

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 917 of 2019

IN THE MATTER OF:

M/s India Trading Oil Company

...Appellant

Vs

M/s Abhinandan Dyeing Pvt. Ltd.

....Respondents

Present:

For Appellant: Ms. Soumya Dutta, Advocate

For Respondents: Ms. Kanchan Yadav, Advocate.

ORDER

04.12.2019 The Appellant- M/s Indian Trading Oil Company filed CP(IB) No. 590/KB/2018 before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata against M/s Abhinandan Dying Pvt. Ltd. – Corporate Debtor under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') claiming to be Operational Creditor seeking Operational Debt of Rs. 19,10,442/-. The claim came to be rejected on the ground that there was pre-existing dispute. Thus this Appeal.

2. Learned Counsel for the Appellant is submitting that for long the Appellant had been supplying furnace oil to the Respondent. The same was supplied between 2013-2016. It was supplied on credit basis. From 2016, the Respondent stopped purchasing oil from the Appellant. Dues were there and thus, a letter dated 30.04.2016 was sent by the Operational Creditor to the Corporate Debtor and when payment was not received, reminder was sent on 18.04.2016. It is stated that later on, winding up notice dated 30.04.2016 under Section 434 of the Companies Act, 1956 was sent to the Corporate Debtor as can be seen in

Annexure-A6 and in response to this, Respondent in reply vide Annexure-A7 dated 20.04.2016, raised dispute that the bills which had been raised were exaggerated and the prices were not as per guidelines of M/s Hindustan Petroleum Corporation Ltd (in short **HPCL**). It is argued that certificate of HPCL (Annexure- A8- Page- 109) shows Furnace Oil pricing is not under administered pricing mechanism of the Ministry. It is stated, the dispute that there was exaggerated pricing was only lame excuse not to pay and raise dispute under the provisions of IBC.

3. Learned Counsel for the Respondent is submitting that pre-existing dispute is apparent from the records and thus the Adjudicating Authority rightly rejected the application under Section 9 of IBC.

4. Although learned Counsel for Appellant is submitting that response to winding up notice under Section 434 of the Companies Act, 1956 could not be relied to say that there is pre-existing dispute, what we find from the records is that such response was sent by the Respondent on 20.05.2016 which was much prior to the notice under Section 8 of IBC sent on 10.01.2018. It cannot be stated to be 'later on taken defence'. The reply dated 20.05.2016 of the Respondent mentioned in paragraph-3 is extracted below:

..

“3. Until June 2015, we continued making payment against supplies, solely under the impression that the Bills were being prepared on the basis of the rates as were prescribed in the Ready Reckoner of HPCL, as had been agreed. However, sometime in the first week of July, 2015, it transpired, in

course of an internal audit exercise, that the rates charged by your client in the bills raised on account of supplies so effected, were far in excess of the rates published in Ready Reckoner of HPCL. Had we known or reason to believe that the Bills of your client were not in accordance with the agreement as aforesaid and the rates quoted therein were but far in excess to that they were otherwise entitled to under the prescribed law, we would not have made any payment there against.”

....

5. In paragraph-9(b) of the Reply it was mentioned as:

.....

“9(b) We deny and dispute that the sum of Rs. 14,74,772/- or any other sum is due or payable by us to your client. We say that nothing is due and payable to your client, in view of the excess amount that were realized by your client in the manner stated above.”

...

6. The above Notice was admittedly sent before the notice under Section 8 of IBC showing that the Respondent had claimed that excess amounts were being charged though it had been agreed to by parties to go by ready reckoner of HPCL and excess amount had been paid in the earlier purchases and that the parties had agreed that no payment in response of further supplies would be made by the Corporate Debtor until adjustments are made of the excess amount. The reply notice bluntly told the Operation Creditor that in view of the excess

amounts which are Operational Creditor had realized, there were no dues payable.

7. We cannot enter into the question whether or not defence taken up by the Corporate Debtor was right or it would stand in the Civil Court but for the purpose of IBC, we find that there was a pre-existing dispute regarding dues which was raised and that being so, it cannot be said that the Adjudicating Authority erred in rejecting Section 9 application.

8. There is no substance in the appeal. The appeal is dismissed. This judgment will not come in the way of the Appellant to pursue appropriate remedy in appropriate forum.

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

(Kanthi Narahari)
Member(Technical)

(V P Singh)
Member(Technical)

Akc/Md.