NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2292 of 2024

IN THE MATTER OF:

Straw Commodities LLP **...Appellant**

Versus

Anram Agro Trading Pvt. Ltd. **...Respondent**

Present:

For Appellant : Mr. Mrinal Harshvardhan, Ms. Sunanda Nimisha, Ms. Rituparna Mohapatra, Advocates.

For Respondent :

O R D E R
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (J) (Oral)

16.12.2024: This Appeal is directed against the Order dated 25.10.2024, by which an Application filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) as the Operational Creditor against the Respondent as the Corporate Debtor for the resolution of an amount of ₹101,89,178.77/- has been dismissed.

2. The Appellant and Respondent executed 3 Sale Contracts dated 21.04.2021 (first Contract), 19.11.2021 (second Contract) and 14.02.2022 (third Contract).

3. The first Contract bearing No. S00128/2021-2022 was qua delivery of 440 MT of Tanzania Origin Soya Bean, New Crop 2021, NON-GMO for an amount of Rs.2,64,00,000/-. There was an extension of Sale Contract 1 by Contract 1-A bearing No. S00128A for delivery of 228 MT of Tanzania Origin Soya Bean, New Crop 2021, NON-GMO for Rs.13,66,622.40/-. The Contract 2 bearing No. S00131 was in regard to sale of 64.46 MTs of Ethiopian Origin

Soya Bean Meal Non-GMO @ 60,000 per MT and the third Contract bearing No. S00141/2021-2022, was regarding 440 MT of Ethiopian Origin Soya Bean, New Crop 2022 Non-GMO @ USD 860 per MT.

4. The grievance of the Appellant is that the Respondent, despite receiving the advance payment failed to deliver the goods on time. A table, extracted from the memo of Appeal, is reproduced as under:

S. No.	***Sale Contract No.***	***Quantity of commodity Order (Metric Ton)***	***Quantity of commodity Delivered (Metric Ton)***	***Advance Payment made (in Rs.)***	***Outstanding Balance Amount (in Rs.)***
1.	*S00128 (Sale Contract I)*	*440 MT*	*211.40 MT*	*Rs. 1,43,18,022*	*Rs. 4,65,296.77*
2.	*S00128A (Sale Contract I-A)*	*228.60 MT*	*Not delivered*	*Rs. 84,15,000*	*Rs. 40,59,234*
3.	*S00131 (Sale Contract II)*	*64.46 MT*	*64.64 MT*	*Payment of Rs. 43,55,766 for Sale Contract II was settled with the advance payment already made for Sale Contract I-A.*	
4.	*S00141 (Sale Contract III)*	*440 MT*	*Not delivered*	*Rs. 56,64,648*	*Rs. 56,64,648*
Total Outstanding Balance Amount					*Rs. 1,01,89,178.77/-*

5. The Appellant issued Demand Notice dated 18.09.2023 under Section 8 of the Code demanding the unpaid outstanding debt for Rs.1,01,89,178.77/-. The Notice was not replied by the Respondent, therefore, the Appellant filed the Application under Section 9, which was contested by the Respondent.

6. On the other hand, the case of the Respondent is that it had imported the agriculture commodities asking the Appellant by making the payment to the Suppliers. But the Appellant has neglected to take delivery of goods despite repeated request made verbally through mail as well as WhatsApp messages. The Tribunal took into account various WhatsApp messages (chat between the parties) and concluded that there was a Pre-Existing Dispute, therefore, the Petition under Section 9 was not maintainable.

7. In this regard, the relevant observations made by the Learned Tribunal is hereby reproduced for a quick glance:

> ***"22.*** *Therefore, it is evident that all these 7 containers were there, but it is the Operational Creditor who in the conversation is stating that Soya Bean marketing in India is too much down. On 03.05.2022, 11.05.2022 also the Operational Creditor is saying market is in terrible bad shape. In view of the fact that Operational Creditor's customers has backed out therefore on 11.05.2022 it is the Operational Creditor who states that,* ***"loss toh hona hain...." "milke baat lete hain..".*** *and to which the representative of Corporate Debtor has replied on the same day agreeing by replying* ***"Hmm if there's some improvement let's c...we could wait for a week or so.***
>
> ***23.*** *On the perusal of this conversation, it is evident that it is the Operational Creditor who proposed to share the loss in view of the fact that his customer was delaying. It is the Operational Creditor who expressed the desire for the loss to be shared and the Corporate Debtor agreed to the same. Subsequently, on 19.05.2022, the Corporate Debtor once again asked the Operational Creditor as to what needs to be done with respect to the 7 containers to which the Operational Creditors stated,* ***"hold karke bechenge.".*** *It is on 19.05.2022 itself the Operational Creditor has referred to Rs. 56 Lakhs advance payment to which the response of the Corporate Debtor was that he wanted to adjust this amount. Subsequently, it is the Operational Creditor who has stated* ***"bean liya tha buyer palat gya...".***

24. *From the perusal of this conversation between the parties, it is certainly evident that the petitioner had proposed the loss to be shared by the Corporate Debtor in view of the fact that it was his customer that changed his mind ("bean liya tha buyer palat gya…")*

25. *Thus it is evident that the Corporate Debtor executed Contract-III which the Operational Creditor failed to lift. There is further conversation with respect to the waiting for the market to improve etc. Thus, it is evident that even though the Corporate Debtor has failed to respond to the Demand Notice or the emails sent by the Operational Creditor, the WhatsApp conversation, and certain emails of the operational creditor are contrary to the case made out by the Petitioner in the present Company petition. From the perusal of the conversation itself its evident that there is already a pre-existing dispute between the parties.*

26. *On the perusal of the facts and circumstances of the present case, it is evident that the petitioner has made an attempt to twist the facts by falsely stating that it is the Corporate Debtor who has failed to execute the contract no. III whereas on the perusal of the documents on record, it is evident from the whatsapp conversations and email that both the Operational Creditor and Corporate Debtor were already in talks and it is the Operational creditor who because of the bad market conditions and low price of Soya Bean failed to lift the commodity. Thus, in these circumstances, the Operational Creditor cannot be allowed to take advantage of his own wrong. It is pertinent here to refer to the decision of Hon'ble Supreme Court in* ***Re. Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353,*** *wherein, the Hon'ble Supreme Court was pleased to hold, inter alia, as follows*

> *40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration*

proceeding relating to a dispute is pending between the parties. ***Therefore, all that the adjudicating authority is to see at this stage 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 unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."***

In the present case, the Operational Creditor failed to lift the commodity because of the bad market conditions and also because of the change of heart of his own buyer as the Operational Creditor himself said on 19.05.2022 that ***"bean liya tha buyer palat gya...".*** *the same has been discussed by them over chats. All these disputes were raised by the Corporate Debtor much prior to the issuance of Demand Notice under Section 8 of the Code. On the basis of the above observations, it is observed that the dispute raised by the Corporate Debtor exists in fact and is not moonshine. Therefore, we are of the view that there exists pre-existing dispute between the Operational Creditor and the Corporate Debtor.*

Hence, the present Section 9 application is not admissible on the ground of existence of pre-existing dispute between the parties. Consequently, there exists 'no default' on the part of the Corporate Debtor as parties were voluntarily trying to share the loss suffered.

27. *The Bench is informed that the Corporate Debtor is running concern doing business and this Tribunal has thoughtfully considered the fact that the Corporate Debtor is a Financially Solvent Company*

with the ability to discharge its lawful debt. The Hon'ble Supreme Court in ***M/S S.S. Engineers V. Hindustan Petroleum Corporation Ltd & Ors., Civil Appeal No. 4583/2022*** *has held that:*

> *"The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with the insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor"*

28. *In the light of the above discussion as well as the law laid down in the afore cited case, we are of the considered view that the present Petition deserves to be dismissed. Otherwise also the present petition seems to be nothing but a process of recovery being used by the operational creditor hence it is not an appropriate forum.*

29. *In view of the presence circumstances, we deem it appropriate to dismiss the present petition. Accordingly, the present C.P. (I.B) No. 1030/MB/2023 petition is dismissed."*

8. Counsel for the Appellant has vehemently argued that the WhatsApp messages between the Parties has to be meet Section 65B of the IT Act. He relied upon the case of ***`M/s. Kashyap Infraprojects Pvt. Ltd.' Vs. `M/s. Hi-Tech Sweet Water Technologies Pvt. Ltd.'*** in ***Comp. App. (AT) (Ins.) No. 33/2023,*** decided on 27.11.2024 in this regard.

9. In this regard, we have candidly asked the Appellant as to whether the Appellant has denied the said conversation in the grounds of Appeal to have ever happened or in the manner it has happened, to which he could not answer in negative. Thus, once there is no dispute that there has been conversation between the Parties, even on WhatsApp which is a common mode of communication these days, it does not lie in the mouth of the

Appellant to contradict the same on the basis of the Judgment in the case of ***`M/s. Kashyap Infraprojects Pvt. Ltd.' (Supra).***

10. In Para 22 of the Impugned Order, the Learned Tribunal has categorically observed that there was conversation between the Parties that the rates of Soya Bean have gone down and further recorded the conversation between the Parties to the effect that Appellant wanted to wait for the market to improve and did not receive the goods. The same conversation has been noticed by the learned Tribunal in Para 23 of the Impugned Order. Therefore, the Tribunal has rightly come to the conclusion that there was a Pre-Existing Dispute between the Parties and the process under the Code is being used for recovery for which it is not the appropriate forum.

Thus, in view of the aforesaid facts and circumstances, we do not find any reason to interfere in the Impugned Order and hence the present Appeal is hereby dismissed, though without any Order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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