

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 01 of 2019

IN THE MATTER OF:

M/s. Yash Technologies Pvt. Ltd.

...Appellant

Vs.

M/s. Base Corporation Limited

...Respondent

Present: For Appellant: - Mr. Raghavendra M Bajaj, Advocate.

ORDER

03.01.2019— The Appellant filed a petition under Section 433(e), Section 434 (1) and Section 439 of the Companies Act, 1956 before the Hon'ble High Court of Karnataka against 'M/s. Base Corporation Limited', which was transferred pursuant to Rule 5 of "the Companies (Transfer of Pending Proceedings) Rules, 2016" before the National Company Law Tribunal (Adjudicating Authority).

2. The Appellant treated the petition as an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) and issued Demand Notice under Section 8(1) followed filing of Form-5 as required under the 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016'. The Adjudicating Authority, Bengaluru Bench, on hearing the parties, dismissed the application by impugned order dated 5th November, 2018 on the ground of pre-existing dispute.

3. Learned counsel appearing on behalf of the Appellant submitted that the 'Corporate Debtor' had agreed to pay the dues by different times, totally five times but the 'Corporate Debtor' claimed that there is 'existence of dispute before the Adjudicating Authority.

Contd/-.....

4. From perusal of the record, we find that much prior to the filing of the petition under Section 433(e) and Section 434 (1) of the Companies Act, 1956, the Respondent- 'Corporate Debtor' raised objections with regard to non-completion of the project within time and completion of the same in haste with defects. The project closure document signed on 12th August, 2014 but records shows that the 'Corporate Debtor' has shown dissatisfaction with regard to work of the project as back as in the year 2015.

5. Learned counsel for the Appellant submits that the 'Corporate Debtor' had issued competition certificate and appreciation certificate but such disputed issues cannot be decided by the Adjudicating Authority, which can be decided only by the Civil Court of competent jurisdiction on the basis of evidence.

6. We have heard learned counsel for the Appellant and perused the records. Being satisfied with the ground, delay of 10 days in preferring the appeal is hereby condoned. I.A. No. 06 of 2019 stands disposed of.

7. As we find that there is existence of dispute raised prior to the filing of petition under Section 433(e) and Section 434 (1) of the Companies Act, 1956, we hold that the application under Section 9 of the 'I&B Code' was not maintainable.

8. For the reasons aforesaid, no relief can be granted. The appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/g