

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

**Company Appeal (AT) (Insolvency) No. 356 of 2024**

**IN THE MATTER OF:**

**Zaara Enterprises Venture Pvt. Ltd.**

**...Appellant(s)**

**Versus**

**Dhanraaj Agencies Pvt. Ltd.**

**...Respondent(s)**

**Present:**

**For Appellant : Mr. Ankur Singhal, Advocate**

**For Respondents :**

**O R D E R**  
**(Hybrid Mode)**

**28.02.2024:** Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 01<sup>st</sup> January, 2024 by which section 9 application filed by the Appellant has been rejected on the ground of pre-existing dispute.

3. The Appellant has issued a demand notice on 18<sup>th</sup> August, 2022 and thereafter filed Section 9 Application. Corporate Debtor filed its reply and in the Reply they have taken a stand that there was pre-existing dispute. By detailed email dated 11<sup>th</sup> July, 2022 Appellant was informed that work was not done satisfactorily and several works were completed by Corporate Debtor on its own cast. It was further stated that advance payment has been made and such excess payment must be refunded to the Corporate Debtor. Relying on the said email and other materials on record, the Adjudicating Authority

rejection Application under Section 9 holding that there is a pre-existing dispute.

4. Learned Counsel for the Appellant challenging the order contends that all work was completed in 2021 and thereafter tax invoices were issued and it was only on 11<sup>th</sup> July, 2022 the email was sent pointing out shortcomings in the work. It is further submitted that the GST Input was also taken by the Corporate Debtor on tax invoice as well and there was no pre-existing dispute and dispute raised by the Corporate Debtor was a moonshine dispute.

5. We have considered the submissions of Learned Counsel for the Appellant and perused the record.

6. The email dated 11<sup>th</sup> July, 2022 has been brought on record by the Appellant as Annexure A-15. It is useful to extract the said email which contains the allegations made by the Corporate Debtor which is as follows:

*“To,*

*The Manager*

*ZMRA Interior*

*Sub: Request to refund advance money paid against interior work after a genuine computation in purview of your commitment.*

*Sir,*

*It is necessary to write and remind you that the job work given to your company for all interior work of our*

*showroom of Maruti at Gaya is not completely done by you. However, we have paid regular advance on your request against the interior job work agreed to be done.*

*It is to be noted that the agreed work was never done on time, however, the payment was released always on your request. You were always failed to complete any part of work on time, hence payment always remained advance with you, which must would have been adjusted by doing the pending work. But apart from doing your committed work, you were always busy in making bills.*

*Further, payment was duly done either in advance or against your each and every bill during the period of FY 2020-21. Our showroom was also started in March,2021 and till then, all payment were duly done with some advance, whereas some of the work was not up to mark which was reported to you for correction but ultimately due to delay in your work, all the correction were done by us with our own cost. The adjustment of such cost is due with you too. Further it is well known to you that very little work were done after march 2021 and you have also raised the bill for all those small works too. It clearly shows that against each and every work, the raising of bills was your regular practice. Then after such small works, when there was no visit by you or any work was done for more than of nine months, then how can a bill be raised by you in the month of June, 2022. The raising of Bill in June, 2022 is very much shocking and seems to be concocted which simply does not suit anyone. And it is*

*again shocking that you are making GST bill now in June, 2022 which is against the provisions of GST and said to be fake and with your own wrongful interest.*

*Now, you must agree that you have never visited in the year 2022 to see the work or to guide the work into our site. So, how you have raised a bill in June, 2022. You have just left the work in between on our own. And it's true that the whole work in 2022 into our showroom were done without your help and guidance, but it was supposed to be done by you. And all older work done by you were corrected by us with our own correction cost. And thereafter most of the pending work were duly done by us with our own employed inputs and services. Because, the partial work done by you was of very poor quality. it was not as per your commitment and suitable for our showroom. So, now we want to say that, when the work was not done as per commitment, then how the bills can be raised in absence of work done or for improper work. Even after several reminder you never visited or interested into our project because about 40 lakhs of advance payment was done to you including some payments in cash time to time by the Directors of our Company through their own pockets on your request. All such excess payment must be refunded to us. If you have any confusion in actual computation, you are always welcome to compute it sitting with us. Actually, we keep very true and fair view and expect the same from you too.*

*On the other hand, it is shocking that you are asking for further payment whereas no visit, no work was done in the year 2022. So, I request you that don't go for unfair dealing and don't take undue advantage of someone's true and fair nature.*

*However, you may feel free to come and discuss the whole work and its consideration in detail on site. I am always ready for that. I think that would be an ideal way to figure it out.*

*It is further to be noted that we have done most of the payment through banking channel and some payments in Cash through the director's own pocket on your several urgent request. Details of such payments are also attached with this request and information letter.*

*So, apart from my several complaints regarding improper, poor or incomplete work on site I may be pleased to receive my excess money back, if you go for genuine computation sitting with us at project place of your work and services but in purview of your committed contract work plan.”*

7. When we look into the email dated 11<sup>th</sup> July, 2022 which was issued much prior to issuance of demand notice it is clear that dispute was raised in the said email regarding completion of the work by the Appellant. Allegations have been made in the email that excess amount has been paid to the Appellant and email also says that excess amount should be refunded. The submissions of the Learned Counsel for the Appellant that work was

completed in March, 2021 and email sent was only moonshine defence cannot be accepted. Averments made in the email raises clear dispute which cannot be said to be moonshine. As per the submission of the Appellant that Corporate Debtor has taken input on the tax invoice sent by the Appellant. It is on record that advance payments were made by the Corporate Debtor and issues whether input tax taken is in excess is the issue which could not be gone into in proceeding under Section 9 of the Code. However, we observe that it shall be open for the Appellant to take such remedy as available under the contract if there are any dues.

With these observations, we dismiss the Appeal.

**[Justice Ashok Bhushan]  
Chairperson**

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

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

*Basant/nn*