

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 79 of 2020**

**IN THE MATTER OF:**

**M/s. Emgee Infrastructure Holdings (India) Pvt. Ltd.                      ...Appellant**

**Vs.**

**M/s. Navayuga Engineering Company Ltd.    ...Respondent**

**Present:    For Appellant: - Mr. Anirudh Wadhwa, Mr. Mayank Sapra, Mr. Kartikeya Asthana and Mr. Keshav Gulati, Advocates.**

**O R D E R**

**21.01.2020—** The Appellant, a sub-contractor of 'M/s. Navayuga Engineering Company Limited'- ('Corporate Debtor'), for default of payment issued Demand Notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 on 16<sup>th</sup> June, 2018. The 'Corporate Debtor' denied the payment on the ground of sub-standard work. The application under Section 9 of the 'I&B Code' has been rejected by the Adjudicating Authority (National Company Law Tribunal), Amaravati Bench, by impugned order dated 3<sup>rd</sup> December, 2019 on the ground of pre-existence of dispute.

2. Learned counsel for the Appellant submits that there is no record to suggest that any dispute was raised by the 'Corporate Debtor' prior to the issuance of Demand Notice dated 16<sup>th</sup> June, 2018. The 'Corporate Debtor' by reply under Section 8(2) cannot raise dispute about the quality of work.

3. Learned counsel for the Appellant submits that the Respondent has made confirmation of the balance amount and also made part

Cont/-.....

payment. It can be a good ground for moving a suit for recovery of money but the Appellant cannot take advantage of the same. The certificate issued by the 'Corporate Debtor' on 28<sup>th</sup> December, 2018 cannot be a ground to hold that default took place subsequently.

4. The Adjudicating Authority in the impugned order has noticed the facts as were placed by the Appellant and as quoted below:

*“6. It is contended by the Petitioner that it had completed the works for which the monthly RA bills have been raised. RA bills for Work Order no. 07 and 08 dated 26.08.2013 and 30.08.2013 relate to the period from 01.10.2013 to 31.03.2014. The RA bills for work order no.26 dated 25.03.2014 relate to the period from 01.04.2014 to 31.03.2015. According to the work orders, the work in respect of Work Order no. 07 was to be completed on or before 25.08.2013; in respect of the Work Order no. 08 it was to be completed by 29.08.2013; and in respect of Work Order no. 26 it was to be completed by 24.03.2015. from the RA bills it is apparent that the work in respect of the Work Order have not been completed within this stipulated period. The conditions of the work order itself indicate that the time would be the essence of the contract. The rejoinder dated 08.01.2019 to the reply dated 29.06.2018 itself indicates that the Petitioner had completed 70% of the Work Order against which RA bills have been raised.”*

5. From the aforesaid fact, we find that work was completed on or before 25<sup>th</sup> August, 2013 and for about five years, the Appellant ('Operational Creditor') has not moved any application before a Court of Competent Jurisdiction or application under Section 9 within three years though the 'I&B Code' came into force since 1<sup>st</sup> December, 2016. The default having taken place as back as on 25<sup>th</sup> August, 2013, we hold that the application under Section 9 was barred by limitation.

6. We have also noticed that the aforesaid payment was made with regard to 70% of the work completed previously and not with regard to the amount as claimed.

We find not merit in this appeal. It is accordingly, dismissed. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

(Justice Anant Bijay Singh)  
Member(Judicial)

Ar/RR