

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 281 of 2017**

**IN THE MATTER OF:**

**Mitcon Consultancy & Engineering  
Services Ltd.**

**...Appellant**

**Versus**

**Al-Ameen Green Energy Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant :** Shri Rajiv Sankar Roy, Shri Avrojyoti Chatterjee,  
Shri Abhijit S. Roy and Mrs. Jayashree Saha, Advocates

**For Respondent :** None

**ORDER**

**19.12.2017** This appeal has been preferred by the appellant against the order dated 23<sup>rd</sup> October, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai whereby and whereunder the application preferred by the appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 has been rejected on the ground that the claim is pre-matured.

2. Learned counsel for the appellant referred to the work order issued by the respondent dated 18<sup>th</sup> May, 2015 at page 73 of the paper-book, particularly paragraph 7 which is the 'Terms of payment' and submitted that the respondent was liable to pay the dues much before the filing of the application under Section 9 of the I & B Code. Therefore, it cannot be held that the payment of debt was not mature.

3. From the records, including the work order it appears that the date of payment was matured and the Adjudicating authority failed to notice the same.

4. Learned counsel for the appellant further submitted that it was brought to notice of the Adjudicating Authority that no dispute was in existence prior to the demand notice issued under sub-section (1) of Section 8 and a dispute was raised for the first time by the respondent while giving reply under sub-section (2) of Section 8.

5. In spite of notice and service of notice, the respondent did not choose to appear nor disputed the aforesaid facts.

6. Having heard counsel for the parties and in view of observations as made above, as we find that the Adjudicating Authority has not appreciated the facts and failed to notice the terms and conditions of work order dated 18<sup>th</sup> May, 2015 and accepted the statement made by the respondent without any basis, we have no other option but to set aside the order.

7. We, accordingly, set aside the order dated 23<sup>rd</sup> October, 2017 passed by Adjudicating Authority in CP/575/(IB)/CB/2017 and remit the case to the Adjudicating Authority, Chennai for appropriate order. If the application is complete and there is no defect, after notice to the respondent and hearing the parties, it will admit the application. If there is defect, appropriate time be granted to the appellant to remove the defects.

8. The appeal is allowed with the aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/gc