

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 326 of 2018

IN THE MATTER OF:

Sudhir Sales & Services Ltd.

...Appellant

Versus

**Comfort Net Traders (India)
Pvt. Limited**

...Respondent

Present:

For Appellant : Mr. Nakul Jain, Advocate

ORDER

06.07.2018 Learned counsel appearing on behalf of the appellant (Operational Creditor) preferred an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') for initiation of 'corporate insolvency resolution process' against the respondent 'Comfort Net Traders (India) Ltd. (Corporate Debtor). By the impugned order dated 25th April, 2018, the Adjudicating Authority (National Company Law Tribunal, Special Bench (Court No. 1), New Delhi rejected the application on the ground of 'existence of dispute'.

The Adjudicating Authority has noted the *e-mail* dated 7th September, 2010 of Mr. Bhutani, Nussli (Switzerland) Ltd. in regard to deficiencies of installations and their visit the site on 16th September, 2010, it was realized that numerous installations was not finished and it is due for completion.

Learned counsel appearing on behalf of the appellant submits that the defects which were pointed out were removed subsequently and the respondent by letter dated 29th June, 2016 admitted the dues amount to Rs. 8160382/- against the work done by the appellant during Commonwealth Games, 2010.

However, from the record and the impugned order, we find that the 'Corporate Debtor' has already instituted the suit against the appellant (Operational Creditor) with regard to the same transaction and the suit is pending since prior to issue of the Demand Notice under Section 8(1) of the I&B Code. For the said reason that the suit is pending and there is existence of dispute, the Adjudicating Authority rightly refused to entertain the application under Section 9 of the I&B Code. However, we hold that the finding of the Adjudicating Authority and observations made by us will not come in the way of the parties in the pending suits, which may be decided on its merit.

The appeal stands disposed of with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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