

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1201 of 2019

IN THE MATTER OF:

Magneto Home Pvt. Ltd.

...Appellant

Vs

Conclave Infratech Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Arvinder Singh Chauhan and Mr. Vinod Chaurasia, Advocates.

For Respondent:

ORDER

11.11.2019: Having heard leaned counsel for the Appellant and being satisfied of the grounds delay of 3 days in preferring the appeal is condoned.

I. A. No. 3515 of 2019 stands disposed of.

2. The Appellant filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'Conclave Infratech Pvt. Ltd.' (Corporate Debtor). The Adjudicating Authority (National Company Law Appellate Tribunal, Hyderabad Bench, Hyderabad by impugned order dated 18th September, 2019 rejected the application on the ground of pre-existing dispute.

3. Learned counsel appearing on behalf of the Appellant submitted that the Respondent admitted the liabilities and in support of his submission referred to page 372, which is reply to the petition.

4. However, from the record we find that it has been noticed by the Adjudicating Authority that by email dated 3rd April, 2018 i.e. prior to issuance of the demand notice under Section 8(1), the Corporate Debtor intimated the Appellant issues relating to quality of the goods that the supplied items were damaged by attaching photographs.

5. Learned counsel for the Appellant submits that only nine photographs were attached by the Respondent out of 343 items. But such issue cannot be determined in a Corporate Insolvency Resolution Process while admitting an application under Section 9 of the I&B Code.

6. There being a pre-existing dispute between the parties, the application under Section 9 was rightly rejected by the Adjudicating Authority in absence of any merit. The appeal is disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)

[Justice Jarat Kumar Jain]
Member (Judicial)

am/gc

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