

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1508 of 2023
& I.A. 5435 of 2023**

IN THE MATTER OF:

Ashika Stock Broking Ltd.

...Appellant

Versus

India Power Corporation Ltd.

...Respondent

Present:

**For Appellant: Mr. Sourojit Dasgupta and Mr. Aniket Chaudhury,
Advocates.**

**For Respondent: Mr. Tabrez Malawat and Ms. Rupali Jain,
Advocates.**

ORDER

14.12.2023: Heard learned counsel for the Appellant. This is an Appeal filed against order dated 04.08.2023 by which order application under Section 9 application filed by the Appellant has been rejected on the ground of pre-existing dispute. Learned counsel for the Appellant challenging the order contended that the debt was acknowledged by the Corporate Debtor even after Demand Notice, hence, the Adjudicating Authority ought not to have rejected the application on the ground of pre-existing dispute.

2. We have considered the submissions of the Appellant and perused the record.

3. From the materials which are brought on the record, the Adjudicating Authority has referred to letter dated 04.02.2021 issued on behalf of the Corporate Debtor to the Operational Creditor, where replying to the email

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dated 30.01.2021 from the Operational Creditor it was stated that there is no liability to pay. It was stated in the letter that no charge is payable by the Company on the bill which was raised by the Operational Creditor. The letter dated 04.02.2021 is at page 243 of the paper book. It is useful to extract the following from the letter:

“The Company received from your Client a bill dated 15th May, 2018 amounting to Rs.89.95.155/- (hereinafter referred to as "Bill") on account of invocation of pledge which was arbitrary levied since no charge for "Invocation of Pledge was mentioned in Schedule-A of KYC as referred in your Notice dated 30th January, 2021. Therefore, post receipt of the bill, the Company had a meeting with representatives of your Client to get clarity on the basis and rationale of levying such arbitrary charge on invocation of pledge, which was not provided to the Company Yet in view of Company's long standing relationship with your Client and in good faith, at that time the Company offered to pay a token charge but your Client did not accept the same and rejected the offer. It is further pertinent to mention here that your Client vide it's mail dated 9th January, 2019 themselves confirmed and acknowledged inter-alia "We confirm once again that no rate was finalized to settle DP bill".

Therefore, your Client not only neglected and failed to amicably settle the matter but on the contrary continued to arbitrarily charge late payment interest 18% on the disputed, arbitrary and wrongly pledge

invocation charge Bill which the Company regularly objected and disputed.

The Company therefore reiterates that no charge is payable by the Company on the said Bill Le. on invocation of pledge as per the Agreement executed with your Client read together with Schedule - A of KYC.

In view of the above facts, you are requested to withdraw your alleged Notice dated 30th January, 2021.”

4. The Demand Notice was issued by the Operational Creditor on 08.02.2022 which Demand Notice was also replied on 18.02.2022 by the Corporate Debtor refuting the claim and the said notice dated 08.02.2022. The reply to notice dated 18.02.2022 is at page 249, where the Corporate Debtor has categorically stated that no amount is due. The letter dated 18.02.2022 is nothing but notice of dispute issued by the Corporate Debtor. The Adjudicating Authority has rejected the application on the ground of pre-existing dispute. We are of the view that no error has been committed by the Adjudicating Authority.

5. Coming to the submission of learned counsel for the Appellant that there are certain acknowledgements contained in interrogatory issued in a civil proceeding, when there is clear statement in letter dated 04.02.2021 and reply to Demand Notice dated 18.02.2022 denying the payment of dues raised by the Operational Creditor, we see no reason to accept the submission that debt

was acknowledged. No error has been committed by the Adjudicating Authority by rejecting Section 9 application. There is no merit in the Appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

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