

NATIONAL COMPANY LAW APPELLAT TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COMPANY APPEAL (AT) (INSOLVENCY) NO.337 OF 2022

(Arising out of the Order dated 24th February, 2022 passed by the National Company Law Tribunal, Kolkata Bench-I, Kolkata in C.P. (IB) No.- 671/KB/2019).

IN THE MATTER OF:

**Anoop Pareek
20 Chakaram Link,
Path Mahavir Lane
Opposite St. Paul's High School,
East Boring Canal Road,
Patna, Bihar 800001**

...Appellant

Versus

**1. M/s Prama Instruments Pvt Ltd
Having its registered office at
Prama House, 21,
Cama Industrial Area,
Walbhat Road,
Goregaon (East),
Mumbai 400063.**

...Respondent No. 1

**2. M/s QRT Labs Pvt Ltd
Having its registered office at
Mahavir Lane,
Chakaram Link Road,
Buddha Colony (East),
Boring Canal Road,
Patna, Bihar 800001
Through the Interim Resolution
Professional
Rajendra Kumar Agarwal**

...Respondent No. 2

For Appellant:

Mr. Malak Bhatt, Ms Neeha Nagpal, Mr. Rajat Bector, Mr. Vishvendra Tomar, Advocates.

For Respondent No. 1:

Mr. Pritesh Burad and Ms. Samita Vaviya, Advocates for R-1.

For Respondent No. 2/RP

Mr. Rajendra Kr Agarwal, Advocate for R-2/RP.

J U D G E M E N T

[Per: Shreesha Merla, Member (T)]

1. This Appeal is preferred under Section 61 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'The Code') by the Shareholder of M/s QRT Labs Pvt Ltd (Corporate Debtor) against the impugned order dated 24.02.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench-I, Kolkata in CP(IB) No.671/KB/2019 filed by the 'Operational Creditor' under Section 9 of the Code. By the impugned order dated 24.02.2022, the Adjudicating Authority has admitted the 'Application' observing as follows:-

"19. However, in this instant case neither any dispute was raised by the Corporate Debtor nor any payment of dues were made after receiving the notice under section 8 of the Code. Further, as per MOU dated 04th August, 2016 the terms and conditions of the MOU was to be reviewed on 30 September, 2016 and a new contract was to be entered between the parties, whereas the invoices raised by the Operational Creditor are from 10 March, 2017 to 15 September, 2017. Hence, the contention raised by the Corporate Debtor with regard to the MOU signed between the parties in 2016 is not having nexus with the said invoices.

20. Further, as submitted by the Corporate Debtor in point 6 of their Reply, there are no documents on record before us which would substantiate the contention of the Corporate Debtor that the Operational Creditor owes money to the Corporate Debtor. It is also pertinent to mention that the Corporate Debtor had never raised this issue before the filing of this application."

2. Learned Counsel for the Appellant submitted that the Appellant and Respondent/Operational Creditor are engaged in business wherein it was agreed that the Operational Creditor would supply goods such as lab equipment and material to the Corporate Debtor who would be the Business Development Partner. It is submitted that a Memorandum of Understanding (MOU) was executed on 14.08.2016 to develop their business in the Northern and Eastern Area and that the liability of Rs.35,54,755/- can only be reconciled between the parties after the amount owed to the Corporate Debtor, as per MOU, is adjusted. It is stated that the cheques issued by the Corporate Debtor was as a security towards the MOU. It is further contended that the Corporate purchased lab equipment between 10.03.2017 and 15.09.2017, during which period, the Corporate Debtor observed that the goods supplied under the invoices were grossly overpriced and the same was communicated to the Operational Creditor vide email dated 18.09.2017 and 22.09.2017.

3. Learned Counsel argued that in September, 2017 itself, the Corporate Debtor had raised substantial disputes with respect to the valuation of the various products and that it is only to recover the disputed amounts under the cheques bearing Nos.000005, 000006 and 000009, that the Operational Creditor had filed this Application. It is submitted that proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated against the Corporate Debtor.

4. It is strenuously contended that the Adjudicating Authority has erroneously admitted the Application disregarding the material brought on

record by the Appellant herein with respect to the pre-existing dispute between the parties.

5. Learned counsel for the Respondent submitted that the issue regarding the pre-existing dispute was never raised by the Corporate Debtor in their reply to the Section 8 Demand Notice; that the total amount of goods purchased by the Corporate Debtor under the said invoices was Rs.35,54,755/-, for which three cheques were issued for payment of the pending dues and all of them were dishonoured on the ground that the payment was “Stopped”; that the Corporate Debtor always admitted the outstanding dues to be payable stating that the amount would be paid after reconciliation of the accounts; that the MOU dated 04.08.2016 was valid only till 30.09.2016 and it clearly stipulates *“that the terms and conditions of this contract will be reviewed as on 30th September, 2016 and accordingly after a fresh round of discussions a new contract will be made regarding the terms and conditions.”* Since the invoices raised by the Operational Creditor are subsequent to 30.09.2016, therefore, the MOU has absolutely no relevance to the issue on hand as no contract existed after 30.09.2016; that the Appellant has, under the pretext of settlement, taken several adjournments and offered varied amounts of Rs.25 lakhs, Rs.22 lakhs, Rs. 9 lakhs and Rs.13 lakhs as recent as three days ago and now at this stage is raising the issue of pre-existing disputes;

6. The Hon’ble Supreme Court in *‘Transmission Corporation of Andhra Pradesh Limited’ V/s. ‘Equipment Conductors and Cables Limited’, (2019) 12 SCC 697*, while deciding the issue of Pre-Existing Dispute and in *‘Mobilox Innovations Pvt. Ltd.’ Vs. ‘Kirusa Software (P) Limited’- 2017 1 SCC OnLine*

SC 353 has clearly laid down the law that the ‘existence of dispute’ must be Pre-Existing’ i.e., it must exist before the receipt of the Demand Notice or invoice as the case may be. In ‘*Mobilox Innovations*’ (*Supra*) the Hon’ble Supreme Court has observed as follows;

“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.”

“17. In the said case, the Hon’ble Supreme Court held as to what are the facts to be examined by the Adjudicating Authority while examining an application under Section 9, which is as follows:

34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration Proceeding

filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

“18. From the aforesaid decision, it is clear that the existence of dispute must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the ‘operational debt’ is exceeding Rs. 1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid ‘operational debt’, the application under Section 9 cannot be rejected and is required to be admitted.”

(Emphasis Supplied)

7. It is not in dispute that the Operational Creditor supplied lab equipment and related products for business purpose of the Corporate Debtor between the period 10.03.2017 to 15.09.2018 against various invoices raised by the Operational Creditor. It is the main case of the Appellant that there were pre-existing disputes with respect to the price of the equipment supplied. In support of this argument, the Learned Counsel placed reliance on email dated 18.09.2017 and 22.09.2017. For ready reference, the email dated 18.09.2017 is reproduced as under:-

Subject: RE: PRAMA TOTAL CREDIT DETAILS : JUNE 2016 - MARCH 2017

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Dear Aayush,

Please find attached working which we have sent you on 08-07-17 and 10-07-17, this is the final working done by us and according to Anish (when he visited Prama House) the working is fine but now we got your mail with new working which is not at all getting matched with our.

So kindly help us with the working which should be understandable. Also would like to highlight that our billing values and the value mentioned in your sheet are totally different due to which we are getting huge difference in final amount.

Eg: our selling price is Rs. 2,33,337 but in your sheet the amount is reflecting Rs. 1,79,480/-

Our selling price is Rs. 16,849 but in your sheet the amount is reflecting Rs. 12,940/-

Why such huge difference is there in working, please elaborate and resolve it ASAP.

Aayush: Please let me know the convenient time of your so that we have discussion on call and close this at the earliest.

Regards,

Pranali Bhalerao

Executive Assistant to MD

From: Aayush Pareek [mailto:aayush@qrtlabs.com]

Sent: 18 September 2017 12:19

To: 'Prama-Pranali' <pranali@pramagroup.com>; 'anish ' <anish@qrtlabs.com>; anish.vikramaditya@gmail.com

Cc: anoop@qrtlabs.com; 'Uday-Prama' <uday@pramagroup.com>; 'harleen' <harleen@qrtlabs.com>; 'Prama-Madan' <madan@pramagroup.com>; 'Sonali' <marketing@pramagroup.com>

Subject: RE: PRAMA TOTAL CREDIT DETAILS : JUNE 2016 - MARCH 2017

Dear Pranali,

Please find attached our working according to the data provided by PRAMA.

Please Note: This calculation is Pre-GAIL working, kindly let us know the status of the same so that we can finally settle the accounts.

8. From the aforementioned email communication it can be seen that there was correspondence regarding the price, but at the same time there was also a reply stating that the accounts would be settled finally. Subsequent email only suggests a correspondence with respect to some discussions

which needed to be done regarding the actual credit and the amounts paid in between.

9. It is the case of the Appellant that the orders were placed under an MOU for the period May, 2016 to November, 2017 and further that the sur-rejoinder filed by the Corporate Debtor was never considered by the Adjudicating Authority.

10. The issue whether the ‘dispute’ raised is an assertion of fact has to be decided on the touchstone of the ratio laid down by the Hon’ble Apex Court in “*Mobilox Innovations (P) Ltd V. Kirusa Software Pvt Ltd*’ (2018(1 SCC 353 has held as follows:

“51. 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.”

.....
56. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible

contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability.”

11. It is significant to mention that the Corporate Debtor does not deny the issuance of three cheques totalling to Rs.35,54,755/-. It is their only case that there was a pre-existing dispute between the parties. It is pertinent to note that the Corporate Debtor has not raised any pre-existing dispute in reply to the Demand Notice under Section 8 of the Code. Be that as it may, the contention of the Learned Counsel that the MOU expired on 30.09.2016 and, therefore, the amounts raised for the invoices for the subsequent period is not payable, is unsustainable as the documentary evidence establishes that the claims made by the Operational Creditor were against the invoices for the period 10.03.2017 to 15.09.2018 and have no nexus with the MOU. The email communication relied upon by the Appellant does not demonstrate that there was any pre-existing dispute. We note that several opportunities were given to the Corporate Debtor on their submission that they were ready and willing to negotiate with the Operational Creditor and settle the dues. The matter was adjourned on 06.04.2022 and 28.04.2022 but the matter could not be settled.

12. It is seen from the record that there is no ‘*disputed questions of fact*’ and that the argument raised regarding the existence of a dispute is a patently feeble legal argument unsupported by evidence. The defence is spurious and a plainly frivolous one.

13. Keeping in view the aforementioned facts and the the ratio of the aforementioned Judgement of the Hon'ble Supreme Court in '*Transmission Corporation*' (*Supra*) and '*Mobilox Innovations*' (*Supra*) this Tribunal is of the considered view that there is no material on record to establish that there was any dispute prior to the issuance of the Section 8 Demand Notice or that there was any assertion of fact supported by any evidence to establish the existence of dispute.

14. From the aforementioned reasons, the Appeal fails and is accordingly dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

**NEW DELHI
18th May, 2022**

Brijmohan