

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

**Company Appeal (AT) (Insolvency) No.1399 of 2023
& I.A. No.4965, 4994 of 2023**

IN THE MATTER OF:

Panjwani Electrical Engineers and Consultants **...Appellant**

Versus

Larsen And Toubro Ltd. **...Respondent**

Present:

**For Appellant: Mr. Gursat Singh and Mr. Pranav Khanna,
Advocates.**

**For Respondent: Mr. Anand Shankar Jha, Mr. Sachin Mintri, Mr.
Abhilekh Tiwari and Mr. Arpit Gupta, Advocates.**

ORDER

06.11.2023: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 17.03.2023 by which order the Adjudicating Authority has rejected Section 9 application filed by the Appellant on the ground of pre-existing dispute. The Work Order was issued by the Corporate Debtor to the Appellant for carrying out certain work. There had been correspondence between the parties. The Corporate Debtor was issued legal notices one of such notice dated 28.02.2019 is at page 339 of the appeal paper book demanding amount from the Corporate Debtor totalling to Rs.1,80,81,534/-. The Corporate Debtor immediately replied the notice dated 28.02.2019, copy of which reply is at page 343. In Para 1 of the reply following has been stated:

*“1. At the outset all the statements, contentions and
allegations made by you in your present notice under*

Cont'd.../

reply are denied as the same are totally false and baseless. As would be demonstrable from the present action, your Client had made a fictitious and fabricated claim for making unjust enrichment at the expense of M/s. Larsen & Toubro Limited (hereinafter referred to as "L&T") by resorting to dubious coercive methods including the present attempt of serving frivolous and scathing notices to its Key Management Personnel. All such dishonest and belligerent attempts to threaten, Intimidate and harass our Company's Key Management Personnel would entail penal consequences which your Client may be duly made aware of. In no uncertain terms we make it clear that no amounts much less the amount of Rs.1,80,81,534.35 is due or payable to your Client by L&T on any account whatsoever."

2. The Appellant thereafter issued notice of demand under Section 8 on 20.05.2019 demanding amount of Rs.1,49,39,386/-, thereafter, Appellant filed Section 9 application. The Adjudicating Authority heard the Section 9 application and by impugned order has rejected it on the ground of pre-existing dispute. The Adjudicating Authority has further noticed that on 02.01.2019, the Corporate Debtor has terminated the Work Order entered between the parties.

3. The Appellant challenging the rejection of application under Section 9 submits that Respondent never disputed the amount claimed by the Appellant, which is clear from emails between the parties. He submits that the amount having not been disputed, termination of Work Order cannot be

treated to be pre-existing dispute and there was regular business transaction between the parties.

4. We have considered the submissions of learned counsel for the Appellant and perused the record.

5. The Adjudicating Authority has noted the termination of Work Order on 02.01.2019 whereas the Demand notice under Section 8 was issued on 20.05.2019. We have already noticed the demand notice issued even prior to Section 8 notice to the Corporate Debtor, one of such notice is dated 28.02.2019, which was filed along with the Section 9 application which was promptly replied and refuted by the Corporate Debtor and in the detailed reply which has been submitted by the Corporate Debtor all claims were disputed. It was clearly stated that no amount was due and payable to the Operational Creditor. We may further notice the statement made in Para 3(vii) of the reply (at page 348), which is to the following effect:

“(vii) That the contents of the last para of your Legal Notice are false and hence denied for the reasons stated hereinbefore. No amount is due and payable to your Client, much less the amounts of Rs.245955.25 and/or Rs.18081534.35/- as alleged or even otherwise. As no amounts are due and payable, therefore the payment of interest on any amounts, does not arise, at all. As such the question of payment of any amount or charges towards legal demand notice does not arise at all. It is denied that any compensation

is payable to your Client, as the facts alleged by your Client are totally false and without any basis.”

6. We are of the view that the Adjudicating Authority did not commit any error in holding that there is a pre-existing dispute. When the Corporate Debtor even prior to issuance of demand notice has denied liability to pay, pre-existing dispute was there. We do not find any ground to interfere with the impugned order rejecting Section 9 application. Appeal is dismissed. However, it is always open for the Appellant to pursue proceedings as per agreement between the parties before an appropriate forum in accordance with law.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

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