

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

15th July, 2023

Subject: Judgement¹ dated 11th July, 2023 of National Company Law Appellate Tribunal Principal Bench, New Delhi in the matter of Manoj Stone Infra Pvt. Ltd. Vs Railsys Engineers Pvt. Ltd, [Company Appeal (AT)(Insolvency) No. 763 of 2023 & IA No.2573 of 2023]

I. BRIEF BACKGROUND:

Operational Creditor (OC) filed appeal against the order of dismissal of section 9 application by AA on the grounds of pre-existing disputes. Brief facts are that OC is a government contractor engaged in manufacturing and selling of aggregates for civil works. Corporate Debtor (CD) placed an order with OC for supply of signaling cables and other electronic items. In pursuance of the said order, goods were supplied by the OC to CD for onward supply to a third party. The goods were directly consigned to the site of the CD and two invoices were raised. The said invoices were duly acknowledged by the CD with an endorsement “Proceed for Payment”. However, the CD made part payment only.

It was pointed out by the CD that payment was to be made to the OC only after receipt of payment from the third party to whom the goods were supplied. However, the third party refused to pay the money on the ground of quality issues and part-supply of goods. This issue has been brought to the notice of OC by CD.

AA, on the strength of an sent by OC to the CD observed that the claim of the former is arising out of a mutual business understanding, and that the debt claimed by the OC does not fall within the definition of operational debt. It held that there were pre-existing disputes between the parties.

II. ISSUE

Whether the debt in question is in the nature of an operational debt and whether there were pre-existing disputes between the parties?

III. OBSERVATION

NCLAT observed that the appellant having fulfilled the requirements of Rule 5(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by attaching the invoices claiming payment of goods supplied by them while furnishing the demand notice proves that present set of transactions fall within the scope and definition of operational debt.

¹ Prepared by Legal Affairs Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here.

However, NCLAT while disposing of the appeal observed that CD has not only disputed the invoices on the basis of two invoices but all the other transactions were to be reconciled while settling the accounts. It upheld the orders of AA as it had covered the touch-stone point laid down by the SC judgment in the *Mobilox Innovations Pvt Ltd., Vs. Kisura Software Pvt Ltd.*, that section 9 applications cannot be initiated in case of disputed operational debt.