

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 1056 of 2021

IN THE MATTER OF:

Ria Constructions Ltd.

**Through Desh Deepak Resolution Professional
of Ria Constructions Ltd.**

...Appellant

Vs.

Blessings Resorts Pvt. Ltd.

...Respondent

Present:

For Appellant:

**Mr. PBA Srinivasan, Mr. Avinash Mohapatra, Mr.
Parth Tandon, Mr. P.S. Chandralekhya, Mr. Narender
Rao, Ms. Nikhita Ross, Ms. Sneha Iyer, Ms. Prerna
Sabharwal, Advocates**

ORDER
(Through Virtual Mode)

20.12.2021: This appeal has been filed against the order dated 20.01.2020 passed by the 'Adjudicating Authority' by which application filed u/s 9 by the Appellant has been rejected. The Appellant is also under the CIRP proceedings and this appeal has been filed through the 'Resolution Professional' (RP).

2. There was an agreement between the Appellant and the 'Corporate Debtor' in the year 2013 to carry out certain construction work. During the currency of the contract, certain amount was paid to the Appellant by the 'Corporate Debtor'. An application u/s 9 was filed by the Appellant claiming that 'operational debt' of Rs. 4,31,73,446/- is due. Prior to that, a notice u/s 8 was issued by the Appellant. A Civil Suit was filed by the Corporate Debtor seeking a declaration

that the Appellant has violated the terms of agreement dated 19.01.2013 and the Appellant before us is liable to pay the huge amount to the plaintiff. The said suit is pending. The application u/s 9 was filed by the Appellant on 28.09.2018.

3. The application u/s 9 was contested by the 'Corporate Debtor' and the plea was taken that the bills which have been claimed by the Appellant were never verified and authenticated. It was further stated that by email dated 07.10.2016 and by letter dated 07.10.2017, the contract of the Appellant was already terminated. It was held by the 'Adjudicating Authority' that there being pre-existing dispute, an application u/s 9 cannot be entertained.

4. Learned Counsel for the Appellant submits that letter terminating the contract dated 07.10.2016 was never received by the Appellant, however, the receipt of the email is not denied.

5. Learned Counsel for the Appellant submits that after notice u/s 8 was issued, suit was filed by the 'Corporate Debtor' by which the claim of the Appellant is sought to be denied.

6. We have considered the submissions of the Learned Counsel for the parties and perused the records. The email dated 07.10.2016 has been brought on record as Annexure 7. In the email itself, it was clearly mentioned that a visit was made by the Managing Director and the Vice-President and some necessary and important steps are being taken for the project and the Appellant was asked to jointly check and count all the material lying at site which is moveable and immoveable, consumable and all the store materials and inventory. The letter

dated 07.10.2016 by which the contract was terminated, is complimentary to the mail and the decision which has been referred to in the email clearly indicate that the contract is to be terminated. By letter dated 07.10.2016, by terminating the contract it was clearly mentioned that the work shall be completed by the Corporate Debtor's at the risk and cost of the Appellant. It was also mentioned that the project is one and half year's beyond the scheduled time. The materials on the record do indicate that there was pre-existing dispute regarding entitlement of the Appellant to receive payment and the bills which were claimed by the Appellant were never verified by the 'Corporate Debtor'. The 'Adjudicating Authority' has not committed any error in rejecting the section 9 application filed by the Appellant on the ground that there was pre-existing dispute.

7. Learned 'Adjudicating Authority' has rightly relied on the judgement of Apex Court and **Hon'ble Supreme Court in 'MobiloX Innovations Pvt. Ltd.' Vs. 'Kirusa Software Pvt. Ltd.' in Civil Appeal No. 9405 of 2017** there being dispute between the parties regarding entitlement, the application u/s 9, was rightly rejected.

8. We may further observe that the proceedings under IB Code are not to resolve the bills of contractor which are not admitted. The Hon'ble Supreme Court time and again has observed that IBC proceedings are not recovery proceedings and the object of the IBC proceedings is to resolve the insolvency of the 'Corporate Debtor' and to bring the 'Corporate Debtor' on track again. There

is no error in the order of the 'Adjudicating Authority'. ***The appeal is dismissed.***

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

ss/nn