

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 264 of 2017

IN THE MATTER OF :

M/s. Oxygen Communications & Anr. ...Appellants

Versus

M/s. Iris Computers Ltd. ...Respondent

Present: For Appellants: Mr. Sanjeev Kumar Singh and Mr. Shighra Kumar, Advocates.

For Respondent:

ORDER

13.11.2017 – The Appellants-‘Operational Creditor’ filed 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 Respondent-‘Corporate Debtor’. The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, New Delhi, by impugned order dated 27th September, 2017 dismissed the application on the ground of ‘existence of dispute’ giving raise to the present appeal.

On hearing learned counsel for the Appellants and learned counsel for the Respondent and perusal of the record, we find that purported notice under sub-Section (1) of Section 8 of the ‘I&B Code’ was issued by an Advocate and Solicitor firm on 8th August, 2017. Prior

to that pursuant to the notices dated 23rd March, 2017 and 20th April, 2017 issued by the Appellants, the Respondent disputed the amount on 30th May, 2017. Apart from this, we find that the purported demand notice issued under sub-section (1) of Section 8 of the 'I&B Code' is not by the Appellant-'Operational Creditor' but by the Advocates and Solicitors firm.

As there is an 'existence of dispute' since prior to issuance of notice under sub-section (1) of Section 8 of the 'I&B Code', and we find that the purported notice under sub-section (1) of Section 8 of the 'I&B Code' has been issued by Advocates and Solicitors firm, which is not permissible as held by this Court in "***Uttam Galva Steels Limited v. DF Deutsche Forfait AG & Anr. in Company Appeal (AT) (Insolvency) 39 of 2017***", the application under Section 9 was not maintainable.

We find no merit in this appeal. It is accordingly, 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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