

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1375 of 2022
& I.A. No. 4297, 4296 of 2022**

IN THE MATTER OF:

Krishna Hi-Tech Infrastructure Pvt. Ltd. ...Appellant

Versus

Bengal Shelter Housing Development Ltd. ...Respondent

Present:

**For Appellant: Mr. A. K. Shrivastava and Mr. Akash Sharma,
Advocates.**

**For Respondent: Mr. Praveen Chaturvedi, Ms. Jayati Chowdhury
and Ms. Jyoti Chaturvedi, Advocates.**

O R D E R

06.12.2022: **I.A. No. 4297 of 2022:** This is an application praying for condonation of 7 days delay in filing the physical copy of the Appeal. The grounds shown in Para 8 of the affidavit is sufficient to condone the delay. Delay in filing the appeal is condoned. I.A. No. 4297 of 2022 stands disposed of.

2. **I.A. No. 4296 of 2022:** This is an application praying for condonation of delay of 11 days in refiling the Appeal. It is stated in the application that the Applicant/Appellant is based in Kolkata and due to medical issued he was out of town and time was taken to remove the defects. Cause shown sufficient, delay in refiling the Appeal is condoned. I.A. No. 4296 of 2022 stands disposed of.

Cont'd.../

3. Heard learned counsel for the Appellant. This Appeal has been filed against order dated 22.09.2022 by which order the Adjudicating Authority has rejected the Section 9 application filed by the Appellant. Appellant was awarded work on contract by the Respondent and in pursuance of the said contract the Appellant proceeded with the work. There has been several correspondences between the parties and payments were also made from time to time. However, when the Appellant could not receive the payment as per the contract he gave a notice under Section 8 of the I&B Code on 13.07.2019 and thereafter filed the application under Section 9 for claiming a debt of Rs.1.39 Crores. The Adjudicating Authority heard the parties and rejected the application observing that there is a pre-existing dispute between the parties. In Para 12 and 13 the Adjudicating Authority held:

“12. In this context it is pertinent to mention that the disputes raised by the Corporate Debtor can categorically be divided into three parameters;

- (i) First, was with respect to the **‘Deficiency in the Work’** – (Page 29 of reply affidavit), e-mail dated 26th April, 2018; (Page 35 of reply affidavit), e-mail dated 25th May 2018 for reduction of labour strength ; (page 48 of reply affidavit), e-mail dated January 18, 2019 for incomplete rectification work and deficiency of work).*
- (ii) Second, was with respect to the **‘Slow Progress in the Work’** – (Page 13 of reply*

affidavit) e-mail dated 3rd March 2018; (Pg 17 of reply affidavit) e-mail dated 13th March 2018; (Pg 18 of reply affidavit) e-mail dated 14th March 2018; (Pg 29 of reply affidavit) e-mail dated 26th April 2018 and (Pg 33 of reply affidavit) e-mail dated 25th May 2018.

*(iii) Third, was with respect to the ‘**Defective Materials**’ – (Pg 18 of reply affidavit), e-mail dated 13th March, 2018; and (Pg 27 of reply affidavit), e-mail dated 6th April 2018.*

*13. In light of the above noted facts and circumstances, we are of the view that the defence is not spurious or plainly frivolous or vexatious. The dispute very much existed between the parties way before the demand notice was sent by the Operational Creditor i.e. 13 July, 2019. Hence, the Petition being **C.P. (IB) No. 1289/KB/2019** is **dismissed.**”*

4. Learned counsel for the Appellant challenging the order contends that in fact the Respondent is a defaulting company. They have not made payment on the due dates since it was provided that within 15 days all bills shall be paid. There was delay in making payment and certain payment were made beyond 15 days. It is submitted, with regard to the emails regarding slow progress of work it was the Respondent who themselves have to be blamed and not the contractor. The emails which were sent by the Corporate Debtor cannot be said to be reason for rejecting the application on the ground that there is pre-existing dispute.

5. We have extracted the findings of the Adjudicating Authority where the Adjudicating Authority has referred to the email dated 26.04.2018 and 25.05.2018 where deficiency in the work was pointed out and further email dated 18.01.2019 has been referred to for incomplete rectification work and deficiency of work. All these email correspondences are prior to Section 8 notice dated 13.07.2019. The contractual dispute between the parties if arise, during the contract provisions are made in all contracts for resolution of such disputes. The dispute between the parties are not supposed to be decided, examined and adjudicated in IBC proceeding. Only question to be looked in Section 9 Application is as to whether the objection raised by the Corporate Debtor opposing claim of the Operational Creditor is not a moonshine defense. We have looked into the emails which were sent by the Corporate Debtor and which are part of the Appeal Paper Book. We are of the view that the issues raised in these emails are not moonshine defense, the issues regarding quality of work were raised much prior to the issuance of Section 8 notice.

6. We, thus, are of the view that the Adjudicating Authority did not commit any error in rejecting Section 9 application filed by the Appellant. We, however, make it clear that it is always open for the Appellant to take such remedy as permissible in law.

7. Learned counsel for the Appellant contends that the emails sent by the Appellant – Operational Creditor has not been considered by the Adjudicating Authority.

8. The Adjudicating Authority had to examine the defence of the Corporate Debtor to find out if there is pre-existing dispute. If the Adjudicating Authority is satisfied on those emails, it is not necessary to refer to explanations given by the Appellant. With these observations, Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Barun Mitra]
Member (Technical)**

Archana/nn