

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1032 of 2019

IN THE MATTER OF:

NCC Limited

...Appellant

Vs

Saptrishi Hotels Pvt. Ltd.

....Respondent

Present:

**For Appellant: Mr. Abir Roy and Mr. Ishaan Chakrabarti,
Advocates.**

For Respondent:

ORDER

14.10.2019: The Appellant – ‘NCC Limited’ preferred application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short ‘I&B Code’) for initiation of Corporate Insolvency Resolution Process against ‘Saptrishi Hotels Pvt. Ltd.’ (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad rejected the application by impugned order dated 20th August, 2019 on the ground of pre-existence of dispute.

2. Learned counsel for the Appellant submits that there is no pre-existing dispute. But from the record we find that it is not disputed that Terms of Agreement dated 1st November, 2011 with regard to purported admitted dues no amount was paid by the Corporate Debtor and the Appellant moved before the Engineer, who was required to decide the dispute. According to learned counsel for the Appellant, such process of alternative forum has failed. But that cannot

be a ground to invoke Corporate Insolvency Resolution Process under I&B Code since as per Terms of Agreement dated 1st November, 2011 there is an alternative forum which was chosen by the parties to settle dispute. The Appellant could have moved before a Court of Law of competent jurisdiction.

3. In the aforesaid background, in view of the pre-existing dispute, we also agree that application under Section 9 of I&B Code was not maintainable. The appeal is dismissed. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member (Technical)

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