

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 823 of 2020

IN THE MATTER OF:

M/s. Micra Systems Pvt. Ltd.

G-1, Plot No. 8, Sector – 1,
Vaishali, Ghaziabad-201010

...Appellant.

Versus

M/s. Masters India pvt. Ltd.

S-201, Second Floor, Chetan Complex,
Shrestha Vihar, East Delhi - 10092

...Respondent.

Present:

For Appellant: Mr. Abhay Mani Tripathi, Advocate.

For Respondent: Mr. Kumar Vikram, Advocate.

ORDER
(Virtual Mode)

12.04.2021 This Appeal has been filed by the Appellant-Operational Creditor against Impugned Order dated 29th May, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-V) in (IB)-2160(ND)2019. By the Impugned Order, the Adjudicating Authority rejected Application filed by the Appellant under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC in short).

2. The Appeal claims and it is argued by the Learned Counsel for the Appellant that the Corporate Debtor – M/s. Masters India Pvt. Ltd. had approached the Appellant- Operational Creditor M/s. Micra Systems Pvt. Ltd. in October, 2016 for development of GST Portal and presentation of the same to GSTN for grant of License as GSP. According to the Appellant, the Operational Creditor gave services to the Corporate Debtor on this count and Operational

Creditor built solutions for the Corporate Debtor which continued till November, 2017. In November, 2017, the Appellant had to discontinue the services on account of non-payment of pending bills and as there was breach of trust by the Corporate Debtor. There were regular payments made by the Corporate Debtor till June, 2017. According to the Appellant, the Appellant started work on design and development of software and automation solution for Respondent at job-wise basis by mutual agreed remuneration of Rs. One Lakh per person per month. The Appellant was sending invoices through e-mail at the end of the month. After July 2017, payments were infrequent and partial. The Appeal refers to some efforts made with regard to entering into formal agreement and exchange of draft in that regard. According to the Appeal, Respondent sent various e-mails on 15.08.2017 raising unfounded and unreasonable issues. The Appellant addressed those issues of the Respondent in various emails, vide email dated 15.08.2017, email dated 15.08.2019, email dated 16.08.2017 and email dated 17.08.2017. According to the Appellant, thereafter the Corporate Debtor did not raise issues with regard to the invoices. According to the Appellant, demand was made to the Respondent on 04th November, 2017 and 17th November, 2017 to make the payments. After lapse of five months, Respondent sent two legal notices raising various issues which were raised earlier in email dated 15.08.2017 along with other concocted and manufactured issue. Appellant did not reply to the same as those issues had been settled. Respondent-Corporate Debtor did not go to any Court/Forum to follow up the legal notices. The Appeal claims that subsequently the Appellant sent demand notice under Section 8 of IBC on 22nd May, 2019 (Page 240 of the Appeal). The Respondent replied vide reply dated 06th *Company Appeal (AT) (Ins.) No. 823 of 2020*

June, 2019 repeating the same concocted and irrelevant allegations raised in the legal notices.

3. Then the Appellant filed Application under Section 7 of IBC. According to the Appellant, Rs. 88,37,700/- are debt outstanding and application has been wrongly dismissed.

4. We have heard Learned Counsel for the Appellant. The Learned Counsel is referring to the various documents, emails and notices to submit and argue that the issues which were raised by the Respondent-Corporate Debtor in the emails and legal notices sent, could be explained. The Learned Counsel submits that the disputes raised in the emails and legal notices were concocted and were irrelevant allegations thus the same were false. According to the Learned Counsel, on the basis of such averments, the claim of the Appellant could not be stated to be pre-existing dispute and the Application under Section 9 should have been admitted.

5. We have gone through the record. The Adjudicating Authority took into consideration Judgment in the matter of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* 2017 1 SCC Online SC 353. After discussing the record, the Adjudicating Authority observed in Paragraphs 38 and 46 as under:

“38. Since the reply to the demand notice has been received by the Operational Creditor, therefore, at this juncture, we would like to go through the reply to the demand notice. We have gone through the reply filed by the Corporate Debtor in response to the demand notice and we find that the Corporate Debtor at internal page of reply to be demand notice, which is at page 161 of the paper book, clearly mentions that the legal notice through its Advocate on 25th April, 2018 has already been sent to the Operational

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Creditor and same was duly received by the Operational Creditor but no reply was given.

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46. *Here, in the case in hand, as we have already stated that there is an existence of disputes raised by the Corporate Debtor prior to the issuance of the demand notice, of course, by filing section 9(3) (b), the Operational Creditor claimed that no notice of disputes has been raised by the Corporate Debtor but for the reasons discussed above, we find that the affidavit shown by the Operational Creditor under Section 9(3)(b) is not in consonance with the averment made in the application filed by the Operational Creditor in which he claimed that the Corporate Debtor by filing the reply raised the disputes on the point that the legal notice had already been sent to the Operational Creditor by Corporate Debtor prior to the issuance of the demand notice.”*

6. The notice under Section 8 was sent on 22nd May, 2019. Before that on 7th November, 2017 there is email (Annexure A31) dated 09th November, 2017 at page 216 which is stated to have been sent by CEO of the Corporate Debtor to the Operational Creditor which reads as under;

“You have abruptly ended all the services on 04th of November, 2017 without due notice, despite knowing 3rd parties are actively using the software and the damage it will do to Masters India. Moreover, substantial damage has been caused to the company due to delays in delivery and incomplete product. Therefore, a discussion needs to be initiated to evaluate the damages and measure adequate remedy for such damages.

So please set a date for further discussion and arbitration mutually, otherwise we will be forced to involve legal council to make things happen.

Do not sell our software, which is our property, any such attempt whatsoever will be considered breach of trust. You shall be liable for damages as well as injunctive relief because of the irreparable harm caused by your actions.”

7. Apart from this, there are notices at Annexure A33 and A34 which according to the Appeal were sent by Advocate of Corporate Debtor in March and *Company Appeal (AT) (Ins.) No. 823 of 2020*

April, 2018 in which notices, the Corporate Debtor raised various issues including that Operational Creditor failed to complete the project in time and whatever Operational Creditor worked-the project was found not working. Going through this material on record, we find that there is already pre-existing dispute between the parties with regard to services rendered. This being so, the submissions of the Learned Counsel for the Appellant that these disputes raised were concocted or that they were irrelevant cannot be decided in summary proceeding under Section 9 of IBC.

In the facts of the matter, there is no substance in the Appeal. We do not find any reason to interfere with the Impugned Order. The Appeal is dismissed. No order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

Basant B./md.