

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 753 of 2019

IN THE MATTER OF:

M/s Pragat Akshay Urja Ltd.

.....Appellant

Vs.

M/s Madhya Pradesh Urja Vikas Nigam Ltd.

.....Respondent

Present :

For Appellant: Mr. Jayant Mehta, Mr. Akshay, Mr. Abhijeet Swaroop, Mr. Vinam Gupta, Mr. Tabrez, Advocates

O R D E R

25.07.2019 - The Appellant – ‘M/s Pragat Akshay Urja Ltd.’ filed an application u/s 9 of the Insolvency & Bankruptcy Code, 2016 (‘I&B’ Code, for short) against ‘M/s Madhya Pradesh Urja Vikas Nigam Ltd.’ (‘Corporate Debtor’). The Adjudicating Authority (‘National Company Law Tribunal’) Ahmedabad Bench, Ahmedabad by impugned order dated 26th June, 2019 rejected the application on the ground of pre-existing dispute.

2. Learned counsel appearing on behalf of the Appellant submits that with regard to invoice in question, Respondent has already deducted TDS and admitted liability. He further submitted that the Appellant is not raising his claim of arbitration against application filed by the Respondent u/s 34 of Arbitration and Reconciliation Act, 1996 which is pending.

3. We have heard learned counsel for the Appellant and perused the record. Admittedly, with regard to same very invoices, the Arbitration Proceedings started between the parties in which award has been passed and the Respondent

...contd.

has filed an application u/s 34 of the Arbitration and Reconciliation Act, 1996 which is pending.

4. Learned counsel for the Appellant submits that there is no stay of the award but that cannot be the ground, for pendency of the application u/s 34 of the Arbitration and Reconciliation Act, 1996 shows that there is a pre-existing dispute which is pending.

5. In view of the aforesaid position of law, no relief can be granted. So far as claim is barred by limitation is concerned, we are not raising any issue in arbitration proceedings as already award has been passed and application u/s 34 of the Arbitration and Reconciliation Act, 1996 is pending.

6. The aforesaid decision given by the Adjudicating Authority cannot be relied upon by any of the party at the time of execution of award, if affirmed by the higher court.

The appeal is disposed of with the aforesaid observation. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc