

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

**Company Appeal (AT) (Insolvency) No.1165 of 2023
& I.A. No. 4107 of 2023**

IN THE MATTER OF:

R.S. Pabbla Constructions Pvt. Ltd.

...Appellant

Versus

ISGEC Heavy Engineering Ltd.

Respondent

Present:

For Appellant: Ms. Minakshi Jyoti, Mr. Sumit Kumar, Advocates.

**For Respondent: Mr. Shambhu Sharan, Mr. Yamandeep Kumar and
Mr. Ankit Jain, Advocates.**

O R D E R

13.09.2023: **I.A. No. 4107 of 2023:** This is an application praying for condonation of delay of 13 days in filing the Appeal. The ground taken in the application is that the Appellant is based out at Andhra Pradesh and therefore substantial time was engaged in discussing with the counsel at Delhi to discuss and prepare for filing of the appeal. Cause shown sufficient, delay in filing the Appeal is condoned. I.A. No. 4107 of 2023 stands disposed of.

2. Heard learned counsel for the parties. This Appeal has been filed against the order passed by the Adjudicating Authority dated 07.07.2023 by which order Section 9 application filed by the Appellant has been rejected on the ground that there was a pre-existing dispute.

3. Appellant is a sub-contractor who has issued Letter of Intent by the Corporate Debtor to carry out chimney construction. The Operational Creditor's case is that after mobilization of resources, plant and machinery

work could not be commenced and subsequently the Corporate Debtor awarded the work to some other entity. The case of the Appellant is that Operational Creditor was entitled for Idle Charges for which several correspondences were made with the Corporate Debtor and a meeting was held on 01.10.2018 where the Operational Creditor was requested to submit all relevant documents which were to be verified by the Corporate Debtor. The Operational Creditor also issued a legal notice to the Corporate Debtor for making payment of Idle Charges dated 11.01.2019. It is submitted that the Appellant has not raised any issue regarding award of contract to some other entity, the claim was with regard to only Idle Charges.

4. We have heard learned counsel for the Appellant and perused the record.

5. Appellant at page 80 itself has annexed Letter dated 02.02.2019 issued by the Corporate Debtor to the Appellant, wherein at Para 3 in response to letter dated 11.01.2019 following has been stated:

“3. It may also be noted by you that your client is well aware of his position and he has also been briefed on the true and correct facts that in the circumstances and the conduct of your client he is not entitled to any money from us on any count whatsoever. By the notices under reply he is trying arm-twisting of us, which is against the provisions of law.”

6. The letter dated 11.01.2019 is the letter by which the Appellant demanded entire payment of amount with regard to Idle Charges. When the

said claim was disputed by the Corporate Debtor, the pre-existing dispute was very much there prior to issuance of demand notice which was issued on 09.01.2020.

7. We, thus, do not find any error in the order of the Adjudicating Authority rejecting Section 9 application. This shall not preclude the Appellant to take such remedy as available in law. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Archana/nn