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

**Company Appeal (AT) (Insolvency) No. 502 of 2024**

**[Arising out of the Impugned Order dated 18.12.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench in C.P. (IB) No. 126/ND/2023]**

**In the matter of:**

**M/s Airtech Airconditioning**
Through Mr. Arshad Shah, Proprietor
Ashiana Building, adjoining Daryacha Building,
Hauz Khas Village,
New Delhi- 110016

…. Appellant

**Versus**

**Parnika Commercial & Estate Private Limited**
Having its Registered Office at:
D-64, 6TH Floor Himalaya House,
23 KG Marg
New Delhi - 11 0001

…. Respondent

**Present:**

For Appellant : Mr. Vipul Ganda, Ms. Avnika Mishra, Ms. Nitu Barik and Mr. Gyanesh Tiwary, Advocates.

For Respondent : Mr. Bhupesh Narula, Advocate.

**J U D G M E N T**
**(Hybrid Mode)**

**Per: Barun Mitra, Member (Technical)**

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (‘**IBC**’ in short) by the Appellant arises out of the Order dated 18.12.2023 (hereinafter referred to as ‘**Impugned Order**’) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-III) in C.P. (IB) No. 126/ND/2023. By the impugned order, the Adjudicating

Authority has dismissed Section 9 application filed by the Appellant-M/s Airtech Airconditioners. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

**2.** To summarily capture the factual matrix of the matter, we notice that the Appellant-M/s Airtech Airconditioners-Operational Creditor was engaged by Corporate Debtor-M/s Parnika Commercial & Estate Private Limited to provide Heating, Ventilation and Air Conditioning services for three of its projects. These three projects were located at Vanijya Bhawan, New Delhi; DRDO, Delhi and IIT, Mumbai. Separate work orders had been issued for these projects for which separate invoices had been raised as running account bills by the Appellant. Since payments were not forthcoming, the Appellant on 21.10.2022 had issued a demand notice under Section 8 for an amount of Rs 8.23 Cr. and interest thereon @18%. In response to the Section 8 demand notice, the Respondent-Corporate Debtor replied on 31.10.2022 denying any outstanding dues qua the Operational Creditor besides raising several deficiencies in the performance of the Operational Creditor with respect to the execution of work by them. The Operational Creditor thereafter filed Section 9 application on 22.02.2023 which was rejected by the Adjudicating Authority vide impugned order dated 23.10.2023. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

**3.** Making submissions on behalf of the Appellant, Shri Vipul Ganda, Ld. Counsel submitted that the Adjudicating Authority while rejecting their Section 9 application had failed to appreciate the fact that though the Corporate Debtor had defaulted in clearing the outstanding operational debt which had arisen beyond the Section 10-A prohibited period and that this amount crossed the threshold limit of Rs 1 Cr. prescribed under Section 4 of the IBC. It was contended that the Adjudicating Authority while deciding on the maintainability of the Section 9 application should have kept in mind the fact that the invoices of the various projects were separate and the dates of default were also separate. Emphasis was laid on the fact that the default in respect of invoices pertaining to DRDO and IIT Bombay projects admittedly fell within the Section 10-A period but the relevant invoices in respect of Vanijya Bhawan Project fell outside the Section 10-A period. It was contended that the amount due and payable from the Vanijya Bhawan Project alone was Rs 2.36 Cr. The Adjudicating Authority had erroneously rejected the Section 9 application without taking notice of the invoices pertaining to Vanijya Bhawan Project.

**4.** Denying the issue of pre-existing disputes which had been raised by the Corporate Debtor, it was contended that the Vanijya Bhawan Project was completed in time and the building already inaugurated on 23.06.2022. It was also submitted that all the defects pointed out in the Snag List Report in respect of the Vanijya Bhawan Project had been remedied by them. They had issued a handing-over note to the Corporate Debtor on 08.10.2022 which note had also been acknowledged by the Corporate Debtor. Even NBCC which had contracted out this work to the Corporate Debtor had also issued a completion certificate. The Corporate Debtor has also availed Input Tax Credit which was reflected in their ledger in respect of the Vanijya Bhawan Project. The invoices dated 09.03.2022 and 13.07.2022 of Vanijya Bhawan Project which reflected on the GST Portal was sufficient proof of the Corporate Debtor having accepted the services rendered by the Operational Creditor. The Respondent did not raise any dispute until the receipt of Section 8 demand notice. The letters issued by the Corporate Debtor on 31.12.2020 and 10.02.2021 basis which Corporate Debtor has raised the bogey of pre-existing dispute were with respect to services provided in respect of the IIT, Bombay Project and not the Vanijya Bhawan Project. The disputes which have been raised by the Corporate Debtor in reply to the Section 9 application with respect to Vanijya Bhawan Project were raised only after filing of the Section 9 application which goes to show that the dispute was raised as an after-thought to overcome the Section 9 application. Hence, the allegation of pre-existing dispute raised by the Corporate Debtor were not only unfounded but an after-thought which ought not to have been taken cognizance of by the Adjudicating Authority. Even the factum of initiation of arbitration proceedings did not constitute a pre-existing dispute as these proceedings were filed much after the Section 8 Demand Notice.

**5.** Refuting the contentions of the Appellant, Shri Bhupesh Narula, Ld. Advocate on behalf of the Corporate Debtor-Respondent submitted that they had issued a demand notice on 19.10.2022 which was prior to the Demand Notice issued by the Appellant. It was emphatically asserted that when the Corporate Debtor had themselves issued a demand notice to the Appellant before the issue of Section 8 demand notice by the Appellant, this itself indicates pre-existing dispute. It was asserted that in their Demand Notice, they had claimed refund of excess payment made to the Operational Creditor to the tune of Rs 1.43 Cr. It was further pointed out that though the Operational Creditor had over-billed their invoices, instead of clarifying the issue of excess payment receipt, they issued a counter notice of demand on 21.10.2022 which was a frivolous notice of demand. It was submitted that the tax invoices and Input Tax Credits relied upon by the Appellant to substantiate their plea of outstanding debt did not contain the signature of the Corporate Debtor and such manipulated documents cannot be looked into. It was also mentioned that several communications were exchanged with the Operational Creditor regarding unexplained delay on their part in completing the work. The Operational Creditor had abandoned the projects midway and not having completed the works undertaken by them cannot rightfully claim any payment to be made to them. Since the Operational Creditor had abandoned the work, the Corporate Debtor had to make alternative arrangements to complete these works as these were time-bound works. The works were executed through alternative contractor viz. Global Aircon at a much higher rate because of which they had to suffer losses. It was added that Global Aircon was paid directly by the Corporate Debtor but the Appellant has mischievously raised invoices for the same works completed by Global Aircon. It was submitted that details of the payments made to Global Aircon was reflected by them in para 4 of their Reply to the present appeal at page 11. It was pointed out that at para 5 of the same Reply at page 13 other disputes relating to the invoices were also fleshed out. A reconciliation statement was also placed at para 7 of the same Reply at page 15-16 which statement shows that the Operational Creditor was liable to refund Rs 3.40 Cr. alongwith interest to the Corporate Debtor. It was further contended that the Appellant had no grounds to raise the Section 9 application because the Respondent had already invoked the

Arbitration Clause in terms of the work order and since the arbitration petition is pending, the continuance of the Section 9 application had become infructuous.

**6.** We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

**7.** The short question before us for consideration is whether the invoices raised by the Appellant-Operational Creditor in respect of Vanijya Bhawan Project in the Section 9 application fell within the excluded period of Section 10A or not.

**8.** To arrive at our findings, we may advert our attention to the Section 9 application with reference to details of the Vanijya Bhawan invoices set out therein along with invoice number, date of default and outstanding amount. The relevant particulars are as reproduced below:

***PART-IV***
***PARTICULARS OF OPERATIONAL DEBT***

| | | |
|---|---|---|
| *1.* | *Total amount of debt details of transactions on account of which debt fell due, and the date from which such debt fell due.* | ***Total amount of Debt***<br>*Rs. 8,23,72,560/- (Rupees Eight Crores Twenty-Three Lakhs Seventy-Two Thousand Five Hundred Sixty) along with 18% interest till the date of actual realization.*<br>*….*<br>*….*<br>*3. That, the Operational Creditor provided firefighting and HVAC services to the Corporate Debtor and was associated in the following three different projects staring from the year 2019:* |

*….*
*….*

| **S. No.** | **Name of the Project** | **Location** |
|---|---|---|
| *1.* | *Vanijya Bhavan* | *Delhi* |
| *2.* | *DRDO* | *Delhi* |
| *3.* | *IIT Bombay* | *Mumbai* |

*8. As per the invoices raised to the Corporate Debtor, the debt became due and payable became due and payable within 15 days of the receipt of the payment by the Corporate Debtor from their respective clients. The details of the said uncleared invoices are as under:*

| ***Invoice No.*** | ***Date of Default*** | ***Amount (Rs.)*** |
|---|---|---|
| ***Vanijya Bhawan, Delhi*** | | |
| *25/2021-2022* | *April 14, 2022* | *1,41,82,896* |
| *04/2022-2023* | *July 29, 2022* | *1,07,29,601* |
| ***Less:*** *Partly received amount for the invoice* | | *12,19,002* |
| ***Total (A)*** | | ***2,36,93,495*** |
| ***DRDO, Delhi*** | | |

*…..*

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<td>2.</td>
<td>Amount claimed to be in default and the date on which the default occurred.</td>
<td>….<br>….
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<tr><th>Invoice No.</th><th>Date of Invoice</th><th>Date of Default</th></tr>
<tr><td colspan="3">VANIJYA BHAVAN, DELHI</td></tr>
<tr><td>25/2021-2022</td><td>March 29, 2022</td><td>April 14, 2022</td></tr>
<tr><td>4/2022-2023</td><td>July 13 , 2022</td><td>July 29, 2022</td></tr>
<tr><td colspan="3">DRDO, DELHI</td></tr>
<tr><td>80/2020-2021</td><td>October 21,2020</td><td>November 6, 2020</td></tr>
<tr><td>108/2020-2021</td><td>February 15, 2021</td><td>March 3, 2021</td></tr>
<tr><td colspan="3">IIT BOMBAY</td></tr>
<tr><td>88/2020-2021</td><td>November 11, 2020</td><td>November 27, 2020</td></tr>
<tr><td>87 /2020-2021</td><td>November 11, 2020</td><td>November 27, 2020</td></tr>
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**9.** From the Part-IV entries, it becomes clear that the Appellant had raised claim against six invoices. Two out of six invoices related to the Vanijya Bhawan Project were dated 29.03.2022 and 13.07.2022 whose dates of defaults were 14.04.2022 and 29.07.2022. The dates of defaults of these two invoices undisputedly fall outside the Section 10-A period.

**10.** Having seen the Part-IV particulars, we now turn to the impugned order to find out how the Vanijya Bhawan Project invoices have been treated. The relevant excerpt of impugned order is as extracted below:

> *"**7. Analysis and Findings***
>
> *iii. As per **Section l0A** of the IBC, 2016 and the MCA Notifications dated 24.09.2020 and 22.12.2020, no application for CIRP may be filed for defaults occurring between 25.03.2020 to 24.03.2021. The*

*invoices based on which the present Application has been filed are dated 06.11.2020, 27.11.2020 and 03.03.2021. Therefore, the present Application is barred by Section l 0A of the IBC, 2016."*

**11.** From the above extracts, it is unambiguously clear that only invoices dated 06.11.2020, 27.11.2020 (two invoices) and 03.03.2021 have been recorded in the impugned order. These invoices undisputedly fall in the excluded period of Section 10-A. We also find that the Adjudicating Authority held the present Section 9 application to be not maintainable by taking notice of only three invoices dated 06.11.2020, 27.11.2020 and 03.03.2021. Where the Adjudicating Authority blundered was that it clearly failed to take note of the two invoices of the Vanijya Bhawan Project, the date of which invoices and their date of defaults unambiguously fell beyond the period covered by Section 10-A of IBC. Since the date of default arising out of these two invoices fall beyond the Section 10-A period, the Section 9 application could not have been dismissed by the Adjudicating Authority on grounds of Section 10-A. We find that the amount arising out of the two invoices in respect of Vanijya Bhawan Project which is more than the amount of threshold provided under Section 4 of IBC of Rs 1 Cr., the Section 9 application could not have been dismissed by the Adjudicating Authority without looking into these two invoices. It is pertinent to add here that during the oral submissions made before this Tribunal, the Appellant has categorically stated that they would like to confine their claims in the Section 9 application only with respect to these two invoices pertaining to Vanijya Bhawan Project.

**12.** In sum, we have no hesitation in concluding that the impugned order is unsustainable as it has failed to notice that the two invoices relating to Vanijya Bhawan Project are not covered by Section 10-A of IBC. We therefore find merit in the present Appeal. The appeal is hereby allowed and the impugned order is set aside. The application bearing CP No. 126 of 2023 is hereby restored and the matter is remanded back to the Adjudicating Authority to be considered again in accordance with law with the caveat that the claim of operational debt shall remain confined only to the two invoices relating to the Vanijya Bhawan Project dated 29.03.2022 and 13.07.2022. We also add here that we have not expressed any opinion on the contentions raised by both parties with respect to pre-existing dispute qua the Vanijya Bhawan Project. No order as to costs.

**[Justice Ashok Bhushan]**
**Chairperson**

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

**Place: New Delhi**
**Date: 07.01.2026**

Harleen