

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

Company Appeal (AT) (Insolvency) No. 2183 of 2024

[Arising out of Order dated 21.11.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II in C.P.(IB) No.397/MB/2020]

IN THE MATTER OF:

**Dilipkumar Lokooram Arora,
(Member of Suspended Board of Directors)
Sahara Hospitality Ltd.**

...Appellant

Versus

KTR Management Service Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant: Shri Krishnendu Datta, Sr. Advocate with Mr. Sandeep Bajaj, Mr. Mayank Biyani, Ms. Alina Marin Mathew, Advocates.

**For Respondents: Mr. Rahul Chitnis, Ms. Shwetal Shepal, Mr. Preshit Surshe, Advocates for R-1.
Mr. Ganesh Ramani, Advocate for IRP.**

**J U D G M E N T
(21st March, 2025)**

Ashok Bhushan, J.

This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging the order dated 21.11.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court-II admitting Section 9 application filed by the Operational Creditor- Respondent herein.

2. Brief facts necessary to be noticed for deciding the Appeal are:-

2.1. A Facility Agreement was entered between the Corporate Debtor- Sahara Hospitality Limited and the Operational Creditor- KTR Management Services Private Limited on 01.04.2018 with respect to the supply of manpower for performing various activities at the Hotel. Corporate Debtor vide e-mail dated 15.06.2019 informed the various deficiencies in the services provided by Respondent No.1. On 01.07.2019, legal notice was issued by Respondent No.1 claiming an amount of Rs.10,59,78,114/-. The Corporate Debtor on 21.08.2019 sent a reply to the legal notice disputing and denying the claim. Reply further pleaded that there are various deficiencies in services provided by Respondent No.1. Reconciliation meeting was also held between the parties on 16.10.2019. On 26.12.2019, the Corporate Debtor owing to deficiency of service terminated the Facility Agreement dated 01.04.2018. Corporate Debtor also raised a counter claim/ demand of Rs.10 Crores towards the financial losses suffered by the corporate debtor at the behest of Respondent No.1. On 03.01.2020, a demand notice under Section 8 of the IBC was issued by the Respondent No.1 claiming an amount of Rs.8,22,82,004/-. The demand notice was replied by the corporate debtor vide its reply dated 28.01.2020. In reply to the demand notice, corporate debtor referred to the on-going disputes between the parties. Section 9 application was filed thereafter by Operational Creditor. A reply to Section 9 application was filed by the corporate debtor raising various grounds including pre-existing dispute between the parties. Adjudicating Authority vide order dated 21.11.2024 admitted Section 9 application, aggrieved by which order this Appeal has been filed.

2.2. Appeal was heard on 25.11.2024 on which date interim order was passed by this Tribunal. On the statement made by the Counsel for the Appellant that Appellant is ready to deposit the amount of Rs.8,22,82,004/- in two instalments of one month each, the interim order was passed directing IRP not to take any further steps in the CIRP except to ensure that the corporate debtor is run as a going concern. The interim order has been continued from time to time.

3. We have heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant and Shri Rahul Chitnis, Learned Counsel for the Respondent No.1. IRP has also appeared.

4. Shri Krishnendu Datta, Learned Senior Counsel for the Appellant submits that there being pre-existing dispute between the parties, the Adjudicating Authority ought not to have admitted Section 9 application. Even prior to issuance of demand notice by operational creditor, the corporate debtor has communicated the operational creditor about the deficiency in service. Legal notice dated 01.07.2019 issued by the Respondent No.1 was replied disputing the claim and pointing out deficiency in the service. Facility Agreement was terminated on 26.12.2019 and it was only thereafter demand notice was issued on 03.01.2020. Present was a case where Section 9 application could not have been admitted, notice of dispute having already been issued by the corporate debtor in reply to the demand notice.

5. Shri Rahul Chitnis, Learned Counsel for the Respondent No.1 submits that the issues between the parties need to be examined by the Competent

Court as per the Facility Agreement dated 01.04.2018 entered between the parties.

6. IRP submits that he is entitled for his fees and expenses which may be directed to be paid.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. As noted above, legal notice was issued by the Respondent No.1 on 01.07.2019 demanding an amount of Rs.10,59,78,114/- which notice was replied on 21.08.2019 by the corporate debtor. In the reply to the legal notice, the corporate debtor has flagged dispute between the parties and the various issues pertaining to operation by the Respondent No.1 with regard to the Hotel. It is useful to notice paragraphs 6, 7 and 9:-

"6. Furthermore, Hereto annexed and marked as Annexure "3" is an email dated 15th June, 2019 (10:45 IST) addressed by my client to your client describing various issues with respect to the operation of your client at our clients hotel. Vide email dated 20th June, 2019 (10:05 IST) your client has admitted pending work and other issues. In the said email your client has reiterated their position of wanting monies due to heavy liabilities and penalties being faced by them. Hereto annexed and marked as Annexure "4" is the email dated 20th June, 2019 (10:05 IST).

7. In view of all the documents produced, it is clear that a genuine and bonafied dispute exists between you

and our Client with respect to the said Claim and this is in existence for a long time, and in any event, much prior to the date of the Notice dated 1st July, 2019.

9. In any event, the parties hereto are bound by the subsisting Arbitration Clause in accordance with the Agreement For Facility Management executed between them which your client has conveniently overlooked in an attempt to coerce our client into paying disputed, unsubstantiated, escalated amounts. Our Client will not relent to any pressure tactics as in threatened in the Notice under reference and if required shall defend any action at your sole risk as to costs and consequences which please note.”

9. Further, the corporate debtor has terminated the Facility Agreement vide letter dated 26.12.2019 in which termination, it was also stated that the corporate debtor has suffered a loss/damages of more than Rs.10 Cr. It was only after Facility Agreement was terminated that demand notice dated 03.01.2020 was issued by the Respondent No.1. The demand notice which has been issued by the operational creditor is termed as reply to the letter dated 26.12.2019. In Section 9 application, the operational creditor has referred to letter dated 03.01.2020 as demand notice. The corporate debtor has replied the demand notice vide its reply dated 28.01.2020. Reply to the demand notice clearly and categorically denies the claim of the appellant. Corporate Debtor again stated that the amount claimed are not due. It was again clearly pleaded that there are bonafide and genuine pre-existing dispute

between the parties and notice without any substance. It is useful to extract paragraphs 8 to 13:-

“8. That, on instructions, we further point out that it was only due to the relationship between the promoters of both the companies that no action was taken due to your inabilities till date by Our Clients. It may not be out of place to mention that your promoter has utilized the services of Our Client's hotel to the tune of Rs. 2,00,00,000/- (Rupees Two Crores Only).

9. That it is further pertinent to point out that various meeting were conducted from time to time wherein the Parties had suggested to reconcile the accounts and the same was done only after you had agreed to improve on your services and upon deduction of the amounts for which you did not provide satisfactory services to Our Client.

10. That it may not be out of place to mention that even after the dues for the month of September, 2019 were cleared, you knowingly put the salaries of your employees on hold and only after Our Clients' intervention, the said salaries were released. It is pertinent to point out that all these acts had instigated your employees to not to work and further instigation by your team members created this situation where the said employees served the aforesaid notice dated 24th December, 2019.

11. That, in fact, even when Our Client decided to terminate the arrangement with you and engage another agency to look after and support your employees, the new agency had to first pay the over

dues to the tune of Rs. 1,60,00,000/-(Rupees One Crore and Sixty Lakhs Only).

12. That in light of the above, we, under the instructions of Our Client, state that the alleged amounts, if any, as claimed by you by way of the Demand Notice under reference is disputed and that there already exists a bonafide, genuine and pre-existing dispute regarding the said Claim and the said Notice is without any substance or merit. Since we have already notified you about the existence of the aforesaid dispute, your threatened action of insolvency proceedings will not be maintainable in view of Section 8(2) r/w Section 9 of the Insolvency and Bankruptcy Code, 2016.

13. Under the instructions of Our Client, we further state that the Demand Notice under reference as sent by you is uncalled for, illegal, unjust and bad in law and as such, we request you to withdraw the Demand Notice under reference at the earliest.

10. Present is a case where demand notice issued under Section 8 was replied and reply notice issued by the corporate debtor dated 28.01.2020 is clearly notice of dispute within the meaning of Section 9(5)(d). The Adjudicating Authority in the impugned order although has noticed the reply dated 28.12.2019 as well as earlier reply sent by the corporate debtor to the legal notice but has brushed aside the said reply relying on reconciliation meeting held on 16.10.2019. The reconciliation meeting is claimed on 16.10.2019 whereas the facility termination was effected on 26.12.2019 and

demand notice was issued only on 03.01.2020 which was replied by notice of dispute dated 28.01.2020. The issue raised by the corporate debtor in reply to the demand notice cannot be held to be moonshine defence. In view of the judgment of the Hon'ble Supreme Court in ***"MobiloX Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.- (2018) 1 SCC 3531"***, the Adjudicating Authority ought not to have admitted Section 9 application. There being pre-existing dispute which existed much prior to issuance of demand notice which is reflected from correspondences between the parties, legal notice issued by the operational creditor dated 01.07.2019 and reply to the legal notice sent by the corporate debtor on 21.08.2019. In the reply submitted by the corporate debtor, relevant materials are brought on the record which clearly reflected a pre-existing dispute between the parties prior to issuance of demand notice.

11. We, thus are of the view that in view of the law laid down by the Hon'ble Supreme Court in ***"MobiloX Innovations Pvt. Ltd."*** (supra), the application under Section 9 could not have been admitted. In view of the foregoing discussion, we allow the appeal, set aside the order dated 21.11.2024 passed by the Adjudicating Authority and reject Section 9 application filed by the Respondent No.1. We, however, make it clear that it shall be open for the operational creditor to take remedy available in accordance with the Facility Agreement dated 01.04.2018. The amount deposited as per the interim order passed by this Tribunal dated 25.11.2024 be refunded to the Appellant.

12. Counsel for the Appellant submits that the Appellant is ready to pay fees and expenses of the IRP incurred during the CIRP on IRP giving details

of fee and expenses along with the relevant bills and vouchers. The said payment will be made by the appellant within a period of one month.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali