

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) (Insolvency) No. 72 of 2017

IN THE MATTER OF:

**International Road Dynamics
South Asia Pvt. Ltd.**

...Appellant

Versus

Reliance Infrastructure Ltd.

...Respondent

Company Appeal (AT) (Insolvency) No. 77 of 2017

IN THE MATTER OF:

**International Road Dynamics
South Asia Pvt. Ltd.**

...Appellant

Versus

D.A. Toll Road Pvt. Ltd.

...Respondent

Present:

For Appellants :

**Shri Joydip Bhattacharya, Shri Surendra Kumar
and Shri Mayank Sharma, Advocates**

For Respondent :

Shri Hasan Murtaza, Advocate

ORDER

01.08.2017 As both the appeals have been preferred by the appellant – International Road Dynamics South Asia Pvt. Ltd., they were heard together and disposed of by this common judgment.

2. In Company Appeal (AT) (Insolvency) No. 72 of 2017, the appellant has challenged the order dated 29th March, 2017 passed by the learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai) whereby the application preferred by the appellant under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the 'I & B Code') for initiation of

Insolvency Resolution Process (IRP) against the respondent – Reliance Infrastructure Ltd. ('Corporate Debtor') has been rejected.

3. In other case, Company Appeal (AT) (Insolvency) No. 77 of 2017, similar application under Section 9 of the I & B Code preferred by the appellant against the 'Corporate Debtor' – D.A. Toll Road Pvt. Ltd. has been rejected by the Learned Adjudicating authority, Mumbai Bench, Mumbai by the impugned order dated 3rd April, 2017.

4. In the case of Reliance Infrastructure Ltd., apart from the other grounds, learned Adjudicating Authority while held that 'Operational Creditor' can initiate 'Arbitration proceedings', further held that the facts of the case do not warrant to invoke Section 9 of the I&B Code.

5. Learned counsel for the appellant submits that there is no dispute in existence. In such case, merely on the ground that there is an arbitration clause in the agreement or that the 'Corporate Debtor' is solvent, the application under Section 9 cannot be rejected, if otherwise complete.

6. Learned counsel for the respondent – Reliance Infrastructure Ltd. submitted that there are existing disputes and the application preferred by the appellant under Section 9 is not complete. According to him, claim with regard to three different projects arising out of three different agreements have been mingled together to show outstanding dues, without explaining the date of default. Further, according to him some of the claims are time barred.

7. Having heard learned counsel for the parties, insofar as Company Appeal (AT) (Insolvency) No. 72 of 2017 is concerned, while we hold that 'alternative remedy of arbitration' cannot be a ground to reject an application under Section 9 and no application under Section 9 can be rejected on the ground that 'Corporate Debtor' is solvent. Though, we hold above, but for the reasons recorded below we are not inclined to interfere with the impugned order dated 29th March, 2017.

8. From the notice dated 21st January, 2017 issued by the appellant under Section 8 to 'Corporate Debtor' - Reliance Infrastructure Ltd., we find that the claim has been made with regard to outstanding dues on account of 'three different projects' arising out of three separate work orders. For example, with regard to 'GF Toll Project', the total payment made by the 'Corporate Debtor' is Rs. 5,41,07,993/- including the last payment of Rs.1,06,55,322 made on 17th May, 2013 as pleaded by appellant. The amount of Rs.2,84,52,328/- is shown to be due.

If the last payment made by the 'Corporate Debtor' on 17th May, 2013, then why the appellant did not chose to move before any Forum for more than four years, particularly when three years prescribed under the Limitation Act, 1963 for filing a suit for money claim has not been explained. However, we make it clear that we are not giving any specific finding on the question as to whether Limitation Act, 1963 is applicable or not in filing application for corporate resolution process under the I&B Code, but certainly the claimant is required to explain the delay and laches.

9. The other claim relates to 'DS Toll Project' and 'NK Toll Projects', arising out of two different work orders. With regard to 'DS Toll Project', it is stated that till date entire amount of Rs. 28,31,430/- is due. The said amount has been added with Rs.2,84,52,328/- in respect of 'GF Toll Project', which arise out of separate work order.

10. We are of the view that different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, the cause of action is being separate. For the said reasons, we hold that the joint application preferred by appellant under Section 9 is defective, as distinct from incomplete, and, was not maintainable.

11. Learned counsel for the respondent also highlighted 'existence of dispute' in regard to non-completion of the project within the time, and, the counter-claim as made by the respondent - 'Corporate Debtor'. However, in absence of any document

enclosed, showing dispute raised prior to issuance of Section 8 notice, we are not deciding such issue.

For the reason aforesaid, we are not inclined to interfere with the impugned order dated 29th March, 2017, though it is open to the appellant to move separate application in respect of separate work orders/contracts, if not barred by limitation or delay and laches and if there is no dispute after following the procedure laid down under I & B Code and Rules framed thereunder.

12. Insofar as the proceedings against 'D A Toll Road Pvt. Ltd.' is concerned, the learned Adjudicating Authority by impugned order dated 3rd April, 2017 noticed the relevant fact. It was noticed that the 'Corporate Debtor' – DA Toll Pvt. Ltd. was making part payment from time to time in respect to invoices of the creditors; in the process of which last payment was made on 26th September, 2013. Ever since, no further payment was made by the 'Corporate Debtor' towards alleged claimed amount of Rs.65,22,971/- which alleged to be outstanding. The learned Adjudicating Authority while noticed that cause of action took place on 26th September, 2013 and a reconciliation between the Creditor and Corporate Debtor made on 13th August, 2015 stating that outstanding amount due to the Creditor is Rs.25,03,900/- and beneath the said reconciliation statement, a note was entered by an employee of debtor company namely Ajay Sharma stated that the bills on hold come to Rs.40,19,071/- and bills were not brought forward into the books of the debtor company to show that the total amount due was Rs.65,22,971/-, the Tribunal accepted the plea taken on behalf of the appellant that since the reconciliation has entered into between the parties on 13th August, 2015 showing an amount of Rs.40,19,071/- needs to be credited in the debtor company's account therefore, the outstanding amount of default of Rs.65,22,971/- has been doubted. For the reason aforesaid, the learned Adjudicating Authority held that there is a

dispute of claim and some part of such claim is hit by limitation, it needs elaborate enquiry and not permitted under I&B Code, 2016

13. We find no merit in both the appeal(s).

14. In the result, no interference is called for. Both the appeals stand disposed of with the observations as made above. However, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)