

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 673 of 2018

IN THE MATTER OF:

Fire Trix Engineering & Systems Pvt. Ltd.

...Appellant

Vs

Maxitech Engineering Pvt. Ltd.

....Respondent

Present:

**For Appellant: Mr. K. Gaurav Kumar and Ms. Alpa Jain,
Representative of Appellant.**

**For Respondent: Mr. P. S. Baghath Singh and Mr. V. Subramanian,
Advocates.**

ORDER

08.02.2019: The Appellant 'Fire Trix Engineering & Systems Pvt. Ltd.' filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'M/s Maxitech Engineering Pvt. Ltd.' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, dismissed the application under Section 9 by impugned order dated 10th July, 2018 on the ground of pre-existing dispute.

2. Learned counsel appearing on behalf of the Appellant submitted that there was no pre-existing dispute and whatever the reply sent by the Corporate Debtor was through the lawyer.

3. The learned counsel appearing on behalf of the Respondent – Corporate Debtor relied on the reply dated 23rd October, 2014 issued by the advocate on behalf of the Corporate Debtor pursuant to the notice dated 9th January, 2014 issued by the Operational Creditor. In the notice dated 9th January, 2014, the Operational Creditor made certain claim, in reply to which the lawyer on behalf of the Corporate Debtor by letter dated 23rd October, 2014 while intimated that

no sub-contract was executed between the Corporate Debtor and the Operational Creditor on 6th May, 2013 for the value of projects of Rs.82,95,000/-. With regard to the other project it was intimated that the said project was neither completed nor handed over to the Corporate Debtor on 28th February, 2014. This was intimated that the Corporate Debtor has not issued the Work Completion Certificate on 5th April, 2014, which the Operational Creditor wanted to reply and thereby denied the voucher and the bills for Rs.93,17,045/-. This apart other dispute was also raised relating to legal notice whereby it was intimated that Mr. R. Kesavaraj, Managing Director of the Operational Creditor had committed an offence of pre-planned criminal conspiracy with Mr. A. Senthilkumar and two others.

4. Learned counsel for the Appellant submits those are all wrong allegations and advocate's reply should not be relied upon. However, we are not inclined to express any opinion as it was open for the Corporate Debtor to give reply through lawyer and it is not possible for the Adjudicating Authority or this Appellate Tribunal to decide whether allegations are correct or wrong.

5. As we find that there is a pre-existing dispute between the parties since 2014, we hold that the Adjudicating Authority rightly rejected the application under Section 9. In absence of any merit, the appeal is dismissed. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk