

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 331 of 2017

IN THE MATTER OF:

AS Technosoft Pvt. Ltd.

...Appellant

Vs.

Goldsquare Sales India Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Atul Kumar, Advocate.

For Respondent: - Mr. Naresh K. Daksh, Advocate.

ORDER

11.01.2018- This appeal has been preferred by Appellant- M/s. AS Technosoft Private Limited ('Operational Creditor') against the order dated 3rd November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, New Delhi, whereby and whereunder the application preferred by the Appellant 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 Respondent- M/s. Goldsquare Sales India Pvt. Ltd. ('Corporate Debtor') has been rejected on the ground of 'existence of dispute'.

2. Learned counsel appearing on behalf of the Appellant submits that no dispute was existence and but the dispute was raised only after notice was issued on 8th September, 2017 under sub-section (1) of Section 8 of the 'I&B Code' which cannot be taken into consideration to reject the application.

Contd/-.....

3. In reply, learned counsel appearing on behalf of the Respondent referred to Advocate notice dated 29th August, 2017, wherein the Appellant has been informed as follows: -

“6. I have also instructions to say that since you breached the contract and have taken/ charged excess payment from my Client even without having complied with the terms of contracts, you the addressee are bound to refund the said amount of Rs. 1.55 Crore to my Client and further, you the addressee also liable to make good all the losses sustained to my Client due to such defective, fraudulent and negligent services. I have instructions to say that since the losses suffered by my Client due to such breach of contract, defective and negligence services cannot be assessed in terms of money but without prejudice to its rights to claim higher amount, my Client is assessing the said losses on account of loss of goodwill, reputation and business losses to the tune of Rs. 50,00,000/- (Rupees Fifty Lacs only) and reserves its right to claim higher amount.”

4. Learned counsel appearing on behalf of the Appellant contended

that the said notice has been issued by an Advocate on behalf of M/s. Awari Technologies Pvt. Ltd. and not by the Respondent- M/s. Goldsquare Sales India Pvt. Ltd.

5. Learned counsel appearing on behalf of the Respondent clarified that the agreement was reached between M/s. Awari Technologies Pvt. Ltd. and the Appellant for sending e-mails. Later on, M/s. Awari Technologies Pvt. Ltd. intimated the Appellant that the payment will be made by the Respondent- M/s. Goldsquare Sales India Pvt. Ltd. therefore, the Advocate notice given by M/s. Awari Technologies Pvt. Ltd. relates to the e-mail supply for which the payment is due from the Appellant which shows substandard quality of sending e-mails.

6. He relied on an e-mail dated 21st May, 2017 send by the Respondent to Mr. Alok Kumar Gupta, who was dealing of the affairs of the Appellant. In the said e-mail forwarded overall 'inbox placement' has been shown. For one of the month it is shown that out of 100% mails, 'spam' is 37.4% and 'inbox' is 62.6%. Similarly, for another month the 'spam' is 31.9% and 'inbox' is 68.1%. Similarly, in another month the 'spam' is 67.3% and 'inbox' is 32.7%. The aforesaid e-mail of Respondent itself suggest that a number of e-mails were not reached the 'inbox' which shows inefficiency on the part of the Appellant, though they claimed 100% payment. From the record, we find that the Appellant has also replied to the aforesaid e-mails and denied the allegations whereinafter part payment has been made. Payments have been made against some of

the bills and TDS has been deducted.

7. From the aforesaid facts, it is clear that there is an 'existence of dispute'. For the said reason, we are not inclined to interfere with the impugned order dated 3rd November, 2017 passed in Company Petition No. (IB) 386 (ND)/2017. 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 Bansi Lal Bhat)
Member(Judicial)

Ar/G