

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Ins.) No. 538 of 2022**

**IN THE MATTER OF:**

**Shree Ram Cargo Pvt. Ltd.**

**...Appellant**

**Versus**

**Rajat Ispat Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant:** Mr. Anuj Agarwala and Siddham Nahata, Advocates

**For Respondent:**

**O R D E R  
(Virtual Mode)**

**19.05.2022:** Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 21<sup>st</sup> March, 2022 by which Order the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the Appellant has been rejected observing that there is pre-existing dispute. In paragraph 12 and 13 of the Order, the Adjudicating Authority has observed as under:

*"12. The Hon'ble Supreme Court in **Mobilox (Supra)** has observed that all that the Adjudicating Authority has to see at "the stage of admission" is **whether there is a plausible contention which requires further investigation and that the 'Dispute' is not a patently feeble legal argument or an assertion of fact or a moonshine defence unsupported by tangible materials/evidence.** In this context it is pertinent to mention that the Corporate Debtor in their letter dated 10.01.2018 has categorically mentioned that **the goods supplied by JSPL against back to back arrangement***

***were of extremely substandard Quality. Further, their consent to pay the outstanding of JSPL was based on the condition that the goods to be supplied to them would be of agreed specification and quality'.***

13. *Fruther, the Operational Creditor in their reply dated 29.01.2018 stated that they will cancel the back to back arrangements and shall make claims against JSPL and they also assured that the Corporate Debtor will have no liability in this regards."*

3. Learned Counsel for the Appellant challenging the Order contends that the Letter dated 29<sup>th</sup> January, 2018 which is relied by the Adjudicating Authority was never written by the Appellant and it is forged Letter. He submits that the Adjudicating Authority has not returned any finding and considered the submissions of the Appellant in above regard. It is submitted that there was no pre-existing dispute and dispute sought to be raised is only moonshine.

4. We have considered the submissions of Learned Counsel for the Appellant and perused the record.

5. The Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued on 06<sup>th</sup> August, 2019 which was replied by the Corporate Debtor on 28<sup>th</sup> August, 2019. It is useful to notice the Reply which was given by the Corporate Debtor which is to the following effect:

*".....*

*Sir,*

*We are in receipt of a purported demand letter dated August 6, 2019 and are shocked and surprised to note the contents of the same.*

*The allegations and claims made by you are false, baseless and misconceived. This is especially so in the light*

*of the fact that you had expressly cancelled and revoked the arrangement between us and it was agreed that we would have no liability to make any payment whatsoever to you.*

*We hereby call on you to forthwith withdrawn the demand notice and to cease and desist from making similar claims against us in future.*

*Thanking you.*

*....."*

6. In the Reply to Demand Notice, it was clearly mentioned that the Corporate Debtor has informed the Appellant that it is the Appellant who have expressly cancelled and revoked the arrangement between the Appellant-the Operational Creditor and Corporate Debtor hence there was no liability to make any payment whatsoever to the Appellant. It is true that there is no reference of the Letter dated 29<sup>th</sup> January, 2018 but the contents are reflected in the Reply dated 28<sup>th</sup> August, 2019. When the notice of dispute was given by the Corporate Debtor which according to us is neither moonshine dispute nor can be said to be without any material or basis, the Adjudicating Authority has rightly taken the view that there was pre-existing dispute hence the Application cannot be entertained.

We thus do not find any merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Ms. Shreesha Merla]  
Member (Technical)**

**[Mr. Naresh Salecha]  
Member (Technical)**

Basant/nn