NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1202 of 2024
&
I.A. No. 4302, 4303, 4304 of 2024

(Arising out of the Order dated 12 June, 2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chandigarh Bench, Chandigarh in C.P. (IB) 657/CHD/PB/2019]

IN THE MATTER OF:

Mr. Gulshan Kumar Ahuja
(Suspended Director of
M/s Ahuja Cotspin Pvt. Limited)
Regd. Office: B-VI-I, Kucha No.1,
Madhopuri Ludhiana
Punjab-141 008
Email ID: accounts@ahujacotspin.com

Also at:
Village Bhattian, Kohara Road, Machiwara,
District- Ludhiana, Punjab **...Appellant / Corporate Debtor**

Versus

1. **Monika Garg**
   Sole Proprietor, Aggarwal Enterprises
   House No.94, Near Shiv Park
   C-Block, Sirsa
   Haryana-126 066 **...Respondent No.1**

2. **Ms. Priya Bhushan Sharma**
   Interim Resolution Professional of
   Corporate Debtor
   Registration No. IBBI/IPA-001/IP-P00351/
   2017-18/10652
   Email id- bhushansharma@hotmail.com **...Respondent No.2**

Present:

For Appellant / Corporate Debtor : Mr. Anand Chhibbar, Sr. Advocate with Ms. Eshna Kumar, Mr. Lakshmi Kant Srivastava, Advocates

For Respondents : Mr. Abhishek Anand and Mr. Krishna Sharma, Advocates for R-1
Mr. Karan Kohli, Advocate for R-2.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is being filed by the Appellant / Corporate Debtor, a member of the suspended board of directors of the Corporate Debtor under Section 61 of the Code against the Impugned Order, passed in C.P. (IB) 657/CHD/PB/2019 by the Hon'ble Adjudicating Authority, wherein the Hon'ble Adjudicating Authority admitted the application filed by Respondent No.1 under Section 9 Code and initiated the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor.

Brief Background of the case

2. The Corporate Debtor was incorporated on 06/12/2010 under the provisions of the Companies Act, 1956 with CIN No. U17119PB2010PTC034482, with its registered office at B-VI-I, Kucha No.1, Madhopuri, Ludhiana, Ludhiana, Punjab, India, 141008. The Appellant / Corporate Debtor, Mr. Gulshan Kumar Ahuja, is a member of the suspended Board of Directors of the Corporate Debtor.

3. The Respondent No. 1 / Operational Creditor is a sole proprietor of Aggarwal Enterprises and is engaged in the business of trading and supplying cotton and the same is registered with the GST Department vide GSTIN 03AAJCA0093R1ZF.

4. The Respondent 2 is the Interim Resolution Professional ("IRP") of the Corporate Debtor appointed by the Hon'ble Adjudicating Authority vide Impugned Judgment dated 12/06/2024 passed in C.P. (IB) 410/CHD/PB/2019.

5. Respondent No.1 and Corporate Debtor were involved in the business of trading and supplying cotton and manufacturing cotton yarn respectively. From 13/08/2018 to 16/09/2018, Respondent No.1 raised various purported invoices upon the Corporate Debtor in respect of goods supplied.

6. In December 2018 there was news in the market as well as published in leading newspapers that a scam of cotton supply based on fake bills was going on and some agents of Haryana were involved therein in supplying materials to cotton yarn manufacturers. The said news made the Appellant / Corporate Debtor vigilant and as a result they stopped purchasing raw materials for manufacturing of cotton yarn from Respondent No.1 and their sister concern and called their authorized agent Mr. Naresh Sharma to provide all original documents of payment of GST and arranged a meeting with Respondent No.1 to discuss the issue. However, the effort of the Appellant / Corporate Debtor has gone in vain as Respondent No.1 failed to meet the Appellant / Corporate Debtor. As a result, thereof, with the consent of Mr. Naresh Sharma, the Appellant / Corporate Debtor was forced to stop

the payment to Respondent No.1, since then those purported invoices are under dispute.

7. The Appellant / Corporate Debtor further contends on 15/02/2019 and 25/02/2019 respectively, the Intelligence Officer, Directorate General of GST Intelligence (DGGI), Chandigarh Zonal Unit raided/searched at the Appellant / Corporate Debtor factories/offices to check the cotton purchased by the Appellant / Corporate Debtor from suppliers including from Respondent No.1 who had supplied cotton to the Appellant / Corporate Debtor without payment of Goods and Servies Tax ("GST") to the GST Authorities.

8. During the raid, the GST Intelligence Officer took into custody and seized all hard and soft records relating to sales/purchases, returns, payments of taxes, etc. Not only this but the said GST Intelligence Officer also forced the Appellant / Corporate Debtor to debit the GST Credit standing in the books of accounts as well as to deposit the amount in the electronic credit ledger. Moreover, the Appellant / Corporate Debtor had been directed by the GST Intelligence Officer to stop payment to Respondent No.1. Therefore, it suffices to say that under the direction issued by the GST Intelligence Officer, the Appellant / Corporate Debtor stopped making payments to Respondent No.1. The Appellant / Corporate Debtor has deposited Rs.20,00,000 (Twenty

Lakhs Rupees Only) in the electronic credit ledger of the GST Department upon their direction.

9. Thereafter, on several occasions from 10/04/2019 to 17/05/2019, the Appellant / Corporate Debtor has been summoned by the Additional Director General, Directorate General of GST Intelligence, 2nd Floor, West Block-8 Wing No.6, R.K. Puram, Sector-1, New Delhi – 110 066.

10. The Appellant / Corporate Debtor, vide email dated 28/05/2019, has called upon Respondent No.1 to provide original documents to prove the genuineness of payment of GST at the time of supply made by Respondent No.1.

11. After the Appellant / Corporate Debtor's email dated 28/05/2019, as an afterthought only, Respondent No.1 issued a purported demand notice dated 27/05/2019 which was received by the Appellant / Corporate Debtor only on 31/05/2019 claiming an amount of Rs.1,91,51,792 (One Crore Ninety-One Lakh Fifty-One Thousand Seven Hundred Ninety-Two Rupees Only) including 18% unilateral interest as an alleged due and payable amount from 13/09/2018. Here, it is pertinent to mention that the amount claimed is under dispute since the very basis of the claimed amount i.e., invoices issued by Respondent No.1 is under investigation by the GST Intelligence Officers. Therefore, the amount claimed in the purported demand notice is under dispute and pending adjudication.

12. Subsequent thereto, in response to the purported demand notice that has been, undisputedly, received by the Appellant / Corporate Debtor only on 31/05/2019, the Appellant / Corporate Debtor gave its reply dated 08/06/2019 wherein, at the outset the Appellant / Corporate Debtor has denied all the averments made by Respondent No.1 in their Purported Demand Notice inter-alia on the following ground:

a) There is the existence of a dispute on account of the breach of representation and warranty as per Section 5(6)(C) of the Code;

b) The Purported Demand Notice has been issued without any authority;

c) Disputes between the parties are civil disputes since they involve mixed questions of facts and law which could only be dealt with by Ld. Civil Court and/or Arbitrator during the full trial as it requires to lead evidence and examinations of witnesses;

d) The company is solvent as its annual turnover is more than 300 Cr. and an export sale of more than 50 Cr.

e) There is a pre-existing dispute between the parties vis-à-vis payment of GST on the purported invoices raised by Respondent No.1. Moreso, the direction of GST Intelligence Officers is not to pay any amount to Respondent No.1.

13. Further, the Appellant / Corporate Debtor had filed a Civil Writ Petition bearing CWP No. 21444 of 2019 before the Hon'ble Punjab and Haryana High Court at Chandigarh, against the Additional Director General, Directorate General of GST Intelligence, 2nd Floor, West Block-8, Wing No.6, R.K. Puram, Sector-1, New Delhi-110 066 and Senior Intelligence Officer, Directorate General of GST Intelligence, 2nd Floor, West Block-8, Wing No.6, R.K. Puram, Sector-1, New Delhi-110 066 with a prayer not to take any coercive action against the Appellant / Corporate Debtor herein and refund of Rs.1,03,80,000 (One Crore Three Lakh and Eighty Thousand Rupees Only) that has been wrongly recovered from the Appellant / Corporate Debtor herein.

14. Pertinently, in response to the Writ Petition filed before the Hon'ble High Court, the GST Department filed its reply wherein it has been categorically mentioned and averred that the invoices received by the Appellant / Corporate Debtor showing the purchase of cotton are provided on the letterhead of firms/entities which have been found to be non-existent during the investigation conducted by the Department against the Appellant / Corporate Debtor. Moreover, in their reply to the Writ Petition, it has also been categorically averred against the Appellant / Corporate Debtor that before the search operation on 25/02/2019, the GST Department gathered various evidence in support of their search operation during which they found the written submission filed by Respondent No.1 and the Appellant / Corporate Debtor. That the Appellant / Corporate Debtor had shown some

bogus purchases either directly from many non-existent traders or through intermediaries. Here, it is pertinent to mention that this list includes the name of Respondent No.1. Thus, when the basis of demand notice i.e., invoices is in dispute and pending adjudication before the Hon'ble High Court, more so before issuance of Purported Demand Notice, there exists a pre-existing dispute between the parties with regard to the alleged debt.

15. Thereafter, only on 15/11/2019, Respondent No.1, based on the purported demand notice and alleged invoices, filed an application under Section 9 of the Code seeking initiation of the CIRP against the Corporate Debtor.

16. On 02/10/2021, the Appellant / Corporate Debtor filed its reply to the application filed under Section 9 of the Code, wherein the Appellant / Corporate Debtor at the outset denied all the allegations levied against the Appellant / Corporate Debtor by Respondent No.1 in their application filed under Section 9.

17. Thereafter, the Appellant / Corporate Debtor herein filed an application bearing IA No.528 of 2024 under rule 11 of the National Company Law Tribunal Rules, 2016, in CP (IB) No.657/Chd/Pb/2019 for impleadment of Directorate General of GST Intelligence, R.K. Puram as a proper and necessary party. However, the said IA has been dismissed on the ground that

the Directorate General of GST Intelligence is not a proper and necessary party.

18. On 12/06/2024, the Hon'ble Adjudicating Authority passed the Impugned Judgment erroneously admitting the Petition bearing No. C.P. (IB) 657/CHD/PB/2019 tiled as "Monika Garg v. M/s Ahuja Cotspin Private Limited", and thereby, initiated the CIRP of the Corporate Debtor.

19. Appellant / Corporate Debtor contends that the Adjudicating Authority A acknowledged the Appellant / Corporate Debtor's claim that the GST Department had instructed the Corporate Debtor to halt payments to the operational creditor. However, it failed to consider this contention properly and incorrectly noted that the operational creditor had paid the GST Department, citing a GST return document provided by the creditor. This finding was deemed outside the Adjudicating Authority's jurisdiction and contrary to law, as the legitimacy of the invoices and GST payments is under challenge in a pending WP before the High Court. Although the Adjudicating Authority recorded the Appellant / Corporate Debtor's submission that the GST Department's reply to the High Court had indicated that the purchases were made through intermediaries, including Respondent No. 1, it wrongly concluded that this litigation about GST dues was irrelevant to the current petition and that the operational creditor was not involved in it. The Adjudicating Authority overlooked the fact that the invoices upon which

Respondent No. 1's claim is based are disputed, and the GST Department's assertion of their being bogus invoices undermines the claim.

20. Appellant / Corporate Debtor also contends that the Adjudicating Authority improperly delved into the merits of the dispute by bifurcating the alleged claim amount and determining the Corporate Debtor's liability. This approach, which involves assessing the dispute's quantum and merits, is contrary to the object of the Code and established legal principles. According to settled law, the court should not evaluate the merits of the dispute at the admission stage of a Section 9 Application.

21. Appellant / Corporate Debtor also contends that the Adjudicating Authority addressed the issue of a pre-existing dispute but did not fully consider the Appellant / Corporate Debtor's argument that the GST-related dispute arose before the demand notice was issued. Although the Adjudicating Authority acknowledged the Appellant / Corporate Debtor's claim, it failed to appreciate it fully. The Appellant / Corporate Debtor had requested original documents to verify GST payments from Respondent No. 1 / Operational Creditor and had been involved in an ongoing GST dispute involving alleged bogus invoices, which led to a WP where the GST Department confirmed the invoices as bogus. Therefore, the Adjudicating Authority erred in concluding that there was insufficient evidence of a pre-existing dispute prior to the demand notice.

22. The CIRP against the Corporate Debtor cannot proceed because the company is solvent, operating two manufacturing units in Ludhiana with an annual turnover exceeding Rs. 300 crore and export sales over Rs. 50 crores. The company is also generating a net profit after fulfilling its debt obligations.

23. Appellant / Corporate Debtor has placed his reliance on **Feng Ji v. Giesecke & Devrient MS India (P) Ltd., 2023 SCC Online NCLAT 507** wherein it is held that the issue of GST dues is a valid pre-existing dispute.

> "26 A dispute regarding credit/refund of the service tax amount which is claimed to have been paid by the operational creditor to the government existed prior to the issue of demand notice under Section 8 and further that such a dispute was a "real" dispute and not merely an assertion or ploy of the corporate debtor to avoid taking care of his liability ".

24. Appellant / Corporate Debtor has also placed his reliance on **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** wherein it has been held as under:

> ". 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 / Corporate Debtor 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 defence 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 characterising the defence as vague, got up and motivated to evade liability. "

25. Appellant / Corporate Debtor has also placed his reliance **S.S. Engineers v. HPCL, 2022 SCC Online SC 1385** wherein it is held that proceedings before the Adjudicating Authority under the Code are not intended for debt recovery.

26. Per contra Respondent contends that the Hon'ble Supreme Court in the matter of **Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd Civil Appeal No. 9405 of 2017** laid down three-fold test for admission of application under Section 9 of the Code. The three test is as follows:

> "25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:
>
> 1. Whether there is an "operational debt" as defined exceeding Rs. 1 lakh?
> 2. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And
> 3. 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."

27. Per contra, Respondent contends that there is no fault in the decision of the Adjudicating Authority. The Appellant / Corporate Debtor has not demonstrated any existing dispute between the parties before the demand notice was issued under Section 8 of the Code. The Appellant / Corporate Debtor did not demonstrate any pre-existing dispute regarding the invoices issued by Respondent No. 1 / Operational Creditor for services provided to the Corporate Debtor, which is central to the current appeal. The proceedings mentioned by the Appellant / Corporate Debtor involving the Additional Director General, Directorate General of GST Intelligence, are between the Appellant / Corporate Debtor/Corporate Debtor and the Department, and cannot be considered a pre-existing dispute between the parties in the present case.

28. Further the proceedings before the Punjab & Haryana High Court (WPC No. 21444 of 2019) involve the Appellant / Corporate Debtor/Corporate Debtor and the Additional Director General, Directorate General of GST Intelligence, with Respondent No. 1 / Operational Creditor not being a party. This was noted by the Adjudicating Authority in the impugned order.

29. Due to the Appellant / Corporate Debtor/Corporate Debtor's failure to pay for services, Respondent No. 1 / Operational Creditor issued a demand notice on 27.05.2019 under Section 8 of the Code and Rule 5 of the IBC. In response to the notice, the Appellant / Corporate Debtor sent a reply on 08.06.2019 but did not demonstrate any pre-existing dispute between the parties. Furthermore, the reply to the Section 9 application lacked genuine proof or documentation of such a dispute.

30. The Appellant / Corporate Debtor claims to have sent an email on 28.05.2019 questioning the authenticity of the invoices. However, this email was not included in the pleadings before the Adjudicating Authority. Therefore, no reliance can be placed on this email.

31. It is admitted that the Appellant / Corporate Debtor received services from Respondent No. 1, who provided raw cotton for manufacturing. The Appellant / Corporate Debtor/Corporate Debtor has not denied the debt or default but only claims a pre-existing dispute, which has been disproven as detailed above.

32. The Appellant / Corporate Debtor Corporate Debtor filed IA. No. 528 of 2024 to implead the Directorate General of GST Intelligence in CP. (IB) No.657/CHD/PB/2019 to prove a pre-existing dispute. The ADJUDICATING AUTHORITY, while admitting the Section 9 application from Respondent No. 1, ruled that the GST department was not a necessary party to the proceedings under the Code and dismissed the application as infructuous.

33. The threshold limit of Rs. 1 crore for initiating CIRP was effective from 24.03.2020. However, the present petition was filed and registered on 15.11.2019, when the threshold limit was Rs. 1 lakh. The outstanding operational debt in this case exceeds the Rs. 1 lakh limit.

34. Judgments relied on by the Respondent are as follows:

a) Appellate Tribunal in the matter of **Deepak Modi vs Shalfeyo Industries Pvt Ltd and Anr. in CA (AT) (Ins) No. 1019 of 2022**.

b) Hon'ble Supreme Court in the matter of **M/s. S. S. Engineers vs Hindustan Petroleum Corporation Ltd. & Ors. CA No. 4583 of 2022**.

c) Appellate Tribunal in the matter of **Amroop India Pvt Ltd vs The Hi-Tech Gears Ltd CA (AT) (Ins) No. 1251 of 2023**.

Analysis

35. Heard counsels of both sides and perused all documents on record.

36. The main issue which emerges is whether in the instant case any pre-existing dispute exists which would not allow initiation of Section 9 proceedings under the Code against the Appellant / Corporate Debtor/ Corporate Debtor.

37. The Appellant / Corporate Debtor contends that there is a pre-existing dispute between the parties. This dispute is with respect to payment of GST dues on the alleged invoices. The Appellant / Corporate Debtor has also challenged the genuineness of the invoices issued by Respondent No. 1 / Operational Creditor before the Hon'ble Punjab and Haryana High Court Chandigarh. Appellant / Corporate Debtor further contends that Directorate General of GST Intelligence had conducted a raid on the factory of the Corporate Debtor between 25th February 2019 and 26th February 2019 regarding bogus invoices to evade GST payment. The Appellant / Corporate Debtor also contends that the issue regarding invoices and payment of GST was existing much before the issuance of the demand notice dated 27 May 2019. The Appellant / Corporate Debtor contends that it had issued emails dated 27th May 2019 and 28th May 2019 in which it had raised the issue of payment of GST to the Directorate General of GST Intelligence but due to inadvertence these mails could not be filed before the Adjudicating Authority. The Appellant / Corporate Debtor has now filed these emails in the Appeal.

38. The demand notice was issued on 27th May 2019 under Section 8 of the Code. And it relates to the invoices. The reply was issued by the Appellant /

Corporate Debtor on 8th June 2019. This reply also contains the issue relating to the same issue of raid conducted on the Appellant / Corporate Debtor and there is no proof or document which shows that there is a pre-existing dispute between the parties. The Appellant / Corporate Debtor has failed to show any pre-existing dispute with respect to the invoices. Appellant / Corporate Debtor is raising the raids conducted by Department of GST and questioning the payment of GST. We find that the issue relating to the payment of GST is between the Directorate General of GST Intelligence and the Appellant / Corporate Debtor. Even the proceedings before the Hon'ble High Court are between the Appellant / Corporate Debtor and the Directorate General of GST Intelligence and the Respondent No.1/Operational Creditor is not even a party in the proceedings. This has been noted by the Adjudicating Authority also. We cannot equate this to a pre-existing dispute between the parties.

39. Appellant / Corporate Debtor claims that he had issued an e-mail dated 28th May 2019 to the Respondent No. 1 / Operational Creditor asking about the genuineness of the invoices raised. This e-mail was not filed and relied upon in the pleadings before the Adjudicating Authority and we cannot rely upon at this stage. Even then, for argument's sake, its perusal shows that it once again raises the issue of GST which is between the Appellant / Corporate Debtor and the Directorate General of GST Intelligence wherein the Respondent No. 1 / Operational Creditor is not a party.

40. From the material on record it is noted that the Operational Creditor has filed all the GST returns applicable to him. These are available in Appeal Paper Book (APB) from pages 317 to 397. It is also an admitted fact that the intelligence officer of Directorate General of GST Intelligence had raided some cotton suppliers, including the Operational Creditor and also issued summons to it. But it has not initiated any legal case against the Operational Creditor.

41. The Corporate Debtor, is claiming that the burden for payment of tax liability of Rs. 20,00,000/- to the GST authorities fell upon him. Presuming that GST of about Rs. 20,00,000/- was to be paid by the Respondent No. 1 / Operational Creditor and which has been paid by the Appellant / Corporate Debtor, which fact is not established as the Respondent No. 1 / Operational Creditor had filed all its GSTR and are on record, even then, after deducting this amount from the total Rs. 1,69,37,567/- the remaining amount is about Rs. 1,49,37,569/- which is above current threshold of Rs.1,00,00,000/-. This has also been noted by the Adjudicating Authority in paragraph 27, which is extracted as below:

> *"27……. Even for the sake of arguments, Rs. 20 lakhs recovered by the GST department from Corporate Debtor is to be paid on behalf of the Operational Creditor in the said Writ petition and assuming that said claim is true then also the Corporate Debtor owes Rs. 1,69,37,567/- plus interest towards the Operational Creditor and after deducting a sum of Rs. 20 lakhs, still there is a liability of Rs. 1,49,37,569/- on the Corporate Debtor which is above the threshold limit of rupees one lakh (now rupees one crore) and the present petition is maintainable under Section9 of the Code.*

42. The quantum of the alleged debt is also disputed by the Appellant / Corporate Debtor. It claims that there is a unilateral demand of interest of 18% on the alleged debt. On detailed examination of the records, particularly Part IV of the Form 5 at page 278 APB, it is very clear about the debt in question. Total Amount due is Rs. 1,91,51,792/- which includes principal of Rs. 1,69,37,569 /- and interest of Rs. 22,14,223/-. The principal alone is more than Rupees One Lakh (as per earlier threshold) and also more than Rupees One Crore (as per revised threshold). Even if the interest is not considered, the outstanding and debt becomes crystalized. Under Section 9 of the IBC, an Operational Creditor can initiate CIRP against a Corporate Debtor for unpaid operational debts exceeding Rs. 1 lakh (at the time of filing of the CP).

43. Both parties have relied upon ***Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd Civil Appeal No. 9405 of 2017,*** with their own interpretation. The Hon'ble Supreme Court in the matter of ***Mobilox Innovations Private Ltd (supra)*** laid down three-fold test for admission of Application under Section 9 of the Code. The test is extracted as follows: -

> *"25. 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 theAct)*
> *(ii) Whether the documentary evidence furnished with the application shows that the aforesaiddebt 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 ofa 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."

XXX XXX XXX

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)(i)(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 trulyexists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

XXX XXX XXX

56. Going by the aforesaid test of "existence of a dispute", it is clearthat without going into the merits of the dispute, the Appellant / Corporate Debtor 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 defence 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, andthe Appellate Tribunal was wholly incorrect in characterising the defence as vague, got up and motivated to evade liability.

...."

(***Emphasis Supplied***)

44. It has also laid down that for a pre-existing dispute to bar the initiation of CIRP, it must be a genuine dispute that existed prior to the issuance of the demand notice. We don't find such situation in the facts of the instant case,

wherein the debt and default are clearly established and Adjudicating Authority has also noted dispute to be irrelevant to the instant proceedings. Furthermore, the threefold test is passed for initiation of Section 9 proceedings against the Corporate Debtor.

45. Appellant / Corporate Debtor has placed his reliance on ***Feng Ji v. Giesecke & Devrient MS India (P) Ltd., 2023 SCC Online NCLAT 507*** wherein it is held that the issue of GST dues is a valid pre-existing dispute.

> "26 A dispute regarding credit/refund of the service tax amount which is claimed to have been paid by the Operational Creditor to the government existed prior to the issue of demand notice under Section 8 and further that such a dispute was a "real" dispute and not merely an assertion or ploy of the Corporate Debtor to avoid taking care of his liability. ".

But in the instant case all GST Returns (GSTR) have been filed by the Operational Creditor and are available in the Appeal Paper book. The Operational Creditor was also raided by the Directorate General of GST Intelligence, but they were not proceeded against for any violation. Further, neither the Operational Creditor nor the Directorate General of GST Intelligence has even impleaded the Respondent No. 1 / Operational Creditor before the Hon'ble High Court. Under these conditions it is difficult to accept the proposition that the GST is a matter of dispute between the parties. The facts of the instant case are distinguishable and we do not find any pre-existing dispute between the parties due to the GST.

46. Both the Appellant / Corporate Debtor and Respondent No. 1 / Operational Creditor have also placed their reliance on **S.S. Engineers v. HPCL, 2022 SCC Online SC 1385** wherein it is held that proceedings before the Adjudicating Authority under the Code are not intended for debt recovery. The purpose of the Code is not to penalize solvent companies by initiating CIRP for disputed claims made by operational creditors. The Supreme Court held as under:

> ". 31. 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 insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalise solvent companies for non-payment of disputed dues claimed by an operational creditor.
>
> 32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed…"

We agree with the proposition that IBC proceedings are not for debt recovery but when the facts are such that Section 9 can be invoked, it has to be invoked and we cannot find fault in the judgement. This judgement doesn't support the case of the Appellant / Corporate Debtor as there is an undisputed debt and a default in payment.

47. Furthermore, the Appellant / Corporate Debtor has relied upon the Judgments as listed below:

a) Appellate Tribunal in the matter of **Deepak Modi vs Shalfeyo Industries Pvt Ltd and Anr. in CA (AT) (Ins) No. 1019 of 2022**, held that:

> "It is true that under the provisions of Code if the ADJUDICATING AUTHORITY is satisfied with pre-existing dispute at the time of entertaining an application filed under Section 9 of the Code there is no reason to initiate the same or admit the application. However, law is settled on the point that there must be pure pre-existing dispute. Meaning thereby that genuine pre-existing dispute must exist in rejecting un application Section 9 of the code."

b) Hon'ble Supreme Court in the matter of **M/s. S. S. Engineers vs Hindustan Petroleum Corporation Ltd. & Ors. CA No. 4583 of 2022**, held that:

> "There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However; if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed."

c) Appellate Tribunal in the matter of **Amroop India Pvt Ltd vs The Hi-Tech Gears Ltd CA (AT) (Ins) No. 1251 of 2023**, held that:

> "12. It is a well settled proposition that for a pre-existing dispute to be a ground to nullify an application under Section 9, the dispute raised must truly be existing at the time of filing a reply to notice of demand as contemplated by Section 8(2) of IBC or at the time of filing the Section 9 application."

The abovementioned judgements also weaken the case of the Appellant / Corporate Debtor.

Findings

48. Basis above analysis and the facts of the instant case, we don't find that the claim of an operational creditor is undisputed and the operational debt remains unpaid. As a result, our findings are:

- The Corporate Debtor received goods from Respondent No. 1 / Operational Creditor and has an outstanding debt exceeding Rs. 1 lakh.

- The Appellant / Corporate Debtor's claims of a pre-existing dispute due to the GST raids and alleged fake invoices are not substantiated with material on record as the correspondence and proceedings involving the GST authorities do not constitute a genuine pre-existing dispute between the Corporate Debtor and Respondent No. 1 / Operational Creditor concerning the operational debt.

- The Appellant / Corporate Debtor's contentions that the company is solvent and the matter should be resolved through civil proceedings or arbitration are not relevant to the initiation of CIRP under the IBC.

Conclusion

49. The appeal lacks merit as the Appellant / Corporate Debtor failed to demonstrate a pre-existing dispute as required under Section 9 of the IBC. The Adjudicating Authority rightly admitted the application filed by Respondent No. 1 / Operational Creditor and initiated the CIRP against the Corporate Debtor.

Order

50. In the result, the Appeal is dismissed. All related IAs pending, if any, are closed. No order as to costs. The Impugned Order dated 12.06.2024, passed by the Hon'ble Adjudicating Authority in C.P. (IB) 657/CHD/PB/2019, is upheld. The CIRP initiated against the Corporate Debtor, M/s Ahuja Cotspin Private Limited, shall continue as per the provisions of the IBC.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi
August 22, 2024

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