

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 93 of 2019

IN THE MATTER OF:

Aluminium Udyog

...Appellant

Vs

Parnika Commercial & Estates Pvt. Ltd.

....Respondent

Present:

**For Appellant: Mr. Syed Sarfarz Karim and Mr. Shashwat Anand,
Advocates.**

For Respondent:

ORDER

29.01.2019: This appeal has been preferred by 'M/s Aluminium Udyog' (Operational Creditor) against order dated 17th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Bench III, New Delhi, whereby and whereunder application under Section 9 preferred by Appellant for initiation of Corporate Insolvency Resolution Process against 'M/s Parnika Commercial & Estates Pvt. Ltd.' has been rejected.

2. Heard learned counsel appearing on behalf of the Appellant and perused the records.

3. It will be evident from the record that the Corporate Debtor has taken a specific plea that in view of lack of expertise, the Operational Creditor (Appellant herein) was not in a position to execute the contract awarded to it and miserably failed to fulfill its obligations. In fact, the Operational Creditor abandoned the project midway without any notice; all the personnel of the Operational Creditor

were also removed from the project site in August, 2017. In this background, the Corporate Debtor was forced to engage another contractor by issuing second work order dated 15th August, 2017 to one M/s KSV Infrabuild for a sum of Rs.2,99,73,003/- The Corporate Debtor had also sought for damages from the Operational Creditor but the notice which was returned on 3rd May, 2018 with remarks 'door locked'.

4. From the aforesaid facts we find that there is a pre-existing dispute about performance of the Operational Creditor. For the said reason, the Adjudicating Authority rightly refused to entertain the application under Section 9. We find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/uk