

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 530 of 2018

IN THE MATTER OF:

Alpha Tech Projects (India) Pvt. Ltd.

...Appellant

Vs

JMD Ltd.

....Respondent

Present:

For Appellant: Mr. L. M. Grover, Advocate.

For Respondent:

ORDER

10.09.2018: The Appellant (Operational Creditor) filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'M/s JMD Ltd.' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal) New Delhi Bench by impugned order dated 20.07.2018 rejected the same on the ground of existence of dispute.

2. Learned counsel appearing on behalf of the Appellant submits that the Operational Creditor has already raised the bills for the work performed by it pursuant to the agreement. He further submitted that all the ingredients of Section 9 of the act as laid down by the Hon'ble Supreme Court in 'MobiloX Innovations Private Limited vs. Kirusa Software Private Limited' are satisfied. According to him the plea taken by the Respondent that there is non-completion of work and inferior quality of work has been done by the Appellant is after thought not based on any of the record. In fact, the final bill dated 14.07.2017 raised by the Appellant was accepted by the Respondent by generating its own acceptance RA bill dated 19.12.2017.

3. On hearing learned counsel for the Appellant and perusal of record, we find that there were correspondence made by the parties regarding completion of the work. An email was issued by the Appellant on 22.09.2015 with regard to

construction of Suburbia-67, Sohna Road, Gurgaon and its progress. The 'Corporate Debtor' by its email dated 26.05.2014 had already informed about slow progress of the work and part completion of the building which failed to meet target, which resulted in heavy penalty on the Respondent for non-completion of the project on time. By another email dated 26.09.2015, the Corporate Debtor again reported non-completion of the project and it was brought to the notice of the Appellant that the brick and plaster work of the 2nd floor were kept on hold for about four months due to the problem.

4. Aforesaid communications by email have been quoted extensively by the Adjudicating Authority which shows that there is an existence of dispute. The question as to whether subsequently the Respondent accepted bill cannot be determined by the Adjudicating Authority in a petition under Section 9. Once the 'Corporate Debtor' raise objection before issuance of demand notice under Section 8(1) of the I&B Code, the application cannot be entertained.

5. For the reasons aforesaid while we are not inclined to interfere with the impugned order, we allow the Appellant to move before an appropriate forum for appropriate relief. The appeal stands dismissed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

am/gc