

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

Company Appeal (AT) (Insolvency) No. 311 of 2023

IN THE MATTER OF:

Jain Irrigation Systems Ltd.

...Appellant

Versus

Pragyawan Technologies Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Karan Grover, Advocates

For Respondent: Mr. Rohan Chawla, Advocate

ORDER

21.03.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 25th January, 2023 by which Order Section 9 Application filed by the Appellant has been dismissed by the Adjudicating Authority on the ground of pre-existing dispute.

3. In the present case, on 10.06.2019, purchase orders were issued to the Appellant for supply of PLB HDPE Duct. On receipt of Purchase Orders, the Appellant issued two Performa Invoices. A letter/notice was issued on 21.11.2019 and 22.11.2019 to the Appellant. Appellant on 27.12.2019 issued a notice under Section 8 of the I&B Code, 2016 reminding payment of the amount and the purchase order. The corporate debtor submitted a Reply to the notice

dated 27.12.2019 on 04.01.2020 which has been brought on record by the Appellant at page no. 246 of the Appeal Paper Book. In the notice of dispute which was issued by the Corporate Debtor against the Appellant's notice under Section 8 dated 27.12.2019 reference of notice dated 21.11.2019 delivered on 26.11.2019 and Legal Notice dated 27.12.2019 delivered on 03.01.2019 was made and the claim of the Appellant was refuted and in paragraph 2, details were given to the pre-existing dispute before issuance of demand notice by the Corporate Debtor.

4. After receipt of the Section 8 Notice, Section 9 Application was filed. The Corporate Debtor also filed a Reply to the Section 9 Application and the Adjudicating Authority after considering the submissions of parties has dismissed the Application under Section 9 of the I&B Code, 2016. Aggrieved by the order, this Appeal has been filed.

5. Learned Counsel for the Appellant challenging the Order contends that the dispute which was sought to be raised by the Corporate Debtor is a moonshine dispute and could not have been relied for dismissing the Section 9 Application. He submits that the inspection was itself dispensed with by the Corporate Debtor and the Corporate Debtor sent a letter that transportation they were arranging when the goods were supplied, the Appellant was required to be paid by the Corporate Debtor.

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

7. It is on record that prior to Section 8 Notice dated 27.12.2019, corporate debtor had sent a notice dated 21.11.2019 raising various issues regarding the supplies made by the Appellant. The notice which was made under Section 8 was replied by a detailed reply notice dated 04.01.2020. In paragraph 2 of the said reply to Section 8 Notice, following has been stated:

“2. Pre-existing dispute before issuance of Demand Notice

That this Demand Notice issued by you on instructions of your Client is further bad in law as it is against the principles of the Code. It is settled law that no proceedings under the IBC shall hold ground if there exists any dispute pertaining to the alleged unpaid debt. In lieu of the same, we state that before the receipt of the demand notice by our Client from you on 27.12.2019 at 5.18PM via email, an email was sent out dated 21.11.2019 specifying the breach committed by your Client and a legal notice claiming breach of the two purchase orders, which are the subject matter of these proceedings, and disputes pertaining to the same was sent out by post on 27.12.2019 itself at 12.21PM and by email on 03.01.2020. The contents of the said legal notice issued by us on behalf of our client is self-explanatory and clearly indicative of a dispute, and its contents are not being reiterated herein for the sake of brevity. The same is being attached herewith as Annexure 1. It is further pertinent to mention that based on the various communications sent by our Client to your Client prior to the issuance of the notice clearly indicate that a dispute

subsists and since the same was not addressed by you, our Client was left with no option but to serve upon you the above-mentioned legal notice. Hence, in light of the same recourse to the provisions of IBC are totally out of place and is contrary to the very essence of the legislative intent of IBC. That it is also imperative to mention that in lieu of the above dispute, a Civil Suit has been filed having CS No. 09/2020. In lieu of the above, vide order dated 02.01.2020 of the Hon' Court of Gautam Buddh Nagar, notice has been issued to your Client for appearance before the Hon' Court at Gautam Buddh Nagar. The copy of the order has been annexed herewith as Annexure 2."

8. From the record, it does appear that prior to Section 8 Notice, issues were raised by the Corporate Debtor including various claims against the Operational Creditor. The submission of Learned Counsel for the Appellant that dispute is a moonshine dispute cannot be accepted in view of the averments and statements made in the Reply-Notice dated 04.01.2020. Section 9 Proceedings are not the proceedings where the dispute raised by the parties arising out of contract between the parties can be gone into and adjudicated. The scheme of Insolvency Proceedings contemplate that the proceeding shall go on only when there is an admitted debt and default, forum is not for deciding and adjudicating the contractual dispute between the parties. Present is a case where prior to Section 8 Notice, letters were issued by the Corporate Debtor and in Reply to Section 8 Notice, detailed Reply has been filed rejecting the claim of the Appellant. The claim having been disputed, present was not a case where Section 9 Application Company Appeal (AT) Ins. No. 311 of 2023

could have been admitted and the Adjudicating Authority has rightly rejected the Section 9 Application.

We do not find any error in the Order of the Adjudicating Authority, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Basant/nn