

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 448 of 2018

IN THE MATTER OF:

Fernas Construction India Pvt. Ltd. ...Appellant

Vs.

RVR Projects Pvt. Ltd. ...Respondent

Present: For Appellant: - Mr. Sudhanshu Batra, Senior Advocate with Mr. N. Prashant Kumar, Mr. Aditya Mishra and Ms. Sahiba Pantel, Advocates.

For Respondent: - Mr. Akshay Sharma, Advocate.

O R D E R

13.08.2018— This appeal has been preferred by ‘Fernas Construction India Pvt. Ltd.’- (‘Corporate Debtor’) against the order dated 9th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench- III, whereby and whereunder, the application preferred by the Respondent- ‘RVR Projects Pvt. Ltd.’- (‘Operational Creditor’) has been admitted, order of ‘Moratorium’ has been passed and the name of ‘Resolution Professional’ has been called for.

2. The main plea taken by the learned Senior Counsel for the Appellant is that the application under Section 9 of the Insolvency and

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Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") was time barred, having filed after more than three years, the cause of action having taken place on 9th May, 2012.

3. He has further submitted that no ground of delay or laches was shown by the Respondent in preferring the application under Section 9.

4. Mr. Akshay Sharma, learned counsel appearing on behalf of the Respondent submits that the application was not time barred as the last payment was made by the 'Corporate Debtor' in the year 2013 and thereafter, correspondence was going on for the payment of amount which can be shown if time is allowed to file reply affidavit.

5. However, we are not inclined to decide the question whether there is a delay in preferring the application under Section 9 or not in view of the fact that the present appeal under Section 61 by the 'Corporate Debtor' is not maintainable as per the decision of the Hon'ble Supreme Court (at Paragraph 11) in ***"Innoventive Industries Ltd. Vs. ICICI Bank and Ors, (Civil Appeal Nos. 8337-8338 of 2017).***

6. Further, even if it is accepted that the Limitation Act, 1963 is applicable, in such case, Article 137 (Part II - 'other applications') will be applicable in terms of which period of three years' time prescribed is to be continued from the date of right to apply accrued to the Appellant.

'I&B Code' having come into force since 1st December, 2016, the Respondent accrued right to file application under Section 9 since 1st December, 2016 and the application having filed within three years, we hold that the application was within the period of limitation.

7. Learned Senior Counsel appearing on behalf of the Appellant submitted that Article 18 of the Limitation Act, 1963 will be applicable as the matter related to the 'price of work done by the plaintiff for the defendant'. However, as the Article 18 is in Part 1 of the Limitation Act, 1963, will not be applicable in the present case which is not a 'suit' nor to be treated as a 'recovery proceeding' under the 'I&B Code'.

8. For both the aforesaid reasons of maintainability and on merit, no case has been made out. Therefore, we are not inclined to interfere with the impugned order dated 9th June, 2018. The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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