

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 152 of 2018

(Arising out of Order dated 16th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, New Delhi in CP.IB No.317/ND/2017)

IN THE MATTER OF:

M/s. Acquisory Consulting LLP

...Appellant

Vs

M/s. BCC Infrastructure Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Arun Kathpalia, Senior Advocate with Mr. Rajesh P, Ms. Bani Brar, Mr. Prasanth Jain, Mr. Samaksh Goyal and Mr. Siddharth Nath, Advocates.

For Respondent: Dr. U.K. Chaudhary, Senior Advocate with Mr. Himanshu Vij and Mr. Ashok Kumar Singh, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

‘M/s. Acquisory Consulting LLP’ claimed to be the ‘Operational Creditor’ filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘M/s. BCC Infrastructure Pvt. Ltd.’- (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Single Bench, New Delhi, by impugned order dated 16th March,

2018, dismissed the application preferred by the Appellant giving rise to the present appeal.

2. The Adjudicating Authority while held that the Appellant does not come within the meaning of 'Operational Creditor', also rejected the claim on the ground that no demand notice under Section 8(1) of the 'I&B Code' was served on the 'Corporate Debtor'.

3. Learned Senior Counsel appearing on behalf of the Appellant referred to an Engagement Letter dated 5th September, 2013 written by the Appellant to suggest that in terms of discussions with respect to assistance as was sought for raising debt amounting to Rs. 150 Crores from Non-Banking Financial Companies or Private Banks in 'M/s. BCC Infrastructure Pvt. Ltd.' for construction of the project at Ghaziabad and repayment of debentures to HDFC PMS, the Appellant quoted fees for engagement equal to 2% of the size of the transaction to be given after disbursement of loan. The copy of the said letter is annexed as Annexure A-3, but we find that at number of places there are overwriting and cutting and part of which is clause 14 (Exclusivity) has been struck off and the letter is not signed by any person. For the said reason, we have not relied upon the aforesaid so-called agreement.

4. Learned Senior Counsel appearing on behalf of the Appellant relied on proof of services rendered on Respondents and enclosed between Pages 112 to 176, but we find that those are e-mail exchanges between the parties and not a demand notice under Section 8(1) of the 'I&B Code'.

5. The case of the Appellant is that Mr. Arun Gupta, CFO of Respondent signed the Engagement Letter and he was also the signatory to the financial statements of the 'Corporate Debtor' during his tenure as well as properly authorized to sign the Engagement Letter. Engagement Letter is documented in E-mail dated 16th September, 2013, from Appellant to Mr. S.P Singh. Further, the assignment letter assigning the said Engagement Letter to the Appellant was signed by Mr. S.P. Singh who is none other than the Chairman cum M.D of the 'Corporate Debtor'.

6. Annexure A-3 is said to be the Engagement Letter but we have already given reason for not relying on the same and on mere reading of the same, it will be evident that it cannot be held to be an Engagement Letter. Whether the Respondent- 'Corporate Debtor' raised any dispute before filing of the insolvency application under Section 9 or not is not the question. The Adjudicating Authority has not accepted the relationship of the 'Corporate Debtor' and the 'Operational Creditor' between the Respondent and the Appellant; we also do not find any such relationship.

7. Learned Senior Counsel appearing on behalf of the Appellant though enclosed invoices dated 6th June, 2016, 21st October, 2016 and 4th April, 2017 and different e-mails and highlighted certain facts by the Appellant has failed to bring on record any document to suggest that the Appellant has rendered services to the 'Corporate Debtor' as observed above. Thus there being a disputed question of fact, the Adjudicating Authority had rightly refused to entertain application under Section 9 preferred by the

Appellant. We find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

30th November, 2018

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