NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1522 of 2019

[Arising out of Order dated 15 November 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench in Company Petition (IB) No. 2953/NCLT/MB/2019]

IN THE MATTER OF:

M/s Allied Silica Limited
Rep by its Director Er Manmohan Singh Jain
No. AH – 216, 8th Main Road
2nd Street, Shanthi Colony, Anna Nagar
Chennai – 600040, Tamil Nadu **...Appellant**

Versus

M/s Tata Chemicals Limited
Represented by its Authorised Officer
Bombay House, 24, Homi Mody Street,
Fort, Mumbai – 400001, Maharashtra **...Respondent**

Present:

For Appellant : Mr Bishwajit Bhattacharyya, Senior Advocate with Mr D. Sreenivasan and Mr Ananda Selvam, Advocates

For Respondent : Mr S. N. Mookherjee, Senior Advocate with Mr Nitesh Jain and Ms Moulshree Shukla, Advocates

J U D G M E N T

[Per; V. P. Singh, Member (T)]

1. This Appeal emanates from the Order dated 15 November 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench in CP No. 2953/NCLT/MB/2019, whereby the Adjudicating Authority has rejected the Insolvency Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code'). The Parties are

represented by their original status in the Company Petition and also in Miscellaneous Applications for the sake of convenience.

2. The brief facts of the case are as follows:

The Appellant (Operational Creditor) and the Respondent (Corporate Debtor) entered into a Business Transfer Agreement (BTA) dated 07April 2018 for the transfer of undertaking on a Slump Sale basis under Section 2(42C) of the Income Tax Act, 1961 at a lump sum amount of Rupees One Hundred Twenty Three Cores only (Rs 123 Crores) as per the provisions of BTA and its schedule annexed to it. The Appellant contends that the Corporate Debtor has only transferred a sum of Rs 65 Crores to the Appellant out of Rs 123 Crores and the balance amount of Rs 58 Crores have not been paid, and on account of default, the interest amounting to Rs. 10.44 Crores, a total of Rs. 58 Crores remain outstanding, which is the unpaid Operational Debt, claimed to be due as unpaid Operational Debt. The Application of the Appellant has been rejected by the Adjudicating Authority mainly on the ground of pre-existing debt.

3. Operational Creditor submits that the Corporate Debtor sent an "Expression of Interest" to acquire the Silica Business of M/s. Allied Silica Limited, other assets, contracts, deeds etc. including the plant at Cuddalore from the Operational Creditor on a Slump Sale. In this regard, Letter was issued On 21 August 2017 by the Corporate Debtor for "proposed acquisition of M/s. Allied Silica Limited", confirming their intention to acquire the Undertaking of the Operational Creditor's Silica Plant at Cuddalore, Tamil Nadu on Slump Sale as a going concern in "as is where is"

condition for a consideration of Rs. 123 Crores and authorises its officials to enter into a Business Transfer Agreement (from now on called as BTA).

4. The Operational Creditor further submits that after due compliance and completion of the "Condition Precedent", relating to the transfer of Undertaking on Slump Sale, as provided for in Clause 4 of BTA, the Compliance notice was submitted to the Corporate Debtor on 04 June 2018, which was acknowledged by the Corporate Debtor. A satisfaction letter was issued to the Operational Creditor on 09 June 2018.

5. The Operational Creditor further submitted that the slump sale was consummated on 18 June 2018 and on the same day the possession of Undertaking was handed over by the Operational Creditor to the Corporate Debtor. Accordingly, ownership of the Undertaking got vested with the Corporate Debtor. The Applicant further submits that it had issued invoice Dt. 18 June 2018 of Rs 123 Crores in respect of the consideration for the transfer of Undertaking and the Corporate Debtor made part payment of Rs 65,19,00,000/- (Rupees Sixty Five Crore and Nineteen Lakh Only) and balance outstanding consideration, as on 18 June 2018,remainedRs 58 Crores.

6. The Operational Creditor also contends that he sent an email communication dated 13 October 2018 to the Corporate Debtor, demanding their balance Slump Sale payment of Rs 58 Crores and expressed their displeasure in continuing the work contract given, after the consummation of the Slump Sale.

7. It is further contended on behalf of the Operational Creditor that the Corporate Debtor submitted its Annual Report for 2018-19 before National Stock Exchange of India on 11 June 2019, wherein the Corporate Debtor categorically acknowledged the due of Rs 6.37 Crores to the Operation Creditor as on 31 March 2019. In this report, the consummation of transfer of Undertaking on Slump Sale for a consideration of Rs 123.19 Crores (including working capital adjustment of Rs 0.19 Crores on closing date), has been disclosed, along with the break-up of the Consideration as Rs. Seventy-five Crores towards the cost of fixed assets and ₹48Crores towards goodwill for the purchase of the Undertaking.

8. It is further submitted on behalf of the Operational Creditor that upon default by the Corporate Debtor to remit the balance consideration of Rs 58 Crores for transfer of Undertaking on Slump Sale basis, notices dated 13 May 2019, 17 May 2019 were issued against the Corporate Debtor and after that demand notice in 'Form 3' dated 03 June 2019, demanding the release of due amount along with interest was issued. The Corporate Debtor sent a reply to demand notice dated 03 June 2019on 14 June 2019.

9. The Operational Creditor further contends that Form 5 filed in CP (IB) No. 2953/NCLT/MB/2019 before the Adjudicating Authority on 02 August 2019 showing Rs. 68.44 Crores, as outstanding amount which includes Rs. 58 Crores towards due consideration, receivable for consummated slump sale of precipitated Silica Plant as a 'going concern' in 'as is where is' condition, vide invoice No. EXEM/001 dated 18 June 2018 for Rs. 123

Crores and interest of Rs. 10.44 Crores for the period between 18 June 2018 and 17 June 2019.

10. The Operational Creditor further contended that post-transfer of the undertaking and post consummation of the slump sale, the Operational Creditor and Corporate Debtor mutually decided to continue their respective rights and obligations to lay down the pipeline, trial run of the Undertaking, satisfactory operation of the Undertaking etc., with the additional scope of work with other tranche payments, which were separate and distinct from slump sale and transfer of Undertaking that culminated on 18 June 2018, and from that the Corporate Debtor becomes the owner of the Undertaking. But despite being the owner of the Undertaking, the Corporate Debtor still needed the help of the Operational Creditor for additional consideration in terms of BTA.

11. It is argued on behalf of the Operational Creditor that the Adjudicating Authority has ignored and went into the post slump sale transactions, which are not the subject matter of the claim of the Operational Creditor. It is admitted that the Undertaking was transferred to the Corporate Debtor on 18 June 2018, and consummated slump sale for a consideration of Rs. 123.19 Crores is also recorded, then after 18 June 2018, i.e. post transfer of the Undertaking, alleged disputes are beyond the scope of the present proceedings.

12. It is further argued on behalf of the Operational Creditor that the Adjudicating Authority without proper appreciation of the facts and correct

perspective of the law accepted the Corporate Debtor's plea of pre-existing dispute and based on that rejected the application filed under section 9 of I&B Code. The Adjudicating Authority failed to appreciate that, the outstanding consideration for per Slump Sale transaction has not been paid as per BTA.

13. It is further contended on behalf of the Operational Creditor that the Adjudicating Authority failed to appreciate that the Corporate Debtor admitted its liability under BTA towards the acquisition of the precipitated Silica Plant on Slump Sale basis in compliance with Section 2(42C) of Income Tax Act, 1961, in "as is where is" condition, as a going concern for consideration of 123.19 Crores, through their submissions before various statutory authorities. The Adjudicating Authority misconceived the said provision of Income Tax Act, 1961 and in Clause 1.1.77 of BTA, which very specifically states that "Slump Sale" basis means the transfer of Undertaking by a company as a going concern in "as is where is" basis in the manner defined under Section 2(42C) of the Income Tax Act, 1961.

14. It is further contended that the Adjudicating Authority has failed to appreciate that the additional work contracts for improvement, were taken up after transfer of ownership and possession of the Undertaking, to meet TATA's standards, i.e. beyond the scope of "as is where is" condition, under which transfer was consummated. There is no dispute about the transfer of undertaking on Slump Sale. Still, all such communication between the parties which have been treated as a pre-existing dispute by the

Adjudicating Authority is related to subsequent business transactions between the parties.

15. It is also contended by the Operational Creditor that the Adjudicating Authority has failed to consider that the respondent's plea of pre-existing disputes is without any basis. No suit, arbitration or any other recovery proceedings are ever initiated by either of the parties in connection with the alleged pre-existing dispute.

16. The Respondent (Corporate Debtor) filed their reply and rebutted in brief that the present Appeal is premised on the suppression of facts and information, misrepresentation and gross misconstruction of the provision of the business transfer agreement (BTA) dated 07 April 2018, entered between the Appellant, and the Corporate Debtor.

17. The Corporate Debtor further submits that the Adjudicating Authority rejected Section 9 Application on the grounds of pre-existence of a dispute and absence of operational debt. The Appellant's contention that post-slump sale transactions are beyond the scope of the IBC proceedings is incorrect. The Adjudicating Authority, while exercising its summary jurisdiction under the IBC, is not expected to decide the disputed question of facts of breach of contract. To admit or reject a petition under Section 9 of the I&B Code the Adjudicating Authority has to ensure the existence of an operational debt of more than threshold limit of Rupees one lac, is due and payable and to ensure that there is no pre-existence dispute between the parties, before the receipt of the demand notice by the Corporate Debtor. Hence, the

adjudicating Authority had rightly rejected the application filed under Section 9 of the I&B Code.

18. That the Corporate Debtor further pleaded that the alleged debt is not an 'Operational Debt 'and the Appellant is not an 'Operational Creditor 'as defined under IBC.

19. The Corporate Debtor further submitted that it had replied to the Demand Notices vide its letters dated 14 June 2019 and 01 July 2019, raising disputes to the claim of the Applicant. Admittedly the Transfer Consideration of Rs 123,00,00,000/- for BTA was divided into Closing Balance Consideration of Rs 65,00,00,000/-, and remaining balance transfer consideration of Rs58,00,00,000/- into 3Tranche Payments as more particularly specified in the BTA. The Corporate Debtor submitted that it has duly paid the Closing Balance consideration and Tranche I and Tranche II payments to the Applicant, even upon non-completion of Tranche I and Tranche II Conditions Precedent, and the Corporate Debtor had adjusted the Tranche III payment against the improvement costs borne by the Corporate Debtor, on account of non-completion of Tranche II conditions precedent by the Applicant.

20. The Corporate Debtor also submitted that the adjustment of Tranche III payment was agreed mutually between the parties and further recorded in Letter dated 08 January 2019. The Corporate Debtor argued that all the requisite amounts under the BTA were duly paid to the Applicant, and no outstanding debt is due to the Applicant as on the date of the present application. The Corporate Debtor submitted that the claim of balance

consideration of Rs 58,00,00,000/- was only raised by the Applicant for the first time in its Letter dated 13 May 2019,i.e. after one year from the execution of BTA and payment of Closing Balance Consideration of Rs 65,19,00,000/-. Thus the Applicant is consciously misinterpreting the BTA to extort money from the Corporate Debtor.

21. We have heard the arguments of the Learned Counsels of the parties and perused the record.

22. The Adjudicating Authority has rejected the application mainly on the ground that the Applicant has failed to prove the Operational Debt and its default and further on the ground of pre-existing dispute.

23. Admittedly demand notice in Form 3, under Rule 5 of the Adjudicating Authorities Rules has been issued on 03 June 2019. In reply to the demand notice dated 14 June 2019 the corporate Debtor has acknowledged the receipt of the demand notice on 06 June 2019. Thus, reply to the demand notice is given within the statutory period of ten days.

24. In reply to the demand notice the corporate Debtor raised the issue of pre existing dispute. In its reply it is stated that;

> *"TCL also contests the validity of the issue of the Demand Notice under the Insolvency and Bankruptcy Code, 2016 ("**Code**"), especially when ASL was well-aware even prior to the issue of the instant Demand Notice that TCL had disputed ASL's demand for payments which were allegedly due from 18 June 2018. In the instance case, even though there is no operational debt due from TCL to ASL, TCL has been embroiled in a dispute with ASL regarding the same on account of ASL raising baseless claims on*

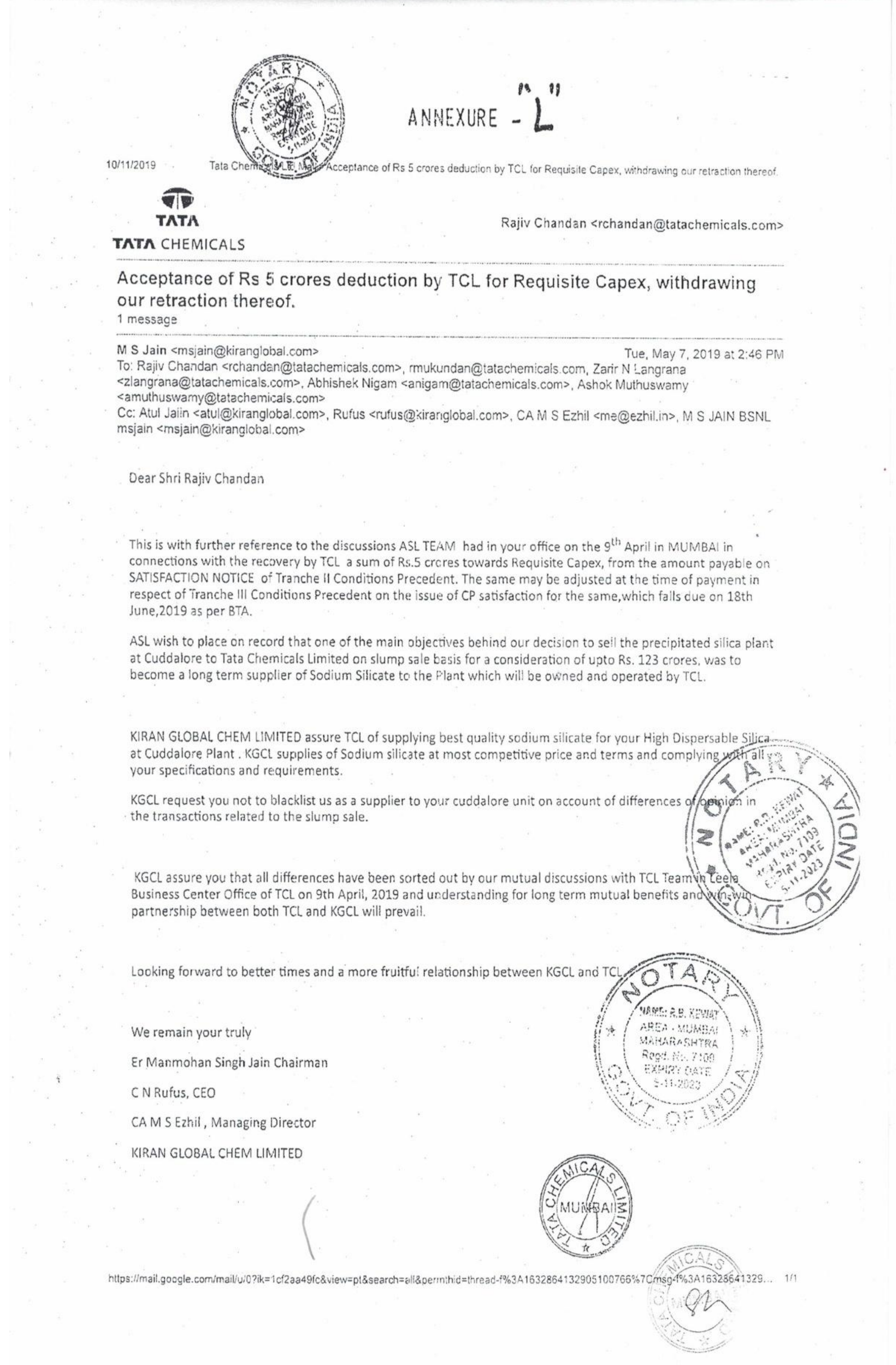
numerous occasions since January 2019. Despite receiving multiple clarifications from TCL regarding the correct factual background, ASL has continued to harass TCL through raising vexatious claims to unjustly enrich itself."……….

"No operational debt due to ASL from TSL: It is clear from the provisions of the BTA that TCL is required to pay Closing Transfer Consideration on the Closing Date and then the remaining Balance Consideration upon the completion of the conditions precedent for each tranche by ASL. It remains an undisputed fact, which is also evident from Annexure B, that TCL has paid INR 65.19 Crores as the Closing Transfer Consideration on 18 June 2018, as per the BTA. It is also evident from Annexures C and D that it is an admitted position that TCL has paid the Tranche-I Balance Consideration of INR 35 Crores and Tranche-II Balance Consideration of INR 17 Crores, the latter of which was obtained fraudulently by ASL. TCL is not liable to pay INR 6 Crores as Tranche-III Balance Consideration as the Tranche-III Conditions Precedent have not been completed till date. The Tranche-III Balance Consideration under the BTA will be paid after the completion of the Tranche-III Conditions Precedent by ASL to TCL's satisfaction, subject to the adjustments under the BTA and the deduction of INR 5 Crores as per the executed Letter dated 8 January 2019 and admitted by ASL in the email dated 7 May 2019 and instant Demand Notice. Therefore, there is no outstanding debt due to ASL from TCL."

25. It is important to point out that before issuance of demand notice an email was sent by Corporate Debtor to the Operational Creditor, whereby the Operational Creditor <u>requested the Corporate Debtor not to blacklist the Operational Creditor as a supplier to your Cuddalore unit on account of</u>

differences of opinion in the transactions relating to the slump sale.

Scanned copy of the email dated 07 May 2019 is as under;



ANNEXURE - "L"

10/11/2019 Tata Chemicals Mail - Acceptance of Rs 5 crores deduction by TCL for Requisite Capex, withdrawing our retraction thereof.

TATA CHEMICALS

Rajiv Chandan <rchandan@tatachemicals.com>

Acceptance of Rs 5 crores deduction by TCL for Requisite Capex, withdrawing our retraction thereof.

1 message

M S Jain <msjain@kiranglobal.com> Tue, May 7, 2019 at 2:46 PM

To: Rajiv Chandan <rchandan@tatachemicals.com>, rmukundan@tatachemicals.com, Zarir N Langrana <zlangrana@tatachemicals.com>, Abhishek Nigam <anigam@tatachemicals.com>, Ashok Muthuswamy <amuthuswamy@tatachemicals.com>

Cc: Atul Jain <atul@kiranglobal.com>, Rufus <rufus@kiranglobal.com>, CA M S Ezhil <me@ezhil.in>, M S JAIN BSNL msjain <msjain@kiranglobal.com>

Dear Shri Rajiv Chandan

This is with further reference to the discussions ASL TEAM had in your office on the 9th April in MUMBAI in connections with the recovery by TCL a sum of Rs.5 crores towards Requisite Capex, from the amount payable on SATISFACTION NOTICE of Tranche II Conditions Precedent. The same may be adjusted at the time of payment in respect of Tranche III Conditions Precedent on the issue of CP satisfaction for the same,which falls due on 18th June,2019 as per BTA.

ASL wish to place on record that one of the main objectives behind our decision to sell the precipitated silica plant at Cuddalore to Tata Chemicals Limited on slump sale basis for a consideration of upto Rs. 123 crores, was to become a long term supplier of Sodium Silicate to the Plant which will be owned and operated by TCL.

KIRAN GLOBAL CHEM LIMITED assure TCL of supplying best quality sodium silicate for your High Dispersable Silica at Cuddalore Plant . KGCL supplies of Sodium silicate at most competitive price and terms and complying with all your specifications and requirements.

KGCL request you not to blacklist us as a supplier to your cuddalore unit on account of differences of opinion in the transactions related to the slump sale.

KGCL assure you that all differences have been sorted out by our mutual discussions with TCL Team in Leela Business Center Office of TCL on 9th April, 2019 and understanding for long term mutual benefits and win-win partnership between both TCL and KGCL will prevail.

Looking forward to better times and a more fruitful relationship between KGCL and TCL

We remain your truly

Er Manmohan Singh Jain Chairman

C N Rufus, CEO

CA M S Ezhil , Managing Director

KIRAN GLOBAL CHEM LIMITED

https://mail.google.com/mail/u/0?ik=1cf2aa49fc&view=pt&search=all&permthid=thread-f%3A1632864132905100766%7Cmsg-f%3A1632864132... 1/1

M 'ain <msjain@kiranglobal.com> Sat, Oct 13, 2018 at 12:17 PM
To: ..ohishek Nigam <anigam@tatachemicals.com>
Cc: rmukundan@tatachemicals.com
Bcc: Dipalok Choudhary <dchoudhary@tatachemicals.com>

Dear Mr Abhishek Nigam

We have completed laying of Effluent Pipeline which was required to be done by ASL.Even we have no authority to approach any Statutory authorities for permission or approval, still we could do this going all out of the way.We have provided two month back Password for filing to TNPCB for changeover of name in CTO from ASL to TCL ,but you did not file at all.
At last we have got that done somehow yesterday.
Your intentions are bad and you are depriving us of our balance payment of INR58 crores.

We sold our plant on Slump Sale basis for INR123 CRORES which was agreed between TCL and ASL.
Now due to wrong BTA, which TCL got signed from us, you are delaying our payment.

Until and unless you settle our balance payment we will not be taking up any further work in Cuddalore plant for trial of the plant.
We request you to make our balance payment of INR58 crores immediately.

Thanks & Regards
M S JAIN
Chairman
Kiran Global Chem Limited
.1 9840041595
msjain@kiranglobal.com
[Quoted text hidden]

TRUE COPY

In the above-mentioned emails dated 13 October 2018 it is specifically stated that "*due to wrong BTA, which TCL got signed from us, you are delaying our payment*."

In Letter written by Operational Creditor dated 13 May 2019 it is stated that:

"The drafting of BTA was done by Shardul, Amarchand Mangaldas (SAM), a law firm appointed by TCL with the task of preparation of the BTA. Two drafts of BTA first on 06March 2018, and second on 16 March were shared with ASL before the execution version of the BTA and was made available only on

the 03 April 2018 by SAM/TCL, with only 3 days left for execution thereof.

5. It is a matter of great shock and blatant illegality that TCL through their consultants altered the EGM resolution passed by ASL relating to the proposed slump sale and sent changed draft directly to the ASL Company Secretary, asking her to replace with the resolution drafted by SAM. It happened on 06 April 2018 evening, 18 hours before the actual signing of the BTA. (Copies of the mails exchanged, the original resolution passed in the EGM and the altered resolution proposed by TCL are enclosed herein). The process of receiving changes and suggestions for correction in the BTA was under the complete control of SAM and TCL.

It is submitted that SAM and TCL made certain changes in the BTA, which neither reflected the correct intention of both the parties to the Agreement nor was in accordance with the Board Resolution of TCL.

6. In the BTA executed on 07 April 2018, SAM added three separate and distinct contracts with specified set of activities, which were not part of the transaction for transfer of undertaking on slump sale on as-is-where-is basis. These Contracts had been incorporated with specific consideration for each of the contracts separately.

It is clear from the copy of the Board Resolution attested by the Company Secretary of TCL on 04 April 2018, that there was no provision or mention of these three extra contracts."

Further, the extract from the email dated 11.02.2019, sent by Applicant to the Corporate Debtor reads as below:

"We are pleased to include with this email, our invoice for Rs. 123 crores towards the sale of Undertaking on Slump Sale Basis and we request you to process the balance payment of Rs. 6 crores due to us and settle the same at the earliest. It is also therefore brought to your notice that we will be including the transaction value of Rs. 123 crores as a exempt transaction in the GST return for the month of January, 2019." (emphasis supplied)

The extract from the Letter dated 08.04.2019, sent by Applicant to the Corporate Debtor reads as below:

"It was sheer financial duress caused by the unexpected delay in completing the negotiation, due diligence and the time taken for getting the amendments required from the Tamil Nadu Pollution Control Board ***that left ASL Team with very little option at the time of execution of BTA but to accept the splitting of the payment of the purchase consideration into tranches spread over one year. An unnatural and unusual condition of delayed and arbitrary splitting of mutually agreed consideration for the transfer of Undertaking, which had been determined about 9 months earlier, was unfairly and unjustly inflicted on ASL by TCL,*** *knowing very well that the financial stress that KGCL was undergoing left it with very litter option but to accept all the conditions imposed through the BTA." (emphasis supplied).*

The above email communications clearly reflect that dispute existed between parties regarding some alterations in the Business Transfer Agreement (BTA) prior to issuance of demand notice.

Hon'ble the Supreme Court of India in "Mobilox Innovations Private Limited vs Kirusa Software Private Limited (AIR 2017 SC 4532)" has interpreted the phrase 'pre-existence of dispute' used in section 9 of the I&B Code. The relevant portion of the said judgment is reproduced below:

> *"The scheme Under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate Debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate Debtor must bring to the notice of the operational Creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)).* ***What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing - i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.****"*

34. 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 the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt 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 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. Apart from the above, the adjudicating Authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

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."

(Emphasis supplied)

Therefore, on perusal of the documents submitted by the parties, it is evident from the Letter dated 08.01.2019 which is signed by both the parties, that the Applicant had failed to complete the Tranche II Conditions Precedent as a result of which the Corporate Debtor had exercised its right under the BTA and set-off and adjusted the Tranche III payment of Rs 6,00,00,000/-. It is further evident from the Letter of Corporate Debtor dated 06.03.2019, wherein the Corporate Debtor had demanded a refund from the Applicant of Rs 15.01 Crores along with interest for violation of terms of Letter dated 08.01.2019 by the Applicant, in the same Letter the

Corporate Debtor had also disputed that the Applicant is in non-compliance of the BTA and therefore is not liable to receive Tranche II and Tranche III payment under the BTA. These disputes by the Corporate Debtor are raised before the receipt of demand notices. Further, it is also pertinent to note that the Corporate Debtor had replied to the Demand Notices within the statutory period of 10 (Ten) days raising disputes with regards to the claim of Applicant and noncompliance of the BTA by the Applicant. Therefore, in the facts and circumstances of the present case, we are satisfied that there is a plausible contention in the defence raised by the corporate debtor which requires further investigation and that the alleged "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence .

26. In the circumstances, we are of the considered opinion that the Ld. Adjudicating Authority has rightly dismissed the application filed under Section 9 of IBC. Thus, we do not find any reason to interfere with the impugned Order. There is no substance in Appeal which is accordingly dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[V. P. Singh]
Member (Technical)

[Shreesha Merla]
Member (Technical)

NEW DELHI
11th AUGUST, 2020

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