

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 672 of 2018

IN THE MATTER OF:

Nizamiya Construction Pvt. Ltd.

...Appellant

Vs.

Thyssenkrupp Industries India Pvt. Ltd.

...Respondent

**Present: For Appellant: - Mr. Rajiv Kumar and Mr. D.P. Mohanty,
Advocates.**

ORDER

05.11.2018— The Appellant- 'Financial Creditor' has preferred this appeal against the order dated 20th August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, whereby the application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) has been rejected on the ground of pre-existence of dispute.

2. From the record we find that much before the issuance of demand notice under Section 8(1) of the 'I&B Code' by the 'Operational Creditor', the 'Corporate Debtor' by their letter dated 15th March, 2017 intimated that as per agreement the 'Financial Creditor' was required to test the functioning but it was not done by the 'Financial Creditor' but by the third party. The other defects were also pointed out but intimating that

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'Nizamiya Construction Pvt. Ltd.' had no compressors for hydro testing of pipeline and the surprisingly a bicycle hand pump was brought to carry out the tests.

3. For such failure and in terms of agreement a counter claim was made by the 'Corporate Debtor' by their letter dated 18th April, 2017.

4. From the aforesaid document, it is clear that there is a pre-dispute and, therefore, the Adjudicating Authority rightly rejected the application under Section 9 of the 'I&B Code'.

5. Learned counsel appearing on behalf of the Appellant referred to an e-mail dated 30th August, 2017 to suggest that the 'Corporate Debtor' has agreed for settlement of claim at Rs. 3,48,443/- (Rupees Three Lakh Forty-Eight Thousand Four Hundred Forty-Three Only). When we asked whether the 'Operational Creditor' intends to settle the claim in terms with the offer given by the 'Corporate Debtor' on 30th August, 2017, learned counsel for the Appellant shown inability to accept such offer.

6. In the circumstances, no relief can be granted. The appeal is dismissed and Interlocutory Application stands disposed of. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

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