

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins) No. 159 of 2022

[Arising out of Order dated 10th March, 2022 passed by the Adjudicating Authority/National Company Law Tribunal, Bengaluru Bench, Bengaluru in CP (IB) No. 17/BB/2018]

IN THE MATTER OF:

**Sree Vinayaka Buildwell Projects
Private Limited**

Having its Registered Office

No. 6, Old No. 123, 19th Cross

M C Layout, Vijaynagar

Bengaluru – 560040

Formerly having Registered Office at

No. 122, 7th Main Road

KHB Colony, 2nd Stage

A D Hally, Basaveshwaranagar

Bangalore – 560079

...Appellant

Versus

NHDPL South Private Limited

Having its Registered Office at:

No. 110, Level 1, Andrews Building

M.G. Road, Bengaluru – 560001

Formerly having its Registered Office at:

Nitesh Timesquare,

7th Floor, No. 8, M.G. Road

Bangalore – 560001

...Respondent

Present:

For Appellant : Mr. A.M. Sridharan, Advocate

For Respondent : None

J U D G M E N T

(Virtual Mode)

(20.06.2022)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The Present Appeal is filed against the Order dated 10th March, 2022 passed in CP (IB) No. 17/BB/2018 by the Adjudicating Authority/National Company Law Tribunal, Bengaluru Bench, Bengaluru, whereby the Adjudicating Authority dismissed the Application filed by the Applicant/Appellant herein.

Brief Facts:

Appellant's Submissions:

2. The Learned Counsel for the Appellant submitted that the Appellant is in the business of water proofing, structural rehabilitation, fabricating and erection of structural steels etc. The Appellant filed an Application before the Adjudicating Authority on 09.01.2018 under Section 9(1) of the I&B Code, 2016 for initiation of Corporate Insolvency Resolution Process against the Respondent herein on the ground that it committed default in payment of balance operational debt of Rs. 39,84,587/- due and payable with interests @ 24% per annum. The operational debt was liable to be paid within 30 days of recommendation issued by project management consultant appointed by the Respondent. The Respondent issued work order dated 25.09.2013 as amended on 26.06.2014. The amendment to the work order was also extended the time period for completion of entire work by 28.01.2015.

3. The Appellant while carrying on the work, the Respondent by its letter dated 12.09.2014 intimated that there was laying protective concrete on top of polyurea which the Appellant has duly performed. The Appellant raised tax

invoice dated 22.12.2014 for Rs. 76,25,629/- pursuant to the part of the work order executed. The Respondent made a payment of Rs. 19,60,000/- on 06.11.2013 and Rs. 23,86,300/- on 16.11.2013 (net of TDS) towards material costs and job work costs.

4. While so, the Respondent appointed Sweett (India) Private Limited as Project Management Consultant to inspect, measure, assess the work carried out by the Appellant and certify the invoice raised by the Appellant. The Sweett (India) Private Limited by its letter dated 06.01.2015 recommended payment of Rs. 36,03,306/- after deduction of material costs reimburse. The Appellant being an MSME Enterprise, the Respondent should have made payment within 30 days after retaining the retention money.

5. The Respondent instead of making the payment, however, by its letter dated 03.03.2016 after expiry of more than one year and six months pointed out certain defects as an after thought to deny the payments to the Appellant and by the said letter the Respondent intend to raise the disputes as existed between the parties, however, the said disputes are illusory, spurious and hypothetical.

6. The Appellant sent demand notice in Form-3 dated 27.12.2017 to the Respondent and the Respondent did not reply to the demand notice.

7. The Learned Counsel for the Appellant submitted that the Hon'ble Adjudicating Authority dismissed the Application on the ground that there

were pre-existing disputes between the parties. However, the Respondent did not bring to the knowledge of the Appellant with regard to the existence of disputes between the parties at any point of time. The letter dated 12.09.2014 of the Respondent intimated that there was delay in laying protective concrete on top of polyurea can be said to be a pre-existing dispute when Sweett (India) Private Limited by its letter dated 06.01.2015 recommended payment of Rs.36,03,306/-. The Learned Counsel further submitted that the Hon'ble Adjudicating Authority failed to appreciate that the Respondent raised the dispute on 03.03.2016 i.e. after expiry of one year and three months of making recommendation of payment by Sweett (India) Private Limited.

8. In view of the reasons and grounds as stated in the Appeal, the Learned Counsel for the Appellant prayed this Bench to set aside the impugned Order dated 10.03.2022, and allow the Appeal as prayed for.

Analysis / Appraisal:

9. Heard, the Learned Counsel for the Appellant in detail and full and perused the records submitted along with the Appeal. Since the matter was reserved for judgment at the stage of Admission, hence, this Tribunal has not ordered notice to the Respondent.

10. After hearing the Learned Counsel for the Appellant this Tribunal need to address the point that whether the order passed by the Adjudicating Authority is justified and is in accordance with law.

11. The Adjudicating Authority after hearing the parties and after considering the pleadings documents filed there at dismissed the Application filed by the Appellant on the ground that there were pre-existing disputes between the parties. The Appellant issued demand notice under Section 8 of the I&B Code on 27.11.2017 (Page 42 of the Appeal paper book) demanding a sum of Rs. 39,84,587/-. In the application, the Appellant claimed an amount of Rs. 66,82,795/- at Part IV of Form-5. However, prior to the demand notice dated 27.11.2017 the Respondent Company vide its letter dated 03.03.2016 addressed to the Appellant at page 127 of Volume-1, whereby the Respondent clearly stated as under:

“Letter No: NHDPL/NCS/SVBC/2016-17/0001

Dt: 3/03/2016

To

*M/s. Sree Vinayaka Buildwell Projects Pvt. Ltd.,
Reg office: #a MIG 30, 2nd Cross, 2nd Stage,
KHB Colony, Basaveswaranagar,
Bangalore – 560079*

Kind Attn: Mr. Raghavendra

Dear Sir,

*Sub: Nitesh Columbus Square – Rectification and balance scope
of terrace water proofing works at site.*

*Ref: Work Order no. 4500004021 dated 25th Sept
2013*

*Refer to our earlier mail correspondences and discussions
had with you regarding the rectification of cracks/removal
and redoing the defective screed concrete works, the
works have not been completed and also other pending
jobs are as follows.*

1. *Cracks on the Screed concrete surface*
2. *Vertical surface to screed haunch portion protection coat not done after water proofing.*
3. *Balance 'A' block water proofing works to be completed*
4. *Joints of screed are not properly finished.*
5. *Cutting grooves of 6 mm x 10mm size at 5 m x 5 m intervals including filling the same with non-shrink filling compound.*
6. *Top surface shall be finished with 20mm thick waterproof plaster with CM 1:3*

Please deploy the manpower immediately to rectify the defective screed concrete and finished the balance works within 15 days. If you fail to complete the above said works, we will deploy other agency and get the work done.

Also, please submit the warranty and guaranty of the work as per the contract at the earliest.

Thanks & regards,

Sd/-

For NHDPL

BP Kulkarni (DGM – Projects)”

12. The Appellant acknowledged receipt of above letter. In view of the existence of dispute prior to the demand notice dated 27.11.2017 the Adjudicating Authority rightly dismissed the Application filed by the Appellant.

Conclusion:

13. In view of the existence of disputes this Tribunal comes to a result conclusion that there is no infirmity or illegality in the order passed by the

Adjudicating Authority dated 10.03.2022. Accordingly, the Appeal is dismissed. No order as to costs. Application if any pending, stands disposed of.

[Justice Venugopal M.]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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