

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 452 of 2018

IN THE MATTER OF:

M/s. Laina Power Engineering

...Appellant

Versus

Sokeo Power Private Limited

...Respondent

**Present: For Appellant : Mr. D. Abhinav Rao and Ms. Monalisa Kosaria,
 Advocates**

ORDER

16.08.2018 The appellant, 'Operational Creditor' filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 which was dismissed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad by the impugned order dated 3rd July, 2018 giving rise to the present appeal.

2. Learned counsel appearing on behalf of the appellant submitted that though the claim of the appellant has been admitted by the respondent, the Adjudicating Authority wrongly relied on other evidence(s) to come to the conclusion that there is an 'existence of dispute'. He relied on *e-mail* dated 12th July, 2017 to suggest that the respondent has admitted the dues.

3. From the record we find that *e-mails* were exchanged between the parties on 3rd May, 2017, 5th May, 2017, and 18th May, 2017 alleging non-submission of work completion certificate, non-completion of work, amount deductible for

lead piping and non-removal of scrap material charges and exorbitant tonnage claim made by the appellant contrary to existing industry practices. All these disputes were raised by the respondent much prior to issuance of demand notice under Section 8(1) issued on 7th July, 2017. There is nothing on record to suggest any correctional measure was taken by the appellant. On the other hand, respondent pleaded before the Adjudicating Authority that there is an 'existence of dispute'.

4. There being disputed question of facts as to whether subsequently the scrap material were removed and exorbitant tonnage claim by the appellant was corrected or amount deducted or reduced, and as such issues cannot be determined by the Adjudicating Authority, we hold that the Adjudicating Authority rightly held that it was not a fit case for admission of application under Section 9. We find no merit in the appeal. It is accordingly dismissed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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