

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 668 of 2019

IN THE MATTER OF:

Raymond Construction Co. India Pvt. Ltd. Appellant

Vs

Larsen and Toubro Ltd. Respondent

Present:

For Appellant: Appeared but attendance not marked.

For Respondent: Ms. Babita Kushwaha, Advocate.

ORDER

05.07.2019 The Appellant Raymond Construction Co. India Pvt. Ltd. filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) before the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, which has been dismissed by impugned order dated 8th April, 2019 on the ground of pre-existence of dispute.

2. The Adjudicating Authority noticed the stand taken by Respondent Larsen & Toubro Limited that M/s. Raymond had earlier raised claims towards the running bills pertaining to Ganganagar site and the payments claimed thereunder were categorically denied by L&T to be payable vide emails dated 11th May, 2018 and 14th May, 2018 since there were pending works to be completed by Raymond and called upon them to perform the same by visiting the site along with the reconciliation statement. However, M/s. Raymond remained sullen to such repeated requests from L&T for reasons best known to them.

3. Learned Counsel appearing on behalf of the Appellant referred to emails dated 10th May, 2018, 11th May, 2018 and 12th May, 2018 to suggest that the work was never abandoned by the Appellant. The Appellant always requested to provide site for execution of the rest of the work, but in spite of such request, site for execution of the rest of the work was not provided, due to which Appellant's labour were sitting idle. It is further submitted that the materials were also returned to them as far back as on 6th February, 2018.

4. We have gone through the records and perused the aforesaid three emails. The email dated 10th May, 2018 was written on behalf of the Appellant wherein it was intimated to L&T against bills prepared, only part of the amount has been paid through RTGS and remaining amount of Rs.37,00,000/- has not been paid. It was also intimated that retention money amounting to Rs.39,34,822/- has also become due to the Appellant as the work has been abandoned on the instructions of L&T.

5. Email dated 11th May, 2018 is the reply by L&T, wherein they intimated that the L&T neither ordered for abandon of the work nor such instructions was conveyed to the Appellant or Appellant's representative. Rather, testing works of laid lines and manholes were still balance for which the payments of the Appellant were on hold. Moreover, material issued from stores is still unaccounted, was informed.

6. The Appellant thereafter by its email dated 12th of May, 2018 intimated the L&T that they have returned the material on 6th February, 2018 to their stores and the work had been abandoned on the request of L&T, as the L&T

was not able to provide the Appellant the site for execution of the rest of the work.

7. From the aforesaid emails, one thing is clear that the work was somehow or the other stopped and rest of the work could not proceed. Allegation is made by the Appellant that work was abandoned because of the instructions by the L&T. On the other hand, L&T intimated the Appellant that they have abandoned the work and there were no instructions given to Appellant or its representative to abandon the work and thereby work remained incomplete. This issue amount to a civil dispute, which cannot be decided by the Adjudicating Authority or this Appellate Tribunal. Therefore, the application under Section 9 is not maintainable. We find no merit in this Appeal, which is accordingly dismissed. However, the impugned order will not come in the way of the Appellant to move before an appropriate Forum for appropriate relief.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC