

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 164 of 2017

IN THE MATTER OF :

United Projects Constructions Ltd.

...Appellant

Versus

Aerocon Buildwell Pvt. Ltd.

...Respondent

**Present: For Appellant: Mr. Vivek Dalal and Rohit Gupta
Advocates.**

**For Respondent: Mr. Manoj Munshi and Mr. R.D.
Makhhija, Advocates.**

ORDER

13.11.2017 — The Appellant- United Projects Constructions Limited ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") for initiation of 'Corporate Insolvency Resolution Process' against the Respondent- Aerocon Buildwell Private Limited ('Corporate Debtor'). In the said case, the Respondent appeared and filed objection on the ground that there is an 'existence of dispute' and therefore the application under section 9 of the 'I&B Code' is not maintainable. The application having been dismissed by the impugned order dated 31st July, 2017 in CP No. (IB) 30/9/NCLT/AHM/2017 passed by Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, the present appeal has been preferred.

2. On 6th October, 2017, on hearing learned counsel for the parties, this Appellate Tribunal made following observation and direction:-

“O R D E R

08.11.2017 – *Learned counsel for the Respondent enclosed a letter dated 10th October, 2016 (Page No.81) to the reply, to suggest that they have disputed the claim. According to Appellant, this letter is subsequently manufactured by the Respondent after filing of the insolvency application under Section 9 of the Insolvency and Bankruptcy Code, 2016.*

2. In this background, we direct the Respondent to file additional affidavit by 13th November, 2017 enclosing any evidence to suggest that so-called letter dated 10th October, 2016 was issued and served on the Appellant. In absence of any such evidence, it will be treated that no such letter was issued or served by the Respondent- ‘Corporate Debtor’.

3. Post the matter on 13th November, 2017.

4. The appeal may be disposed of on the next date.”

3. Today, an affidavit in compliance has been filed by the Respondent enclosing a copy of letter dated 10th October, 2016 but we find no document enclosed by Respondent to suggest that the notice was served on the Appellant. In the additional affidavit the Respondent has enclosed a so-called e-mail which according to learned counsel for the appellant cannot be termed to be an e-mail notice to the appellant. From

the said e-mail, it is clear that the same has not been issued to the Appellant-‘Operational Creditor’; even the name of the sender has not been mentioned therein.

4. Having heard learned counsel for the parties and taking into consideration the aforesaid fact, as we find no record of ‘existence of dispute’ we are of the view that the matter requires reconsidering by Adjudicating Authority and to decide as to whether there is any document available on record to suggest ‘existence of dispute’ prior to notice of demand served on Appellant-‘Operational Creditor’ and whether the respondent created certain documents to stall triggering of the ‘Corporate Insolvency Resolution Process’ against it.

5. For the reasons aforesaid, we remit the case to the Adjudicating Authority and make it clear that we have not allowed either the Appellant-‘Operational Creditor’ or the Respondent-‘Corporate Debtor’ to file any additional affidavit or document, except the copies of the affidavit and documents filed before this Appellate Tribunal, which may be noticed apart from other documents earlier filed by parties for determining issue about ‘existence of dispute’.

6. We, accordingly, set aside the impugned order dated 31st July, 2017 and remit the case to the Adjudicating Authority to reconsider the case. If there is no evidence of dispute, the Adjudicating Authority will

proceed in accordance with law; that means if the application, if otherwise complete, is to be admitted and if there is any defect, then time is to be provided to the appellant to remove the defects/complete the record or otherwise if there is a dispute in existence then to dismiss the application.

7. No separate notice to be issued to the parties, they are directed to appear before the Adjudicating Authority on 27th November, 2017 when the Adjudicating Authority will fix a date for hearing. The appeal stands disposed of with aforesaid observations and directions. No Cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member(Technical)

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