

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 331 of 2022

(Arising out of Order dated 31.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB)-27/KB/2021)

IN THE MATTER OF:

G4S Secure Solutions (India) Private Limited

Through Mr. Deepak Sharma
(General Legal Counsel – India)
Having its registered office at:
C-16, Community Centre Janakpuri,
Behind Janak Cinema,
New Delhi 110058
India.

...Appellant

Versus

Heavy Engineering Corporation Private Limited

Having registered office at:
H.E.C. Administrative Building
4 Plant Plaza Road
Ranchi 834004
Email: sect@hecltd.com

...Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Shweta Bharti, Ms. Jyoti Chaudhary, Ms. Ankita Panikkar, Ms. Megha Dugar and Ms. Shruti Pandey, Advocates.

For Respondents: Ms. Madhavi Divan, ASG with Mr. Amit Meharia, Ms. Tannishtha Singh, Ms. Vidushi Tripathi, Mr. Vishesh Kalra and Ms. Aishani Narain, Advocates.

Cont'd.../

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by an Operational Creditor has been filed against the order dated 31.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata rejecting application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') filed by the Appellant. The Appellant aggrieved by said order has come up in this Appeal.

2. The brief facts of the case necessary to be noticed for deciding this Appeal are:

- (i) The Respondent – Corporate Debtor issued Notice Inviting Tender (NIT) on 18.08.2015, in pursuance of which two work orders for Hospital & Township and Plants & Headquarter were issued and a performa agreement was executed between the parties on 28.09.2016. The Operational Creditor was to provide round the clock security arrangement of all three plants, Headquarter, Hospital and township.
- (ii) An email dated 04.10.2018 was sent by the Corporate Debtor to the Appellant informing about the absenteeism of the workers.
- (iii) On 14.12.2018 again an email was sent by the Corporate Debtor to the Appellant that while executing the contract Appellant has

short supplied supervisors and security personnel in the month of August, 2018 and September, 2018. Reference was made to Clause 25(a) of the Special Terms and Conditions.

- (iv) Another email dated 11.02.2019 was issued by the Corporate Debtor informing the Operational Creditor about the short supply of Supervisor and security personnel which as per Section 25(a) shall result in corresponding recoveries from the payment of the Appellant. It was further mentioned that recoveries will be visited on conclusion of the contract. To the same effect is another email dated 15.02.2019 sent by the Corporate Debtor to the Appellant.
- (v) By email dated 16.04.2019, the Corporate Debtor informed the Operational Creditor about the short supply of Supervisor and security personnel and consequent recoveries from the payment. It was again mentioned that recovery will be visited on conclusion of the contract.
- (vi) Contract of the Appellant came to an end on 31.05.2019. After the contract was over, certain deliberation took place between the parties regarding finalization of the bill.
- (vii) Appellant claim that on 07.06.2019 a meeting was held where CMD of the Corporate Debtor instructed to release an amount of Rs.1 Crore and further release the remaining amount on final reconciliation.

- (viii) On 20.12.2019, a letter was written by the Deputy General Manager of the Corporate Debtor to the Appellant where it was communicated that there is an issue of releasing final payment after observing the terms and conditions of the contract and the issue is likely to be settled shortly.
- (ix) No further payment having been released, the Appellant issued a Demand Notice under Section 8 of the I&B Code demanding payment of operational debt of Rs.2,50,20,319/- with future interest.
- (x) The Operational Creditor filed an application under Section 9 on 01.06.2020 claiming debt and default on the part of the Corporate Debtor for an amount of Rs.2,50,20,319/- pertaining to dues from December, 2018 to May, 2019.
- (xi) The Corporate Debtor did not send any reply of the Demand Notice within the time allowed by the Code. The Corporate Debtor sent a letter dated 05.02.2021 purported to be in reference to Demand Notice dated 30.12.2019 denying the claim of the Appellant. The Reply further stated that as per Clause 25(a) of NIT and Clause 73 of NIT on account of short supply of security personnel, recovery of an amount of Rs.1,67,31,718/- has to be done for the entire period of contract. On 05.02.2021, a notice was also issued by the Corporate Debtor invoking the Clause 50 of the Notice Inviting Tender dated 05.04.2016 for referring the dispute to an

Arbitrator. Name of three Arbitrators were forwarded soliciting response from the Operational Creditor.

(xii) In pursuance of notice issued by the Adjudicating Authority in Section 9 Application, the Corporate Debtor filed its reply dated 06.08.2021. In the reply, the Corporate Debtor denied the claim of Appellant and reiterated the facts stated in the letter dated 05.02.2021, where it is pleaded that the claim of the Appellant was never acknowledged. In reference to email dated 14.12.2018, 17.12.2018, 11.02.2019, 26.02.2019 and 16.04.2019, it was stated in the reply that the Corporate Debtor had categorically informed the Appellant of short supply of Supervisor and unarmed security personnel. The claim of the Appellant was disputed.

(xiii) The Adjudicating Authority after hearing the parties by impugned order dated 31.01.2022 dismissed Section 9 application holding that there being pre-existing dispute between the parties the claim under Section 9 is to be rejected. Aggrieved by the order dated 31.01.2022 rejecting Section 9 Application, this Appeal has been filed.

3. We have heard Shri Ramji Srinivasan, learned senior counsel for the Appellant and Ms. Madhavi Divan, learned ASG appearing for the Respondent.

4. Learned counsel for the Appellant submits that the Corporate Debtor is required to show a pre-existing dispute and not a prior dispute. Existence or subsistence of the dispute which is recognized by the statute is a lawful genuine dispute to resist any initiation of CIRP. It is submitted that there is no pre-existing dispute. The dispute between the parties was resolved. Learned counsel for the Appellant has placed reliance on the Minutes of Meeting dated 07.06.2019. It is submitted that during the above meeting Corporate Debtor released an amount of Rs.1 Crore to the Appellant and balance amount was also agreed to be released after reconciliation. Reference to communication dated 20.12.2019 issued by the Corporate Debtor has also been made where the Respondent communicated that they are on the verge of completing the exercise, which has some shortcomings. It is further submitted that Demand Notice dated 30.12.2019 was required to be replied by the Corporate Debtor within ten days, however, no reply was sent and after more than 13 months letter dated 05.02.2021 was sent by the Corporate Debtor claiming to be reply to the Demand Notice. It is submitted that invoking of the arbitration by letter dated 05.02.2021 was also subsequent to issuance of Demand Notice and could not be relied for any pre-existing dispute. The Respondent has tried to set up a counter claim in reply dated 05.02.2021 where the Respondent for the first time alleged that Respondent is entitle to recovery of Rs.1.67 Crores on account of levy of penalty for short staffing. There was no contemporaneous material relied by Respondent in support of allegation of

pre-existing dispute. The Adjudicating Authority committed error in rejecting the Section 9 Application filed by the Appellant.

5. Learned ASG, Ms. Madhavi Divan refuting the submissions of learned counsel for the Appellant submits that there was pre-existing dispute regarding the claim of the Appellant which was clearly reflected in emails dated 14.12.2018, 11.02.2019, 15.02.2019 and 16.04.2019 which has been recorded by the Adjudicating Authority in Para 10 of the order. It is submitted that the aforesaid email clearly communicated the Appellant regarding recovery at the time of finalization of contract on the ground of short supply of Supervisor and Security Personnel and the penalty which has to be imposed. Thus, the claim of the Appellant was clearly disputed. The submission of the Appellant that even if dispute was raised earlier, the same came to an end after meeting dated 07.06.2019 is incorrect. There has been no reconciliation by the Corporate Debtor or settlement of the claim of the Appellant in meeting dated 07.06.2019. The Minutes of the Meeting brought on the record by the Appellant does not bear signature of any of the officials from the Corporate Debtor and the minutes are self-generated minutes by the Appellant. There was pre-existing dispute with regard to execution of contract by the Appellant, there were serious issues regarding short supply of supervisor and security personnel. Before issuance of the Demand Notice by the Appellant, the Corporate Debtor has already communicated about short supply of the personnel for which penalty has to be imposed at the end of the contract. There has been no denial about the fact which was communicated by the Corporate Debtor to

the Appellant by the emails as noted above. The Respondent at no point of the time admitted claim of the Appellant. The email dated 20.12.2019 only communicated that reconciliation is in progress. The breach of contract terms by the Appellant has serious penal consequences and the claim of the Appellant could not be said to be undisputed, however, the claim of the Appellant was stoutly disputed by the Corporate Debtor. Proceedings under Section 9 are not proceedings for recovery of money. IBC is not a forum for recovery of amount of bill as claimed by the appellant. Under the Notice Inviting Tender there being Arbitration Clause, the Respondent having invoked the Arbitration Clause and matter is pending before the Arbitrator, where the Appellant is not cooperating.

6. Learned counsel for the parties have placed reliance of various judgments of this Tribunal as well as judgments of Hon'ble Supreme Court which shall be referred to while considering the submissions in detail.

7. The expression 'existence of dispute' as occurring in Section 8 of the Code has been elaborately interpreted by the Hon'ble Supreme Court in **"(2018) 1 SCC 353, Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd."**. In para 51 of the judgment, Hon'ble Supreme Court laid down following:-

"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.”

8. Further in Para 56 following has been laid down:

“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.”

9. Further, the Hon’ble Supreme Court in **“(2021) 10 SCC 483, Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (India) (P) Ltd.”** in para 21 has again reiterated the same principle in following words:-

“21.All that the adjudicating authority is required 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 a mere bluster. It has been held that however, at this stage, the Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. It has been held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application.”

10. We have to now examine the material on record which were placed before the Adjudicating Authority to find out as to whether the finding recorded by the Adjudicating Authority that there are pre-existing disputes are supportable from the evidence on record or not.

11. In the present case notice of demand was issued on 30.12.2019, hence, we proceed to examine the materials on the record before 30.12.2019 to find out was to whether there was any dispute raised by the Corporate Debtor regarding bills of the Appellant and further whether the dispute raised earlier was not existing on the date when Demand Notice was issued and has subsided as contended by leaned counsel for the Appellant. The Corporate Debtor has referred to Clause 25(a) and Clause 73 of the Notice Inviting Tender and Clause 35 of the Work Order, which are to the following effect:-

“Further, Clause 25(a) of the NIT states that “In case any of contractor’s personnel’s deployed under the contract is (are) absent, a penalty equal to double the wages of number of guards/supervisors absent on the particular day shall be levied by the company and the same shall be deducted from the contract’s bills”.

Clause 73 of the NIT and Clause 35 of the said Work Orders provide that “In case of failure/inability to provide the security personnel as per the deployment plan or if any post left unnamed or in the event of any other breach of contract, HEC may impose a penalty upto 5% of monthly invoice value for the default, apart from deduction of daily wage for each day of absence of the number of security personnel.””

12. The Adjudicating Authority in Para 10 of the order while returning the finding that there is a pre-existing dispute between the parties has

placed reliance on emails issued by the Corporate Debtor to the Operational Creditor. Para 10 of the impugned judgment is as follows:-

“10. Further, upon perusing the records it is evident that several mails dated 14 December, 2018, 11 February, 2019, 15 February, 2019, 26 February, 2019 and 16 April, 2019 were sent by the Corporate Debtor to the Operational Creditor stating the short-supply of the supervisor category personnel and other related services on different occasions and the same was never denied by the Operational Creditor. It is also pertinent to mention that the Demand Notice under Section 8 of the Code was send in December 2019.”

13. Now, we first need to notice the email issued by the Corporate Debtor which have been relied by the Adjudicating Authority for holding that there had been pre-existing dispute between the parties. The first email relied is email dated 14.12.2018 issued by the Corporate Debtor to the Operational Creditor. The contents of the email are as follows:-

“Dear Sir,

With reference to the subject we inform you that your officials are completing the set of supporting documents in 2 to 3 attempts. It is clearly stated in the NIT and Work orders about the manner in which every month the claim bill is to be submitted to us for further processing. Kindly advise them to get such set of documents tied together/spiral binding.

We find that while executing the Contract No. HQ/BDC&DISP/SECURITY/2016-065 dtd 16-07-

2016 you have short supplied supervisors and security personnel on almost every day in the month of August 2018. It is noted that there is short-supply of total 54-mandays of supervisor category personnel and 465-mandays of security personnel during the month of August 2018.

We find that while executing the Contract No. HQ/BDC&DISP/SECURITY/2016-065 dtd 16-07-2016 you have short supplied supervisors and security personnel on almost every day in the month of September 2018. It is noted that there is short-supply of total 65-mandays of supervisor category personnel and 462-mandays of security personnel during the month of September 2018.

Kindly explain why Clause 25(a) of special terms and conditions mentioned in NIT HEC/TA Divn/Security/2016/01 dtd 05-06-2016 should not be invoked and corresponding recoveries should not be resorted to. Kindly send your reply within 3 days. We will complete the processing of your aforesaid claim bills, even if you do not reciprocate.

Thanking you,

Yours truly,

Ramjee

DGM/TA Div Rev & Sec”

14. The above letter indicate that there was short supply of security personnel in the month of August, 2018 and September, 2018 and reference was made to Clause 25(a) as to why recovery should not be

resorted to. On 11.02.2019 another email was sent by the Corporate Debtor to the Operational Creditor where short supply of Supervisor and security personnel was communicated. It was also informed that short supply shall result in recovery from the payment. Email dated 11.02.2019 is as follows:-

“Dear Sir,

With reference to the above all, we convey that your claim bill amount to Rs.32,33,837/- has been examined. You have claimed Rs.27,40,540/- against your performance made in October, 2018. The excess attendance shown in the bill has been corrected and accordingly your claimed amount got reduced by an amount of Rs.56,475/- to Rs.26,84,065/-. From the said amount, Rs.2,68,407/- has been posted to your security deposit. After paying GST amounting to Rs.4,83,132/- to you, the final amount of Rs.28,98,790/- stands for release.

We find that while executing the Contract dated 16-07-2016 you have short supplied supervisors and security personnel in the month of October 2018 by 45-mandays of supervisor category personnel and 498-mandays of unarmed security personnel. This attracts application of Clause No.- 25(a) of special terms and conditions mentioned in NIT HEC/TA Divn/Security/2016/01 dtd 05-06-2016 resulting into corresponding recoveries from your payment. Also, the enhancement made in those non-wage related factors, which are independent of increase made in rate of wages

rate wef 01st April/ 1st October, are needed to be reviewed. All these recoveries will be visited on conclusion of the contracts.

However, in order to save your employees deployed in our Corporation from facing hardships towards payment of their monthly wages, the aforesaid final amount is being released conditionally. Hope, you will appreciate the gesture.

Regards,

*(Ramjee)
DGM/TA”*

15. Next email dated 15.02.2019 also communicated the similar content. 26.02.2019 email also communicated the short supply of Supervisor and the Security Personnel and number of days on which short supply was there. Last email dated 16.04.2019 was with regard to processing of bill of December, 2018. Last email dated 16.04.2019 is as follows:-

“Sub: Processing of your claim bills pertaining to the month of December 2018 Plant Security

Ref: Our Work Order No. HQ/BDC&DISP/SECURITY/2016-065 dtd 16-07-2016 for providing “Round the Clock Security Arrangement of Three Plants of HEC Ltd Ranchi-834004”

Dear Sir,

With reference to the above all, we convey that your claim bill amount to Rs.3,257,057/- (refer your tax invoice dtd 31-01-2019- received on 14-02-2019) has been examined. You have claimed

Rs. 27,60,217/- against your performance made in December 2018. The excess attendance shown in the bill has been corrected and accordingly your claimed amount got reduced by an amount of Rs.91,086/- to Rs.26,69,131/-. After paying GST amounting to Rs.4,80,444/- to you, the final amount is Rs.31,49,575/-. From the said amount, Rs.2,66,913/- has been posted to your security deposit and payable amount is Rs.28,82,662/-.

We find that while executing the Contract dated 16-07-2016 you have short supplied supervisors and security personnel in the month of December 2018 by 27-mandays of supervisor category personnel and 533-mandays of unarmed security personnel. This attracts application of Clause No.-25(a) of special terms and conditions mentioned in NIT HEC/TA Divn/Security/2016/01 dtd 05-06-2016 resulting into corresponding recoveries from your payment. Also, the enhancement made in those non-wage related factors, which are independent of increase made in rate of wages rate wef 01st April/ 1st October, are needed to be reviewed. All these recoveries will be visited on conclusion of the contracts.

However, in order to save your employees deployed in our Corporation from facing hardships towards payment of their monthly wages, the aforesaid final amount is being released conditionally. Hope, you will appreciate the gesture.

Regards,

(Ramjee)
DGM/TA”

16. From the communication which was sent by the Corporate Debtor to the Operational Creditor following three facts need to be noted:-

- (i) The details of short supply of Supervisor and Security Personnel in each month was communicated with number of man-days when there was short supply.
- (ii) Operational Creditor was communicated that as per Clause 25(a) corresponding recovery shall be made from the payments and all the recovery will be visited on conclusion of the contract.
- (iii) In order to save employees of the Operational Creditor from facing hardship towards payment of their monthly wages, final amount was released conditionally.

17. The Operational Creditor was, thus, put to notice that there is short supply of the Supervisor and Security Personnel under the contract which shall result in recovery from the payment and payments for the months mentioned therein has been released to mitigate the hardship of the employees which were released conditionally and all recoveries will be visited on conclusion of the contract.

18. The above material which was placed before the Adjudicating Authority sufficiently communicated to the Operational Creditor that dispute existed with regard to bills submitted by the Appellant for the

payment of each month and recovery was to be effected from the payment of each month and further recovery has to be visited on conclusion of contract. To counter the aforesaid material which clearly indicates the existence of dispute communicated to the Operational Creditor much before the issuance of Demand Notice, learned counsel for the Appellant, Shri Ramji Srinivasan submits that even if the dispute was subsisting, it was reconciled in the meeting dated 07.06.2019 and further payment of Rs.1 Crore was released.

19. We, thus, also need to examine whether the dispute which was communicated by the Corporate Debtor came to an end and issues were resolved on the date when demand notice was issued. Reliance is placed by the Appellant on the Minutes of Meetings dated 07.06.2019 which minutes have been brought on record at Annexure A-14, which minutes are claimed to be sent by the Appellant to the Respondent by email dated 10.06.2019, which are as follows:-

“3. For remaining outstanding, respected CMD Sir has given instruction to Mr. Ramjee to do a thorough reconciliation with GAS representatives to derive at actual payout based on his working & observation.”

20. Perusal of the minutes indicate that Minutes of the Meeting were not signed by any of the official of the Corporate Debtor. Although presence of CMD, DGM of the Corporate Debtor is noticed in the minutes. A bare

perusal of the Minutes of meeting indicate that the minutes are the minutes which are prepared by the Appellant. At Point No.1 it is mentioned:

“There was some disputes raised by Mr. Ramjee against duty deployment numbers. The same has been explained to him in front of respected CMD Sir”.

21. The issue pertaining to short supply of the Supervisors and Security Personnel was communicated in writing with details of each month number of Supervisor and Security officers not present for duty. How the said dispute can be resolved by minutes of the meeting without any amount of recovery being finalized or effected? The reliance was placed on minutes of meeting dated 07.06.2019 by the Appellant before the Adjudicating Authority also. In the Reply, which was filed by the Corporate Debtor in Section 9 application with regard to minutes dated 07.06.2019 following pleadings have been made in para 10:-

“It is stated that it was on the request of the applicant that the penal recoveries against short supply of manpower were not enforced as per Clause 25(a) of the NIT initially and thus the applicant was reluctant to complete the process of for releasing the last and final payment. Further, the minutes dated June 7, 2019 is neither signed nor its content be relied upon since the same was maliciously generated by the applicant and was never acknowledged or accepted by the respondent, as alleged or at all.”

22. The Appellant has also filed Rejoinder Affidavit to the Reply of Respondents filed before the Adjudicating Authority. A copy of Rejoinder is also placed on record in Vol. II. Para 10 of the Reply has been answered in Para 14 of the Rejoinder, which is to the following effect:-

“14. That the entire contents of Para No. 10 of the Reply Affidavit are specifically and vehemently denied as being false, spurious and vexatious. The above mentioned paragraphs of the Preliminary Objections have been relied upon by the Operational Creditor herein, the contents whereof although reiterated are not repeated herein for the sake of brevity. That the same exposes the mala fide of the Corporate Debtor.”

23. The Minutes of Meeting dated 07.06.2022 on which reliance is placed by the Appellant are clearly generated by the Appellant themselves which does not bear any signature/concurrence of any of the officials of the Corporate Debtor and when in the Reply it was specifically mentioned that the facts in the minutes are self-designed by the Appellant and allegations were made that minutes are maliciously generated by the Appellant, we are of the view that said minutes could not be relied in support of the submission of the Appellant that all the issues between the parties were subsided and decided in the minutes dated 07.06.2021. When in the emails, as extracted above, it is clearly mentioned that the recovery shall be effected at the end of the contract, there has to be reconciliation between the parties taking into account non-compliance of the Terms and Conditions by the Operational Creditor which each detail were

communicated to the Appellant. Much reliance has been placed by the Appellant on the email dated 20.12.2019 which was sent by the Corporate Debtor to the Operational Creditor. It is necessary to notice the contents of email dated 20.12.2019, which is to the following effect:-

“Dear Sir,

With reference to the above all, it is conveyed that both the contracts have got concluded on 31-03-2019. Your monthly claim bills against performance have been processed. Since there is an issue of releasing the final payment after observing the terms and conditions of contracts, as you know, we are at the verge of completing the exercise under intimation to our goodself. Therefore, we inform you that very shortly the aforesaid issues would be settled. In the meantime kindly have the readiness with all clearances to receive the payments.

Hope, you will appreciate the gesture. Regards.”

24. The above email clearly mention that there are issues regarding releasing the final payment after observing the terms and conditions of contracts. The letter dated 20.12.2019 clearly communicated that issues regarding observing the terms and conditions of the contracts are yet not settled or decided and that was in process. The email further stated that Appellant is informed that ‘very shortly the aforesaid issues would be settled’. The above email does clearly belie the submission of the Appellant that before issuance of demand notice dated 30.12.2019 all the issues

between the parties were settled. The communication dated 05.02.2021, which although could not be treated as reply of the Demand Notice but the said letter contains details of recoveries which the Corporate Debtor has to effect from the bills of the Appellant, the total amount to be deducted from the payments of the Appellant was Rs.1,67,31,718/-. The said letter dated 05.02.2021 can be treated to be reconciliation and final offer by the Corporate Debtor to the Appellant. According to which after deduction of the said amount the Appellant will be entitle to receive the payment. In the reply which was filed by the Corporate Debtor before the Adjudicating Authority, averments made in letter dated 05.02.2021 were reiterated and hence, those averments can be treated to have been reiterated in the Reply.

25. We, thus, do not find any substance in the submission of learned counsel for the Appellant that dispute, if any, existing earlier came to an end by the time Demand Notice was issued by the Appellant on 30.12.2019. The materials brought on the record before the Adjudicating Authority and also before us clearly indicate that there was pre-existing dispute with regard to payment of amount claimed by the Appellant and Appellant was duly communicated of the said dispute even prior to issuance of Demand Notice, as noticed above. No reliance on Minutes of Meeting dated 07.06.2019 be placed to accept the submission of Appellant that all the issues between the parties subsided and were settled and the reconciliation was complete.

26. We also do not agree with the submission of learned counsel for the Appellant that Respondent has by the aforesaid has raised the counter

claim. Present was not case of counter claim by the Corporate Debtor rather the objection was with regard to the bill of payment which was submitted by the Appellant under the Contract. We also do not find any material to the effect that Corporate Debtor admitted the debt of the Appellant as claimed, at any point of time.

27. In view of the foregoing discussion, we are of the view that the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Appellant on the ground of pre-existing dispute. There is no merit in the Appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

28th September, 2022

Archana