

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 58 of 2017

IN THE MATTER OF :

VDS Plastics Pvt. Ltd.

...Appellant

Versus

Pal Mohan Electronics (P) Ltd.

...Respondent

Present: For Appellant: Mr. D. Moitra, Advocate.

**For Respondent: Mr. K.K.Sharma, Senior Advocate with
Mr. Avrial, Advocate.**

ORDER

14.09.2017 – The Appellant- ‘Operational Creditor’ preferred an 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’. Learned Adjudicating Authority (National Company Law Tribunal) New Delhi Bench, New Delhi, by impugned order dated 21st April, 2017 rejected the application there being a dispute in existence.

2. Learned Counsel for the Appellant while submitted that there is no dispute pending or in existence and referred to the decision of Appellate Tribunal in **“Kirusa Software Pvt. Ltd. Vs. Mobilox Innovations Pvt. Ltd. Company Appeal (AT) (Insolvency) 6 of 2017”**, contended that mere a dispute giving a colour of genuine dispute or

illusory, raised for the first time cannot be a ground to reject the application under section 9 of the 'I&B Code'.

3. Per contra, according to Learned Counsel for the Respondent, there is a dispute in existence, which have been noticed by the Adjudicating Authority.

4. We have heard Learned Counsel for the parties and perused the record.

5. From letter dated 1st August, 2016 written on behalf of appellant- 'Operational Creditor, it appears that statutory notice for winding up under section 433(e) and 434(1)(a) of the Companies Act, 1956 was issued by appellant on the respondent- 'Corporate Debtor'. Therein it was mentioned that pursuant to the order placed by the 'Corporate Debtor', the goods and materials were duly supplied as per the entire satisfaction of the 'Corporate Debtor' and the same were duly acknowledged. The amount sold, supplied and delivered to the 'Corporate Debtor' is worth Rs.1,48,37,586/- (Rupees One crore forty-eight lakhs thirty-seven thousand five hundred eighty-six only) and against the above mentioned amount, part payment has been received of Rs.57,56,610/- (Rupees Fifty-Seven Lakhs Fifty-Six Thousand Six Hundred and Ten only) and balance amount of Rs.90,80,976/- (Rupees ninety lakhs eighty thousand nine hundred seventy-six only) is payable to appellant as on that date.

6. In reply to the said letter on behalf of 'Corporate Debtor', by letter dated 20th September, 2016 the claim was denied and the appellant was intimated as follows:

"It is pertinent to mention here that it is completely incorrect to state that goods and materials worth Rs.1,48,37,586/- were supplied by your client to our client. Our Client never acknowledged and accepted the said goods and materials.

5. *That the contents of para no.5 of the notice under reply are false and denied. It is specifically denied that a balance amount of Rs.90,80,976/- is outstanding as on date against the aforesaid alleged supply.*

6. *That the contents of para no.6 of the notice under reply are false and denied. It is denied that the goods and materials were ever supplied by your client to our client as per orders placed by our client and the same were duly received by our client."*

7. From the aforesaid two letters, both of which were addressed prior to issuance of notice under section 8 of the 'I&B Code', as we find that there is an existence of dispute with regard to supply of goods and materials. In spite of notice under section 433(e) and 434(1)(a) of the Companies Act, 1956, and receipt of reply, no steps was taken by the

appellant. Much thereafter, application for initiation of 'Corporate Insolvency Resolution Process' was filed. In the circumstances, we find no reason to interfere with the impugned order wherein the Adjudicating Authority held that there is an 'existence of dispute'.

8. In absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Balvinder Singh)
Member(Technical)

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