

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) (Insolvency) No. 282 of 2017****IN THE MATTER OF:****Dolphin Offshore Enterprises (India) Ltd. ...Appellant****Vs.****Instrumentation Ltd. & Anr. ...Respondents****Present: For Appellant: - Mr. Sharad Tyagi, Advocate****For Respondents: - Mr. Jayant Mehta and Mr. Rakesh Wadhwa, Advocates for 1st Respondent.****Mr. S.K. Mohanty, Senior Panel Central Government Counsel for 2nd Respondent.****ORDER**

12.03.2018 – The Appellant preferred an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) for initiation of ‘Corporate Insolvency Resolution Process’ against Respondent- Instrumentation Limited (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, by judgment dated 17th October, 2017, dismissed the application on the ground of ‘existence of dispute’.

2. Learned counsel appearing on behalf of the Appellant submitted that the ‘Corporate Debtor’ has not disputed the liability of payment of dues except the contingent liabilities such as VAT/Contract Tax/Sales Tax, which cannot be a ground to dismiss the application under Section

9 of the 'I&B Code'. It is submitted that there is a debt and default of the amount payable by Respondents to the Appellant.

3. It is submitted that the Respondent- 'Corporate Debtor' is withholding the payment for the works already executed by the Appellant and for which the 'Corporate Debtor' has already received payment from ONGC. It is submitted that the non-payment of the dues to the Appellant is not only the interest but are being levied for other financial obligations to the Appellant, though work has been executed within the time.

4. According to learned counsel for the Appellant, there is no dispute with regard to the timely execution of the projects or the quality of execution of the tax liability which the Respondents claimed cannot be construed a dispute qua the Appellant ('Financial Creditor') and the 'Corporate Debtor'.

5. Learned counsel appearing on behalf of the 1st Respondent submits that first contract executed by the Appellant was inclusive of tax and the Appellant having not paid the same and has disputed, it will amount to 'existence of dispute'.

6. Further, according to counsel for the 'Corporate Debtor', while the Appellant has made claim of Rs. 4.90 crores, a counter claim of Rs. 7.5 crores has been raised by the 'Corporate Debtor' with regard to the same very work on account of tax liability.

7. Learned counsel appearing on behalf of the 2nd Respondent-Central Government, adopts the arguments as raised on behalf of the 1st Respondent and submitted that the Appellant is liable to pay the tax which the 'Corporate Debtor' is entitled to recover and then pay it to the 2nd Respondent.

8. Having heard learned counsel for the parties, we find that there is an 'existence of dispute'. For the said reason, we are not inclined to interfere with the impugned order dated 17th October, 2017 passed in Company Petition No. (IB)-157 (PB)/2017. In absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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