

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

**Company Appeal (AT) (Insolvency) No. 300 of 2020**

**IN THE MATTER OF:**

**M/s Regal Engineers & Construction (P) Ltd.**

**No. 3A, Kundrathur Main Road**

**Garugambakkam**

**Chennai 600 122**

**...Appellant**

**Versus**

**M/s Endee Shelter Properties Pvt. Ltd.**

**Registered Office at**

**No. 92/3, BAAB Gandhi, 2<sup>nd</sup> Main Road**

**Gandhi Nagar, Adyar**

**Chennai 600 020**

**...Respondent**

**Present:**

**For Appellant:     Though present but did not mark attendance.**

**For Respondent: Mr. Shantanu Singh, Advocate.**

**O R D E R**

**19.02.2020**       Delay of 8 days in filing the Appeal is condoned. I.A. No. 782 of 2020 is disposed of.

1.     Heard learned counsel for the Appellant. This appeal has been filed by the Appellant M/s Regal Engineers & Construction (P) Ltd. (Operational Creditor) as the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 filed against the Respondent (Corporate Debtor) was rejected by the Adjudicating Authority, National Company Law Tribunal, Division Bench- I, Chennai, by impugned order dated 31<sup>st</sup> December, 2019.

2.     It appears that the Respondent had engaged services of the Appellant as a contractor for carrying out construction work and Appellant had raised invoices

which were not honoured and thus, the Appellant sent notice under Section 8 of the I&B Code, 2016 on 5<sup>th</sup> July 2018 Annexure- A-9 claiming Rs. 1.88 Crores from the Corporate Debtor.

3. The Corporate Debtor replied vide Annexure- 10 dated 21<sup>st</sup> July 2018 and referred to existing dispute regarding the quality of the work carried out.

4. The learned counsel for the Appellant submits that the Adjudicating Authority merely relied on the earlier exchange of notices between the parties in which by reply dated 5<sup>th</sup> June 2018 the Corporate Debtor had raised dispute regarding quality of the work. The counsel states that the Adjudicating Authority did not considered that the Corporate Debtor had itself appointed a consultant as can be seen from Annexure- 4 (Page No. 44) of the Appeal in November 2017 and the consultant had given report regarding the amount due for works carried. The payment summary as page No. 45 showing the amount payable as Rs. 1,19,82,975.00 is pointed out. Thus, according to the learned counsel these amounts were due and payable. The Adjudicating Authority should not have relied on the notice reply dated 5<sup>th</sup> June 2018, it is stated.

5. The Adjudicating Authority after hearing the parties observed in the impugned order as under:-

*“ 18. As to point (ii), it is evident from the records that the Operation Creditor has sent a Demand Notice in Form 3 to the Corporate Debtor on 05.07.2018 which was received by the Corporate Debtor on 12.07.2018. Even two months prior to the issuance of the Demand Notice, the Operational Creditor has sent*

*a Legal Notice to the Corporate Debtor on 21.05.2018 and demanded a sum of Rs. 1.88 Crores to be paid to the Operational Creditor. Thereafter, the Corporate Debtor has sent a reply to the said legal notice on 05.06.2018 wherein, the Corporate debtor has rebutted the claim of Rs.1.88 Crore made by the Operational Creditor and for the reasons stated therein, has pointed out that the Operational Creditor has not fully completed the work in Block 3. Further, in addition to the rebuttal of the claim of Rs. 1.88 made by the Corporate Debtor as against the Operational Creditor, the Corporate Debtor has also made a counter claim of Rs. 45 Lakhs to be paid by the Operational Creditor for its dereliction of duties and inefficient works all of which points out that there has been a pre – existence of dispute. ”*

6. Considering the arguments, we find that before notice under Section 8 of the I&B Code was sent already, there was exchange of notices between the parties and the Corporate Debtor had on 5<sup>th</sup> June 2018 raised dispute regarding the quality of the work done. Only because a consultant had valued the work done did not prohibit the Corporate Debtor to raise question as to the quality of work that was expected and what was done. We cannot enter into settling the dispute whether or not the quality of work was good or it was not good. As there was pre existing dispute which cannot be said to be moon shine the application under Section 9 was rightly rejected by the Adjudicating Authority.

7. There is no substance in the Appeal. The Appeal is dismissed at the stage of admission. No order as to costs.

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

[Justice A.B. Singh]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

R N/md /