

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 95 of 2020

IN THE MATTER OF:

R. S. Fuel Pvt. Ltd.

...Appellant

Vs

Ankit Metal & Power Ltd.

....Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate.

For Respondent: Mr. Abhijeet Sinha, Mr. Jeevan B. Panda, Mr. Satish Padhi, Ms. Meher Tandon and Mr. Saikat Sarkar, Advocates.

O R D E R

20.01.2020: Appellant – ‘M/s R. S. Fuel (P) Ltd.’ moved 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 ‘M/s Ankit Metal & Power Limited’ (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by impugned order dated 21st November, 2019 dismissed the application on the ground of pre-existing dispute.

2. Learned counsel for the Appellant submits that Appellant has already accepted that that the amount is payable and referred to letter issued on behalf of the Corporate Debtor to the Advocate of the Appellant dated 22nd September, 2016.

3. Having gone through the aforesaid advocate’s reply dated 22nd September, 2016, we find that there is a pre-existing dispute since August, 2016 relating to supply of coal which was not in accordance with the description in the purchase order. From the said letter it appears that legal notice was issued on behalf of the Appellant on 29th August, 2016, which the Advocate of Corporate Debtor replied in letter dated 22nd September, 2016, which is as follows:-

TYPED COPY

BIDYUT DUTT
ADVOCATE, HIGH COURT CALCUTTA

"TEMPLE CHAMBERS"
6, OLD POST OFFICE STREET
3RD FLOOR, ROOM NO. 79/2
KOLKATA - 700 001
Phone : Office : 2210-3662

To
Vikash Kumar Bhuvania
Advocate, Bhuvania and Associates
Kendua, P.O. Kusanda
District - Dhanbad - 828116
Jharkhand

Your Client : M/s. R. S. Fuels Private Limited having its office at Harmu
Road, Ranchi - 834001, Jharkhand

My Client : Ankit Metal & Power Limited

Sub : Reply to the Legal Notice dated 29.08.2016 send by you as
regards to disputed claims amounting to Rs. 11,74,37,063/-
for supply of coal

Dear Sir,

After deliberating with my client upon your notice, I have been instructed to give
reply by my client, Ankit Power and Metal Limited against the irrational and false claims
made in your legal notice. I hereby reply to your notice.

1. The goods supplied by your client as against the purchase orders provided to them was not in accordance with product description as stated in the Purchase Orders. This was a clear violation and has caused much loss to my client.
2. Purchase orders had stated that delivery of coal would be immediate. My client was faced with the situation where immediate coal was required for upkeep of production but due to the delay in delivery from your end such caused immense hardship and loss of business for my client. The approach taken by your client in fulfilling its duties have been thoroughly unprofessional and inhuman.
3. The latches as provided before which is emanating from your client's part has caused much hardship and loss to my client. These delays and wrong goods supplied has led to production loss in bulks rendering my client to stop payments as set off against loss caused due to delay supply by your client and also, for goods supplied which was not in accordance with product description as stated in the Purchase Orders.

NOTARY PUBLIC
R. S. FUELS PVT. LTD.
06.03.2020
of West Bengal

NOTARY PUBLIC
R. S. FUELS PVT. LTD.
KOLKATA
06.03.2020
OF INDIA

R. S. FUELS PVT. LTD.

CERTIFIED TRUE COPY
R. S. FUELS PVT. LTD.
(Signature)
(Signature)

4. From the Accounts maintained by my client, it appears that there is a credit balance of Rs.90,28,866.94 (Rupees Ninety lakhs twenty eight thousand and eight hundred and sixty six Paise Ninety Four only) in your client's name and the same is kept on hold for adjustment against loss suffered by my client as stated above. The remainder sum is disputed as such being false and made up so as to siphon away undue payments from my client.
5. Further, your legal notice is bad in law as because Clause 5 of the Purchase Orders contains an Arbitration Clause to settle dispute between the parties through Arbitration and Conciliation under a special statute. A civil Dispute where the claims itself are dispute between the parties cannot be given the face of criminal nature as because such would be a nullity under the laws governing the land.
6. To reiterate, the principle of "generali ex specialibus non derogate" meaning general law will yield before the special law. In this matter your client has accepted the dispute resolution clause provided in the Purchase Orders under clause 5, when such purchase orders was received and accepted by your client, such being in the nature of standard form of contract.
7. In view of Clause 5, all dispute or differences whatsoever arising under the purchase orders shall be settled amicably at first before resorting to Arbitration. This is in clear conformity with settled laws on Arbitration and being so clear scope of the dispute resolution clause had been already laid down in the Purchase Orders.

In pursuance of the reasons stated above, I advise you to check on dues of your client and also to advise your client to amicably solve the disputes arising as according to the terms of the Purchase Orders. If you move forth with your criminal litigation, we would contest the same and if thereafter, your client loses its claim then all loss/damages/costs incurred will be compensated by them and also my client will have right to counter sue for defamation and loss of goodwill.

Yours faithfully,
Sd/-
Advocate

CERTIFIED TRUE COPY

R. S. FUEL PVT. LTD.
S. S. Sanyal
Director



4. Therefore, it is clear that much prior to issuance of demand notice, the disputes regarding the quality of goods/coal and delayed supply were continuing, such letter having already issued. We find that the letter of dispute was issued much prior to the issuance of demand notice under Section 8(1) issued on 30th September, 2017. The dispute was even before the commencement of Insolvency and Bankruptcy Code. What are the particulars of the goods, whether they were of substandard quality or delayed are not the matters which can be decided by the Adjudicating Authority (National Company Law Tribunal), therefore, such dispute cannot be decided and application under Section 9 cannot be entertained. The appeal is dismissed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk