maintained by the Operational Creditor and after adjustment of security deposit, the Operational Creditor demanded payment of Rs.24,91,063/- as its outstanding dues for the services offered to the Corporate Debtor, which not having been clear despite service of demand notice upon the Corporate Debtor, the Operational Creditor had recourse to provisions of Section 9 of I&B Code by filing application in the prescribed format before the Adjudicating Authority, which came to be admitted in terms of the impugned order dated 10th October, 2018 as the Corporate Debtor did not appear before the Adjudicating Authority in response to the notice served through process of the bench and was set ex-parte.

5. Learned counsel for Appellant, while advancing arguments, did not dispute the factum of demand notice having been served upon the Corporate Debtor under Section 8(1) of the I&B Code, which was not responded to by the Corporate Debtor. Thus, the Corporate Debtor failed to bring to the

notice of the Operational Creditor existence of a dispute in conformity with the provision engrafted in Section 8(2) of the I&B Code. As regards, service of notice by the Adjudicating Authority at the pre-admission stage, the plea raised is that the notice served through the mode of email by the Adjudicating Authority went unnoticed as the mail landed in the 'Junk Folder' of the registered email of the Corporate Debtor. This plea is unsound both in design as also in technique. It is indeed indisputable that service through the mode of email is a legally recognized mode of service. Once it is admitted that the mail was served on the registered email of the Corporate Debtor, the Adjudicating Authority cannot be held to have failed to properly serve the notice. It was for the Corporate Debtor to be careful about his mail, more particularly as the Operational Creditor had served demand notice upon it. Therefore, it is futile to contend that there was not proper service of notice upon the Corporate Debtor.

6. Having held that the Corporate Debtor was duly served and it failed to show existence of a dispute in regard to the invoices raised by the Operational Creditor for services rendered by it and the account maintained on the basis of which outstanding liability was worked out, it would be appropriate to refer to the factum of Appellant being specifically asked by this bench as to what would have been the response of the Corporate Debtor to the demand notice or notice served upon it by the Adjudicating Authority. The relevant portion of the minutes of proceedings/ interim order recorded on 10th December, 2018 reads as under:-

"ORDER

10.12.2018-Learned counsel for the Appellant submits that no notice of admission of the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was served on the 'Corporate Debtor'. Otherwise, the 'Corporate Debtor' would have settled the claim."

In the face of this assertion before the bench, it should not lie in the mouth of Corporate Debtor or the Appellant that there was a valid dispute as regards the invoices upon which the edifice of initiation of Corporate Insolvency Resolution Process was based. The fact that learned counsel for Appellant claimed that the Corporate Debtor would have settled the claim if notice had been served upon it postulates that the Operational Creditor's assertion in regard to debt and default was not disputed and the Corporate Debtor was intended to comply with the notice of demand. Even on merit, with reference to page nos. 55, 65 and 67 of the paper book, be it seen that the Operational Creditor not being a party to the settlement agreement and the correspondence referred being irrelevant as regards the debt in respect whereof default is alleged and established by the Operational Creditor, the argument raised is unsustainable.

7. For what has been discussed hereinabove, we are of the considered opinion that the appeal lacks merit. We find no legal infirmity or factual

frailty in the impugned order. The appeal is accordingly dismissed. However, there shall be no orders as to costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

2nd May, 2019

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