

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**COMPANY APPEAL (AT)(INSOLVENCY) NO.1082 OF 2019**

**In the matter of:**

Ashok Raja

Appellant

Vs

Arun Kumar Gupta & Anr

Respondent

Mr. Mohit Chaudhary, Ms Garima Sharma, Advocates for Appellant  
Ms Madhu Juneja, Resolution Professional in person.  
Ms Prachi Johri, advocate for R1.

**ORDER**

**11.12.2019-** Mr. Arun Kumar Gupta, Chartered Accountant (operational creditor)) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code in short) for initiation of corporate insolvency resolution process against Him valves and Regulators Pvt Ltd, Corporate Debtor. The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench VI, vide impugned order dated 01.10.2019 admitted the application and appointed Interim Resolution Professional. Learned counsel for the appellant submitted that there was a pre-existing dispute as 1<sup>st</sup> Respondent, Mr Arun Kumar Gupta earlier moved before the Labour Court for the same claim. On the other hand according to the counsel for 1<sup>st</sup> Respondent, there was no pre-existing dispute which was also noticed by the Adjudicating Authority, New Delhi Bench VI and rejected such objection of the Corporate Debtor.

2. In so far as the application preferred by the Respondent before Labour Court against the Corporate Debtor for its dues is concerned, it is submitted

that the application was filed but was withdrawn on 20.07.2019. From the list of events referred to and the list of events which was filed before the Adjudicating Authority we find that the application was preferred by 1<sup>st</sup> Respondent, Mr. Arun Kumar Gupta on 6<sup>th</sup> December, 2018 before the Labour Court, New Delhi against the Corporate Debtor for recovery of their dues. During the pendency of the application before the Labour Court the demand notice under Section 8(1) of I&B Code was issued on 05.01.2019 followed by notice dated 09.01.2019. From the aforesaid facts it would be evident that as on the date of issuance of demand notice under Section 8(1) of I&B Code on 05.01.2019 the matter was pending for consideration before the Labour Court, therefore, we hold that there was a pre-existing dispute prior to the issuance of demand notice. Subsequent withdrawal of said case from the Labour Court cannot give any advantage to the 1<sup>st</sup> Respondent, Mr. Arun Kumar Gupta. The Adjudicating Authority has failed to notice the above fact. We set aside the impugned order dated 01.10.2019 and dismiss the application filed under Section 9 of the I&B Code preferred by 1<sup>st</sup> respondent.

3. Ms Madhu Juneja, IRP/RP is present in the Court and submits that she has worked for 2 months 11 days and has incurred actual expenses of Rs.80000/-.

4. In the circumstances we assess the fee of IRP/RP at Rs.1 lac per month i.e. Rs.2,50,000/- for 2 ½ months and entitled for Rs.80,000/- towards actual expenses i.e. total Rs.3,30,000/-. The appellant will pay Rs.3,30,000/- to IRP/RP towards fee and actual expenses incurred. The IRP/RP has already received Rs.3,00,000/- from 1<sup>st</sup> Respondent. The IRP/RP will refund Rs.3,00,000/- to 1<sup>st</sup> respondent within one week from the date of receipt of

total amount of Rs.3,30,000/- from the appellant. The Corporate Debtor is released from rigour of CIRP. IPR/RP will hand over the keys of the premises to the appellant/promoter immediately on receipt of the amount.

5. The appeal is allowed with the aforesaid observations.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member (Judicial)

(Justice Venugopal M)  
Member(Judicial)

Bm/sk