

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 278 of 2020

IN THE MATTER OF:

M/s. Lloyd Insulations (India) Ltd. ...Appellant

Vs.

M/s. Sintex Prefab & Infra Ltd. ...Respondent

Present: For Appellant: - Mr. Abhinav Hansaria and Mr. Nikhil Sharma, Advocates.

O R D E R

14.02.2020— The Appellant- 'Lloyd Insulations (India) Ltd.' moved an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of 'Corporate Insolvency Resolution Process' against 'M/s. Sintex Prefab and Infra Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad), by impugned order dated 2nd January, 2020 rejected the application on the ground of pre-existence of dispute.

2. Learned counsel for the Appellant submits that there is no pre-existence of dispute and e-mail etc. relied upon does not suggest any dispute with regard to service rendered by the Appellant.

3. However, on perusal of the record, we find that there is pre-existence of dispute as rightly held by the Adjudicating Authority. This is evident from an e-mail on 25th July, 2014, as extracted below:

Contd/-.....



Naimish Oza <naimish.oza@shirpurpower.in>

Regarding slow progress & review meeting.

1 message

satyanarayan <satyanarayan.sharma@shirpurpower.in>

Fri, Jul 25, 2014 at 6:48 PM

To: sc.tandon <sc.tandon@lloydinsulation.com>

Cc: s.angra@lloydinsulation.com, ceb-vms@lloydinsulation.com, ceb-bpsirohi@lloydinsulation.com, ceb-abisht@lloydinsulation.com, project <project@shirpurpower.com>, sunil.mohanty@shirpurpower.in, power.vilas@shirpurpower.in

Dear Sir,

Please note that following are the site related concerns which needs your kind attention to improve the progress.

FOHS:

1. Tank fabrication is progressing from last 06 months and till today not a single tank fabrication has completed. The workman ship is very poor as erection gang could not be retained by M/s Lloyds.(till date 9 fitters had tried in 9 different ways)
2. Tank completion Schedule(s) have been revised several times, we are not sure that when the same will be handed over to us.

CW / ACW pipe laying work:

1. Due to severe shortage of the man power, the work is progressing in pockets and all fronts work is not taken up.
2. Due to non-availability of End cap the back filling near the Condenser pit is pending.
3. Work progress is hampered / disrupted regularly on account of funds required by your sub - contractor.
4. Presently blasting is carried out by inexperienced persons which may lead the accident hence License holder blasting expert is required at site who can do the blasting properly and safely.
5. Nonstandard packing / handling of materials.

Fire Fighting work:

1. Still work of underground Pipe laying for firefighting is not taken up.
2. MIDC approval for LIL is pending from long back. LIL has given several dates which is not meet out.
3. Erection schedule is not submitted
4. M/s LIL to deploy experienced supervisor/ Engineers for Fire Fighting work separately.
5. Regarding opening of LC further, please note that around Rs. 1.0crore material is received at site but till date M/s LIL has not mobilized the man power and not started the work.

We are planning for Boiler lightup in the month of September 2014, and it is well aware that all the above packages is required before light-up. As Fuel oil is required for LDO unloading & storage, ACW piping is required for Air Compressor cooling and fire fighting system for safety of the plant.

A monthly package review meeting is planned on 30th July 2014 wherein we shall be discussing the details / issues Supply / Fabrication(s). You are requested come along with your Senior representative at site for discussing all the issues.The meeting shall be chaired by our Shri R K Saraf Ji.

Kindly confirm.

FOR, SINTEX PREFAB AND INFRA LTD.

AUTHORISED SIGNATORY

4. The aforesaid e-mail shows that the tank fabrication was in progress, but not a single tank fabrication was completed. The workmanship was very poor as erection gang could not be retained by 'M/s. Lloyd Insulations (India) Limited' (Appellant).

5. In view of the pre-existence of dispute, it is not desirable to decide whether the dispute raised by the Respondent is genuine or not which can be decided by Court of Competent Jurisdiction and not by the Adjudicating Authority or this Appellate Tribunal.

In absence of any merit, the appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Alok Srivastava)
Member(Technical)

Ar/g