

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 697 of 2018

IN THE MATTER OF:

Substantia Capital Services LLP

...Appellant

Vs.

Neelkanth Realtors Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Anandini Kumar and Mr. Rohan Deshpande, Advocates.

For Respondent: - Mr. Darpan Wadhwa, Senior Advocate with Mr. Kush Chaturvedi, Mr. Aman Varma, Ms. Smriti Churiwal, Ms. Priyashree Sharma and Ms. Cauveri Birbal, Advocates.

O R D E R

06.05.2019— The Appellant who claimed to be ‘Operational Creditor’ filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) against ‘M/s. Neelkanth Realtors Private Limited’- (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, rejected the application by impugned order dated 31st August, 2018 on different grounds.

2. Learned counsel appearing on behalf of the Appellant submitted that the application under Section 9 filed was maintainable, the Appellant

Contd/-.....

having rendered services, but we are not going into the question of maintainability as we only look into the question as to whether there was a debt and/ or there is an existence of dispute.

3. The claim of the Appellant is that it facilitated the 'Corporate Debtor' to get loan from the 'Financial Creditor' and is entitled for its fee (fee as an agent/ facilitator) which has not been paid since 2015. There being a default the application under Section 9 was filed.

4. Learned counsel appearing on behalf of the Respondent referred to a letter dated 28th October, 2016 to suggest existence of dispute, prior to notice under Section 8 of the 'I&B Code'.

5. Learned counsel for the Appellant referring to the decision of the Hon'ble Supreme Court in "**Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2017) 4 CompLJ 255 (SC)**" submits that the dispute set up by the Respondent is a mere bluster. However, we are not accepting such submission in view of the specific dispute raised by the Respondent by letter dated 28th October, 2016. Relevant part of which reads as follows:

"VP/3903/3340/2016

28th October, 2016

*Iyers Chambers,
Advocates for Substantia Capital Services Pvt. Ltd.
No.9, "Sarayu" Ground Floor,*

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Plot No. 561/562, 11th Road, Chembur
Mumbai 400 071

Dear Sir,

Ref: Your letter/ legal notice dated 6th October, 2016

xxx

xxx

xxx

6. *Between 2014 and 2015, your client had purportedly made various efforts in furtherance of the appointment letter by presenting deal for debt funding and refinancing of the said project to various financial institutions. However, your client failed to close any deal for debt funding and refinancing and/or to obtain a final term sheet from any of the institutions purportedly approached by your client.*

7. *In or around July, 2015, one Mr. Rajnish Changrani, the Director of your client had informed our client of the inability to conclude financing arrangement with any of the institutions purportedly approached by your client, including Edelweiss Finance Ltd., in respect of whom it is claimed in the letter under reference that a deal was closed and*

funding as required, was obtained, entirely due to the efforts of your client which is completely contradictory to the situation in the year 2015 and the statement made by the Director of your client. At that time, Mr. Chagnani also informed Mr. Bhavik Bhimjyani that he should consider alternate back up financing options since he was not in a position to conclude the financing with Edelweiss as originally promised.”

6. As we find that there is a pre-existing dispute, we hold that the application under Section 9 was not maintainable. The appeal is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g