

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 60 of 2019

IN THE MATTER OF:

Narender Sharma

.....Appellant

Vs.

Vistar Construction Pvt. Ltd.

.....Respondent

Present :

For Appellant: Mr. Abhishek Jain, Advocate

For Respondents: Mr. Nikhil Jain, Advocate

O R D E R

08.08.2019 - The Appellant – erstwhile Civil Engineer of Appellant – ‘Narender Sharma’ was also Civil Engineer of ‘Vistar Construction Pvt. Ltd.’ (‘Corporate Debtor’) was forced to resign from service on 27th May, 2015. Subsequently, he filed Demand Notice u/s 8(1) of the Insolvency & Bankruptcy Code, 2016 (‘I&B’ Code, for short) on 21st July, 2017 to one ‘Three C.Developers’, showing him as ‘Corporate Debtor’.

2. However, an application u/s 9 of the Insolvency & Bankruptcy Code, 2016 (‘I&B’ Code, for short) was filed by the Appellant against ‘Vistar Construction Pvt. Ltd.’ – present ‘Corporate Debtor’ in Company Petition No. (IB)-521(ND)/2017.contd.

3. The Adjudicating Authority ('National Company Law Tribunal') New Delhi Bench noticed the stand taken by the 'Corporate Debtor' that notice u/s 8(1) was addressed to one 'Three C. Developers' and not to the 'Corporate Debtor'.

4. In this background, learned counsel for the Appellant withdrew such petition u/s 9 of the 'I&B' Code on 18th September, 2017 with liberty to file fresh petition.

5. The Adjudicating Authority by order dated 18th September, 2017 granted liberty subject to the laws of Limitation.

6. Subsequently, Demand Notice was issued u/s 8(1) of the 'I&B' Code to the 'Corporate Debtor' on 5th October, 2017 which was followed by an application u/s 9 of the 'I&B' Code preferred before the Adjudicating Authority ('National Company Law Tribunal') Special Bench, New Delhi (Court No.-II) by Impugned Order dated December, 2018 dismissed the application on the ground of pre-existing dispute.

7. Learned Counsel for the Appellant submits that there is no pre-existing dispute and Suit was filed in the Court at Noida on 16th October, 2017 itself much after the Demand Notice dated 5th October, 2017 and, therefore, such Suit cannot be relied upon to hold pre-existing dispute.

8. From the record as appended by the Appellant (Annexure – A/8), we find that learned counsel for the Appellant earlier sent a legal notice on 4th April, 2017 to the 'Corporate Debtor'.

9. In reply to the same, learned counsel for the 'Corporate Debtor' by reply dated 25th July, 2017 raised the dispute relating to payment relevant of which portion is quoted below:-

"Preliminary Objections:

4. At the very outset, we have to state that your client has not apprised you of the correct facts and circumstances involved in the matter of the instant legal notice and has a resignation letter to our Client informing that he had resigned from the current employment with effect from 27.05.2015 which was not in compliance with the terms of the contract of employment with our Client. The contents of preliminary objections may be read as part and parcel of present para under reply and are not repeated herein for the sake of brevity.

5. That the contents of Para 5 of the notice under reply are wrong, false and hence denied. It is submitted that though our Client had issued a full and final settlement with your Client but it was subject to the fulfilment of the obligations of handing over of relevant documents including site plans, working drawings, schedules etc. relating to the day to day execution of the project to the site engineer who had replaced your client

on time bound manner. The contents of preliminary objections may be read as part and parcel of present para and are not repeated herein for the sake of brevity.

6. *That the contents of Para 6 of the notice under reply are wrong, incorrect, false and hence vehemently denied. It is denied that at the time of relieving the job, your client was assured by our client that the final amount as per the full and final statement would be transferred as soon as possible to your client's account. It is submitted that our client was never liable to make any payment to your client subject to the full and final settlement as alleged by your client herein. The contents of preliminary objections may be read as part and parcel of present para under reply and are not repeated herein for the sake of brevity.*

7. *That the contents of Para 7 of the notice under reply are wrong incorrect, false and hence vehemently denied. It is denied that our client had a malafide intention in retaining the lawful dues of your Client and INR 12,22,518/- had not been paid by our Client. It is submitted that your client was not entitled to claim an amount of INR 12,22,518/- against our client on*

account of the wilful negligence and default committed on the part of your client as the same had caused to delay the execution of the project for three months. The contents of preliminary objections may be read as part and parcel of the para under reply and are not repeated herein for the sake of brevity.”

10. The aforesaid reply given on behalf of the ‘Corporate Debtor’ on 25th July, 2017 was much prior to the Demand Notice issued u/s 8(1) of the ‘I&B’ Code dated 5th October, 2017.

11. We find that there was a pre-existing dispute. We are not inclined to interfere with the Impugned Order. The appeal is accordingly dismissed. No Costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/sk