

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

Company Appeal (AT) (Insolvency) No. 913 of 2022

IN THE MATTER OF:

a'XYKno Capital Services Pvt. Ltd.

...Appellant

Versus

Rattan India Power Ltd.

...Respondent

Present:

For Appellant: Mr. Nikhil Nayyar, Sr. Advocate with Mr. Vikram Hegde, Mr. Naveen Hegde and Mr. Chitwan Sharma, Advocates.

For Respondent: Mr. Karan Batura and Mr. Jayant Chawla, Advocates.

ORDER

10.11.2022: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 27.01.2022 by which order Adjudicating Authority has rejection Section 9 application filed by the Appellant. The Appellant was engaged as Consultant for providing consultancy services to the Corporate Debtor. The invoices were issued by the Appellant in February, 2015. On 18.02.2015, the Corporate Debtor with regard to the consultancy services for Coal Block issued a letter raising various issues pertaining to the quality of service. After the receipt of said letter some clarification was issued on 09.03.2015 by the Operational Creditor. By email dated 05.03.2015, Corporate Debtor was communicated that they are qualified and successful in Tara Block. Appellant's case is that letter dated 18.02.2015 was replied on 09.03.2015 and thereafter no response was received and correspondence was made in 2016 only. Notice under Section 8

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was issued on 26.07.2018, which is said to be replied on 02.08.2018. Learned counsel for the Appellant submit that reply dated 02.08.2018 was never received by them, it was only filed alongwith the reply to the Section 9 application. The Section 9 application was filed thereafter which was replied by counter affidavit filed by the Respondent. The Adjudicating Authority considering the materials on record came to conclusion that there was a pre-existing dispute, the dispute which was raised in letter dated 18.02.2015 regarding poor quality and deficiency in service reflect the same. The observations which have been recorded by the Adjudicating Authority in Para 9 of the impugned order are to the following effect:

“9. We have heard the Ld. Counsels for both sides and perused the documents available on the matter. The O.C. has stated that the team of O.C. was called several times between the dates December 2014 to April 2017 for personal discussions and assurances made by the C.D. towards payment and also several telephone calls and communications are available, however, such details have not been provided. Further, the email dated 06.12.2016, which allegedly is an admission of the liability of C.D. has been disputed by the C.D. Though, the alleged reply of the C.D. dated 02.08.2018 to the O.C.’s demand notice has been disputed/claimed to be false by the O.C. But the Operational Creditor has not disputed the letter dated 18/02/2015, page 52 of the petition. Since this letter is filed by the Petitioner, therefore, its genuineness cannot be doubted. And on the basis of this document, it is admitted fact that the

Respondent has raised the dispute regarding the quality and deficiency in the service, which comes under the definition of dispute u/s 5(6) of the IBC, 2016. In view of the Section 9(5)(ii) IBC, the moment dispute is established by the Corporate Debtor, the Corporate Insolvency Resolution Process should not be initiated against the Corporate Debtor. So far payment of TDS is concerned, it is not settled that deduction of TDS does not amount to acknowledgement of debt. The Insolvency Proceedings are not meant to be recovery proceedings. This Adjudicating Authority cannot enter into disputed questions of fact which could be resolved only through formal proceedings of a Civil Court, nor is it meant to be a recovery forum.”

2. Learned counsel for the Appellant contended that Appellant continued to render services even after letter dated 18.02.2015 and the contract was not terminated and there has been no further correspondence in this regard. The Appellant – Operational Creditor was following for its payment and in 2018 when nothing transpired, notice under Section 8 was issued on 26.07.2018. Present is a case where entitlement of the Appellant was not denied.

3. We have considered the submissions of the Appellant and perused the record.

4. The Appellant was engaged for consultancy services and by letter dated 18.02.2015, which is a detailed letter, Corporate Debtor has informed the Operational Creditor regarding the poor performance of the consultancy service and loss of company business. The letter is a details letter where

different items/instances were mentioned and the letter further clearly states that whole process of consultancy was managed in a very chaotic manner with poor end result. Submission of the Appellant that payment was never denied and contract continued even after letter dated 18.02.2015 also does not negate the dispute between the parties, since poor quality of service was explained by Corporate Debtor by letter dated 18.02.2015, hence, the dispute was very much there from the said date at least. Section 9 application was also objected by the Respondent and reply was filed raising dispute and refuting the claim of the Appellant. The Adjudicating Authority had come to the conclusion that there being pre-existing dispute application deserves rejection. The disputes pertaining to contractual issues are not to be resolved in Section 9 proceedings. Present is not a case where there is undisputed debt for which insolvency can be asked by the Appellant to be initiated. We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 application, there being a pre-existing dispute. There is no merit in the Appeal. Appeal is dismissed.

5. Learned counsel for the Appellant lastly submits that TDS deductions were made even after 18.02.2015. Be that as it may. It is always open for the Appellant to seek remedy for its dues, if any, as permissible in law.

**[Justice Ashok Bhushan]
Chairperson**

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

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