

**Insolvency and Bankruptcy Board of India**  
**7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

**15th December, 2022**

***Subject: Judgment<sup>[1]</sup> dated 6<sup>th</sup> December, 2022, in the matter of Krishna Hi-Tech Infrastructure Pvt. Ltd. Vs. Bengal Shelter Housing Development Pvt. Ltd.[Company Appeal (AT)(Ins ) No. 1375 of 2022& I.A. No. 4297, 4296 of 2022]***

**I. Brief Background:**

1. OC (Krishna Hi-Tech Infrastructure Pvt. Ltd) was awarded work contract by CD (Bengal Shelter Housing Development Ltd.) and the work was proceeded with. When the payments were not received by the OC, it issued a demand notice under section 8 of the Code to the CD on 13.07.2019. Thereafter, the OC filed a petition under section 9 of the Code, seeking initiation of CIRP against the CD.
2. Vide order dated 22.09.2022, AA rejected the application on the ground that the dispute existed between the parties way before the demand notice was sent by the OC. The CD had raised disputes through emails in respect to deficiency in work, slow progress in work and defective materials. Aggrieved by the impugned order OC filed an appeal against this dismissal order contending that it is the CD who is defaulting company as they have not made payment on the due dates since it was provided that within 15 days all bills shall be paid under the contract. Hence, the emails regarding slow work by the CD who themselves have to be blamed and not the OC. Respondent CD contented that dispute existed very much between the parties way before demand notice was sent by the OC.
3. NCLAT held that the Contract Act provides for dispute resolution mechanism for contractual disputes arising between the parties during the contract period. The dispute between the parties is not supposed to be decided, examined and adjudicated in the IBC proceeding. The only question to be looked in section 9 petition of the Code is whether the objection raised by the CD opposing claim of the OC is not a moonshine defense.
4. NCLAT further held that the issues raised in the emails sent by CD to the OC were not moonshine defence in the instant matter. The issues regarding quality of work were raised by the CD much prior to the issuance of section 8 notice. The AA has to examine the defence of the CD to find out if there is pre-existing dispute. If AA is satisfied on those emails of CD, it is not necessary to refer to explanation given by the OC.
5. NCLAT upheld AA's decision and dismissed the appeal.

**II. Analysis:** - NCLAT made it clear that the only question to be looked into while adjudicating upon section 9 application by the AA is whether the objection raised by the CD opposing claim of the OC is not a moonshine defense.

---

<sup>1</sup> Prepared by Legal Affairs Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here

