

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

NEW DELHI

Company Appeal (AT) (Ins) No. 73 of 2017

IN THE MATTER OF:

Design Worx Infrastructure India

Pvt. Ltd.

....

Appellant

v.

Premier Restaurants Private Ltd.

.... Respondent

Present:

For Appellant: - Mr R.L. Bhatia and Mr S.K. Tuli, Advocates

ORDER

01-8-17 This appeal has been preferred by the Appellant against impugned order dated 8th May 2017 passed by the Ld. Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi in C.P. No. (IB)-76 (ND)/2017 whereby and whereunder the application of the Appellant under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to I&B Code) for initiation of corporate insolvency resolution process against Respondent/Corporate Debtor was rejected with the following observation:-

"5. In the reply filed by the Corporate Debtor they have pointed out and relied upon emails to show that there was dissatisfaction over the work done. Ld. Counsel for the corporate debtor has submitted the following points in resisting the prayer made for by the operational creditor.

- (i) *The entire contract for the job work assigned was for a sum of Rs. 95 lakhs only; there was no approval for any escalation in the contractual amount which has unilaterally been increased by the petitioner without due sanction from them.*

- (ii) *There is correspondence between the parties where dissatisfaction over the job work done has been expressed. Since the snags were not removed by the petitioner, the Corporate Debtor was constrained to engage the services of a third party for completion of the job. Reliance by the Operational Creditor on the virtual handing over certificate given by M/s. Cushman & Wakefield on their behalf is misplaced as it does record satisfaction of the work done. Even this certificate contains a Defect Liability period of 12 months when extended till March 2017. During this period itself, various snags were pointed out, not only by them but even the Mall Management, specially in respect of Kitchen Audits, but the petitioner abandoned the project in June 2016 itself.*
- (iii) *There was inordinate delay in executing the work and handing over the premises to them which saddled them with additional rent to be paid to their lessors vis., M/s. DLF Mall. The time limit for execution was initially fixed for 31.7.2015 but was later extended to January 2016. Despite the same, the premises were only handed over by the Operational Creditor in March 2016. For this delay in handing over the property in an operational condition, they incurred a liability of Rs.11 lakhs towards the rent to be paid to their lessors, without being in a position to commence their business.*
- (iv) *As per the agreement, the delay in execution invited a liquidated damage which was capped at 10% of the contractual amount. Failure to execute the job work on time resulted in losses to them and they were entitled to adjust this amount against the final bill.*

6. *Attention of this Bench is further drawn to various emails, including those dated 4.5.2016 and 17.5.2017, whereby the corporate debtor had asked the operational creditor to remove these snags. As these were not removed, the Corporate Debtor submits that they were constrained to engage the services of a third party, so as to minimize their losses."*

Ld. Counsel on behalf of the Appellant tried to rely on different facts to suggest that there is no dispute prior to the issuance of notice under Section 8 of the I&B Code. He also wanted to rely upon sub-Section (6) of Section 5 of the Code to show that it does not constitute any 'dispute'. However, we are not inclined to accept such submission in view of the specific finding passed *vide* impugned order dated 8th May

2017 by the Ld. Adjudicating Authority showing existence of 'dispute' between the parties. In the absence of any merit, the appeal is dismissed.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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Not