

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

**Company Appeal (AT) (Insolvency) No. 800 of 2022**

**IN THE MATTER OF:**

**Navkar Urbanstructure Ltd.**

**...Appellant**

**Versus**

**Niyojit Infratech Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant: Mr. Pavan Godiwala, Mr. M.S. Vishnu Sankar, Advocates**

**For Respondent:**

**ORDER**

**22.08.2022:** Heard Learned Counsel for the Appellant.

This appeal has been filed by the Appellant ('Operational Creditor') against the order dated 28.04.2022 passed by the Adjudicating Authority by which application filed under Section 9 by the Appellant has been rejected.

2. The 'Corporate Debtor' received a Work Order from one M/s. 'Annu Infra Construct India Pvt. Ltd.' for trenching, ducting, backfilling supply and installation of manholes etc. in the state of Bihar. The 'Corporate Debtor' assigned part of the Work to Appellant by agreement dated 30.11.2018.

3. The notice dated 12.01.2021 u/s 8 of the Code, (dispatched on 25.01.2021) was issued by the Appellant to the 'Corporate Debtor' demanding amount due and payable on account of service provided to the 'Corporate Debtor' by the 'Operational Creditor'. The Corporate Debtor has issued notice dated 22.01.2021 invoking Arbitration Clause under the agreement. Notice u/s 8 was issued by the Operational Creditor on 25.01.2021 to the 'Corporate Debtor' which was replied by the Corporate Debtor vide reply dated 09.02.2021.

4. In the reply notice, the claim of the Appellant was denied stating that no money could be claimed by Operational Creditor before obtaining the Completion Certificate for the work stated in Letter of Intent (LOI). The reply also referred to the notice dated 22.01.2021 by which Operational Creditor was informed about the Arbitration Clause in LOI dated 30.11.2018.

5. Section 9 application was filed by the Operational Creditor claiming an amount of Rs. 8,29,54,798/-. The Corporate Debtor filed a detailed reply to section 9 application.

6. After hearing the parties, by impugned order dated 28.04.2022 the Adjudicating Authority dismissed Section 9 application noticing that Section 8 notice was posted by the Operational Creditor on 25.01.2021 whereas Corporate Debtor vide notice dated 25.01.2021 has invoked Arbitration Clause.

7. The Appellant challenging the order contended that the Appellant was not present only on the date when the order was passed whereas he appeared on earlier dates. He submits that he could not file any rejoinder to the reply filed by the Corporate Debtor due to certain valid reason which have not been taken note of by the Adjudicating Authority. He further submits that notice invoking arbitration was received after Section 8 notice was issued.

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

9. In para 13,17 and 18 of the reply, following averments have been specifically made:-

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*“13. It is stated that the petitioner was supposed to complete the work as aforesaid by March 31,2019. However, the same was incomplete and whatever work was done was not satisfactory of the Authorities and therefore for the same no completion certificate and/or NOC was issued by the competent Authority. The Petitioner at all material points of time knew about Payment Clause of both the Agreements.*

*17. Pursuant thereto, the Corporate Debtor had issued a notice inviting the arbitration for adjudication of the alleged claim made by the petitioner and for adjudication of the damage suffered to the Corporate Debtor due to non completion of work in accordance with the Letter of Intent or Work Order done by the petitioner. A copy of letter send on January 22, 2021 is annexed and marked as annexure ‘H’ at Pg. 61 of the said Petition.*

18. *It is noted that the said purported notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was received after issuance of the arbitration notice and the same was replied to by the Corporate Debtor via its letter dated February 9, 2021. A copy of the reply dated February 9, 2021 is annexed hereto and marked 'C'. It is relevant to mention herein that both alleged that the notice of invocation annexed and marked as annexure 'H' at Pg.61 of the said Petition is a reply to the purported notice under Section 8 of the Insolvency & Bankruptcy Code, 2016."*

10. The Corporate Debtor in reply to Section 8 notice as well as in reply to Section 9 application has categorically pleaded that there is Arbitration Clause in the contract between the parties. Notice dated 22.01.2022 was issued by the Corporate Debtor Invoking Arbitration Clause and the Operational Creditor issued notice dated 12.01.2021 only on 25.01.2021 when it demanded amount from the Corporate Debtor.

11. The Corporate Debtor in its reply has clearly stated that no amount can be claimed by the Appellant to be due on the Corporate Debtor since no Completion Certificate regarding the work of the Appellant was ever issued.

When Completion Certificate regarding Work Order was never issued, the amount claimed by the Appellant is disputed and the Adjudicating Authority has rightly taken the view that in view of the pre-existing dispute between the parties the application u/s 9 cannot be admitted.

12. There being Arbitration Clause in the agreement between the parties. The Appellant is always at liberty to pursue his claim in the Arbitration.

13. We are satisfied that there is no good ground to entertain this appeal. There is no merit in the appeal. ***The appeal is dismissed.***

**[Justice Ashok Bhushan]  
Chairperson**

**[Justice M.Satyanarayana Murthy]  
Member (Judicial)**

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

***Shashi/nn***