

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 905 of 2021

IN THE MATTER OF:

Hukum Singh

...Appellant

Versus

Adaab Hotels Ltd.

...Respondent

For Appellant: Mr. Indranil Ghosh and Mr. Palzer Moktan, Advocates.

For Respondent:

ORDER
(Virtual Mode)

11.11.2021: Heard Learned Counsel for the Appellant. This Appeal has been filed against order dated 22.09.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench IV. The Application filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' in short) has been rejected by the impugned order. A notice under Section 8 was issued by the Applicant claiming dues to the extent of total amount of Rs.20,74,313/-. The notice was replied by the Corporate Debtor on 19.08.2019, which reply has also been brought on the record at page 162 of the Appeal Paper Book. The reply, in detail, claims liability towards Respondent No. 2 to the tune of Rs.26,29,204.03 as on 31.03.2019. The reply also refer to resolution dated 02.04.2018 where it was decided that till the situation improves no Director would be paid any salary and interest on deposits. The reply further stated that due to actions of the Appellant he was removed from the directorship. Several

allegations regarding withdrawal of money from accounts and misappropriation has been made in the reply.

2. The Adjudicating Authority after noticing the details of the case and contents of the reply as well as law laid down by Hon'ble Supreme Court in the matter of 'Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.', (2018) 1 SCC 353 took view that dispute was in existence prior to receipt of demand notice. The Adjudicating Authority took the view and rejected the prayer of the Applicant to initiate CIRP proceedings under IBC against the Corporate Debtor.

3. Learned Counsel for the Appellant submitted that there was no pre-existing dispute prior to issuance of demand notice and Application under Section 9 ought to have been proceeded by the Adjudicating Authority.

4. We have considered contentions of the Appellant and looked into the record. The reply is sufficient to indicate that there was dispute in existence prior to issuance of Section 8 notice. Dispute is evident from the resolution passed for removal of Respondent No. 2 as Director and other resolution for not paying salary to any Director after 02.04.2018. The notice of demand claimed salary by the Applicant, who was removed from Directorship and no salary was to be paid after 02.04.2018.

5. We are satisfied that there was existence of dispute prior to issuance of Demand Notice. The Adjudicating Authority after considering all the relevant materials has rightly taken the view that Application under Section 9 cannot be

accepted. We do not find any infirmity in the order of the Adjudicating Authority.
The Appeal is dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

Archana/nn.