

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 420 of 2020

In the matter of:

Rohini Industrial Electricals Ltd.

....Appellant

Vs.

National Textiles Corporation Ltd.

....Respondent

Present:

Appellant: Mr. K. Dutta, Mr. Rohit Gandhi and Ms. Mehak Khurana, Advocates.

Respondent:

ORDER

13.03.2020: 'Rohini Industrial Electricals Ltd.' (Operational Creditor) moved application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against 'National Textiles Corporation Ltd.' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No. IV) by impugned order dated 10th January, 2020 rejected the application on the ground of pre-existing dispute.

2. Learned counsel for the Appellant submits that the work was completed in the year 2014 and completion certificate was handed over to the Respondent. He further submitted that the Respondent acknowledged the liability through letters from time to time including letters dated 5th April, 2017 and 15th December, 2018. The Master Data of the Corporate Debtor has also been enclosed to suggest that the debt is due. We are not going in the issue as to whether application under Section 9 was barred by limitation or not, as

Appellant has brought on record certain correspondences to suggest acknowledgment by the Corporate Debtor. The question as noticed is whether there is a pre-existing dispute or not.

3. From the record we find that invoice for the value of Rs.13,18,35,161/- was raised by the Appellant, against which Corporate Debtor paid a sum of Rs.11,34,03,966/-. According to the Appellant a sum of Rs.1,84,31,195/- remained due and payable. Demand notice under Section 8(1) of the I&B Code was issued by the Appellant on 4th December, 2018. The Corporate Debtor in reply pointed out the existence of dispute between the parties. The Adjudicating Authority noticed that by letter dated 20th October, 2012, the Appellant was informed by the Corporate Debtor to complete the work and submit the final bill. The payment of balance amount is pending on account of non-fulfilment of contractual obligations. The emails regarding deficiencies in services and their rectification were communicated between the parties including email dated 28th December, 2013 and 6th January, 2014. This apart letter dated 29th June, 2017 was also forwarded for rectification of certain works. Learned counsel for the Appellant submits that letter dated 23rd June, 2018 was written by the Appellant and it has wrongly been relied upon by the Adjudicating Authority. All the works about which deficient service was alleged were rectified and subsequently, the Corporate Debtor accepted the liability of payment.

4. On hearing learned counsel for the Appellant and perusal of the record, we are of the view that Adjudicating Authority is not in a position to determine the dispute on question of fact as to work completed or not completed or rectified or not. The question as to whether on rectification of the work, the Corporate Debtor accepted the liability and thereby there was no existence of dispute is a question of fact which can be determined only by Court of competent jurisdiction and not in an application under Section 9 of the I&B Code. Once evidence are brought on record to show pre-existing dispute raised prior to issuance of demand notice under Section 8(1), the Adjudicating Authority cannot entertain the application under Section 9. We find no merit in this appeal, it is accordingly dismissed. However, order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the Appellant to move before the appropriate forum for appropriate relief.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Alok Srivastava]
Member (Technical)

am/gc