

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT)(Insolvency) No. 896 of 2019

IN THE MATTER OF:

Beacon Trusteeship Ltd.

...Appellant

Vs

Earthcon Infracon Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. K. Datta, Mr. Ayush Agrawal, Mr. Shikhar Mittal, Ms. Tanvi Sapra, Ms. Pallavi Srivastava, Advocates

For Respondents:

ORDER

06.09.2019 M/s Emperos Infrastructure Private Ltd. ('Operational Creditor') has filed an application under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short **IBC**) for initiating Corporate Insolvency Resolution Process against M/s Earthcon Infracon Private Limited ('Corporate Debtor'). The application has been admitted by the Adjudicating Authority (National Company Law Tribunal)- Court No. IV, New Delhi by order dated 23rd August, 2019.

Learned Counsel appearing on behalf of the Appellant submits that the impugned order dated 23rd August, 2019 was passed by the Adjudicating Authority because of collusive action on the part of the M/s Emperos Infrastructure Private Ltd. – 'Operational Creditor' and the M/s – Earthcon Infracon Private Limited -'Corporate Debtor'. Therefore, according to him the application under Section 9 of IBC filed by Operational Creditor for initiation of Corporate Insolvency Resolution Process is with malicious intent for the purpose

other than resolution of insolvency or liquidation. He placed reliance on Form-V, which is the application under Section 9 IBC, but from the record, we find that no such case is made out to hold that there was any collusion between the 'Operational Creditor' and the 'Corporate Debtor' or that the Insolvency Resolution Process was initiated with malicious intent of the 'Operational Creditor' for the purpose other than Resolution of Insolvency or liquidation.

Learned Counsel for the Appellant submits that the Appellant being a 'Debenture Trustee' of the Corporate Debtor, the matter was not brought to the notice of the Corporate Debtor. However, aforesaid issue inter-se disputes of the Corporate Debtor cannot be taken into consideration for admitting or rejecting an application under Section 9 of IBC. Before filing of application under Section 9 of IBC, a Demand Notice was issued by the Operational Creditor under Section 8(1) of the IBC. On receipt of the notice, the Corporate Debtor has not raised any objection, nor there is anything on record to suggest a pre-existing dispute raised before issuance of Demand Notice under Section 8(1) of the IBC. The Adjudicating Authority had issued notice to the Corporate Debtor before admission of Application under Section 9 of the IBC, but no objection was raised by Corporate Debtor showing pre-existing dispute about the claims.

Learned Counsel appearing on behalf of the Appellant submits that the Demand Notice was issued on 11.06.2019 before that no supply of products or services were there. But such dispute having not been raised by the Corporate Debtor before issuance of Demand Notice under Section 8(1) of IBC at belated stage, the Appellant cannot take such plea.

We find no merit in this appeal and accordingly the appeal is dismissed.

No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Akc/Sk