

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

**Company Appeal (AT) (Insolvency) No. 20 of 2018**

**IN THE MATTER OF:**

**Explo Media Pvt. Ltd.**

**...Appellant**

**Vs**

**Ambience Pvt. Ltd.**

**....Respondent**

**Present:**

**For Appellant: Mr. Anand Mishra, Mr. Hemant Kumar and Ms. Mamta, Advocates.**

**For Respondent: Mr. P. K. Agarwal and Ms. Tannya Sharma, Advocates.**

**ORDER**

**16.03.2018:** The Appellant (Operational Creditor) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code') which has been rejected by the Adjudicating Authority (National Company Law Tribunal) Bench III, New Delhi by impugned order dated 3<sup>rd</sup> November, 2017 giving rise to the present appeal.

2. Learned counsel appearing on behalf of the Appellant submits that no dispute was in existence when the Appellant rendered services to the Respondent – 'Corporate Debtor' till the date the contract was terminated. It was about two and half years after rendering service, when notice under section 434 of the Companies Act, 1956 was issued by the Appellant, Respondent disputed the quality of services.

3. Learned counsel for the Respondent submits that prior to issuance of demand notice under Sub-section (1) of Section 8 of I&B Code on 19<sup>th</sup> April, 2017, the Respondent had disputed about the quality of service rendered by the Appellant.

4. From the record, we find that the Appellant (Operational Creditor) issued advocate notice on 6<sup>th</sup> March, 2017 under Section 434 (1) (a) of the Companies Act, 1956 calling upon the Respondent – ‘Corporate Debtor’ to pay a sum of Rs.61,85,400/- alongwith 18% interest and another sum of Rs.25,000/- towards professional fee for legal notice. In reply to the same, the Advocate of the Respondent (Corporate Debtor) by reply dated 11<sup>th</sup> March, 2017 disputed the quality of service rendered by the Appellant, relevant portion of it reads as follows:

*“B. That your client misled our client to place the order for outdoor advertising campaign on its representation that it is best in the field of outdoor advertising and are truly professional. However, it turned out to be false premise used by your client only to obtain the order for outdoor advertising campaign and for which our client suffered mental tension, agony and loss of reputation. Your client failed to provide the agreed/ approved sites for the agreed/ approved size & location under the agreement Metro Pillars Belvedere Towers, Cyber Hub towards Gateway Tower and NH-8, Gurgaon. Your client never provided the services as per the agreement. Your client failed to change the damaged flexes within the agreed time. The flexes was not of high quality as agreed. Your client never rectified the electrical problem of damaged/ non working Halogen bulbs and of fuse failure in time as per agreement. Despite repeated requests your client failed to provide the regular updates and Photographs as per agreement to our client. Your*

*client failed to provide bright lights as per satisfaction of our client for hoardings. Our client has suffered mental tension, mental agony and loss of reputation due to your client.”*

5. From the record, as we find that there was an existence of dispute between the parties prior to issuance of the notice under Sub-section (1) of Section 8 of I&B Code. We are of the view that the Adjudicating Authority rightly rejected the application under Section 9 of I&B Code. We find no merit in this appeal. It is dismissed. However, there shall be no orders to cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansilal Bhat]  
Member (Judicial)

*am/gc*