

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 31 of 2018

(Arising out of Order dated 14th December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Bench-III, New Delhi in C.P. No. IB-316/ND/2017)

IN THE MATTER OF:

Ramco Systems Ltd.

...Appellant

Vs.

Spicejet Ltd.

...Respondent

Present: For Appellant: - Mr. Neeraj Malhotra, Senior Advocate with Mr. Rajdev Singh, Mr. Ritesh Khare, Ms. Deepika Kumari, Mr. Akhilesh, Mr. Azeem, Ms. Nikita Anand and Mr. Rajesh Sivaswamy, Advocates.

For Respondent:- Mr. Virendra Ganda, Senior Advocate with Mr. Abhishek Sharma and Ms. Ashly Cherian, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- 'Ramco Systems Limited'- ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) against the 'Spicejet Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Bench-III, New Delhi, by impugned order dated 14th December, 2017, dismissed the application on the ground of inconsistency in the overall payments and the non-compliance with the

provisions of Section 9(3)(c) by the 'Operational Creditor', in the absence of a certificate from the financial institution maintaining accounts of the 'Operational Creditor'. The Adjudicating Authority further observed that the 'Corporate Debtor' on the other hand shown that certain payment has been made.

2. The brief facts of the case is that the Appellant- 'Ramco Systems Limited' and the Respondent- 'Spicejet Limited' entered into 'Aviation Software Solutions Agreements' dated 13th May, 2013 consisting of four Agreements, all dated 13th May, 2013 namely, 'General Terms & Conditions', 'Software License Agreement', 'Professional Services Agreement' and 'Software Support Agreement'.

3. Subsequent thereto on 1st July, 2014, the 'Change Order Demand' was executed between the parties. The earlier 'Software License Agreement' for 180 number of Authorised Users were amended to 55 Aircraft Tails and unlimited users with other amendment and modification which also followed various modification and alteration on 1st July, 2014.

4. Learned counsel for the Appellant submitted that huge amount is payable by the Respondent- 'Spicejet Limited' and invoice for Rs. 62.89 Lakhs were intimated to them by e-mail sent on 19th January, 2016. Same relates to documents one dated 30th May, 2013 and two both dated 23rd July, 2014.

5. Reliance has been placed on the Auditor's Report of 'Spicejet Limited' whereby the Appellant was intimated that the Auditors have been engaged to perform the limited review of 'Spicejet Limited' for the quarter ending 31st December, 2015 and as a part of their audit procedure, they are required to obtain confirmation of balances directly from vendors.

6. Learned counsel for the Respondent submitted that all claims depended on invoices for the year 2013-14 including the invoice dated 23rd July, 2014 which was due and payable by 22nd August, 2014. It is submitted that they are barred by limitation.

7. Learned counsel appearing on behalf of the Appellant referred to the e-mail dated 19th January, 2016 of Spicejet Auditors to suggest that it is not barred by limitation.

8. The Demand Notice under Section 8(1) was issued by the Appellant on 24th April, 2017 without attaching the invoices relating to debt which are payable. The Respondent has taken plea that Invoice No. INAVN/DIN2/0001/15 for an amount of Rs. 59,83,170.00/- and Invoice No. INAVN/DIN2/0002/15 for an amount of Rs.33,70,800.00/- both dated 23rd July, 2014 had never been issued by the Appellant to the Respondent.

9. It is also stated that the Appellant has claimed an amount of Rs.1,42,88,750/- for the unbilled license dated 13th March, 2013.

10. There is nothing on the record to suggest that the invoices dated 23rd July, 2014 were forwarded or received by the Respondent- 'Spicejet Limited'. Therefore, the Demand Notice issued on 24th April, 2017 as relates to invoice dated 23rd July, 2014, though it cannot be held to be barred by limitation, but in absence of specific evidence relating to invoices actually forwarded by the Appellant and there being a doubt, we hold that the Adjudicating Authority has rightly refused to entertain application under Section 9 which requires strict proof of debt and default.

11. For the reasons aforesaid, no relief can be granted. However, the order passed by this Appellate Tribunal or the Adjudicating Authority will not come in the way of the Appellant to move before the Court of Competent Jurisdiction for appropriate relief.

12. The appeal is dismissed with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI
8th May, 2019
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