

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1105 of 2024 & I.A. No. 6587 of 2024

IN THE MATTER OF:

**Anil Kumar Seth (Suspended Director,
Supercast Technologies Pvt. Ltd.)**

...Appellant

Versus

Valplast Technologies Pvt. Ltd. & Anr.

...Respondents

Present:

**For Appellant : Mr. Krishnendu Dutta, Sr. Advocate along with
Mr. Milan Singh Negi, Mr. Lokesh Malik, Ms. Aakriti
Gupta & Ms. Atika Chaturvedi.**

**For Respondents : Mr. Mohd. Nazim Khan, Mr. Harshit Sikka &
Mr. Satyendra Sharma, for IRP.**

O R D E R
(Hybrid Mode)

[Per : Justice Rakesh Kumar Jain (Oral)]

26.05.2025 This appeal is directed against the order dated 14.05.2024 by which the National Company Law Tribunal, Allahabad Bench, Prayagraj (**'Tribunal'**) has admitted an application filed by M/s Valplast Technologies Pvt. Ltd. on 02.06.2023, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (**'Code'**), against M/s Supercast Technologies Pvt. Ltd. (**'Corporate Debtor'**) for the resolution of an amount of Rs. 2,29,48,069.19/- and appointed Satyendra Sharma as the IRP.

2. Shorn of unnecessary details, in this appeal, filed by the Suspended Director of the Corporate Debtor, the issue of pre-existing dispute, raised by the Appellant, has not been decided by the Tribunal in accordance with law.

3. It is submitted that the Tribunal has not looked into various emails/ letters exchanged between the parties which were attached with the reply affidavit from page 103 to 158, only on the ground that the Appellant did not reply to the demand notice issued under section 8 of the Code and also filed the reply to the main petition after the right to file reply were opened on payment of Rs. 15,000/- as cost.

4. It is submitted by the Appellant that it was not even necessary for the Appellant to file reply to the notice under Section 8 for proving that there was a pre-existing dispute between the parties for seeking dismissal of application filed under Section 9 of the Code. In this regard, he has relied upon a decision of this court rendered in the case of **M/s Brand Realty Services Ltd. vs. M/s Sir John Bakeries India Pvt. Ltd.** in Company Appeal (AT) (Ins.) No. 958 of 2020 decided on 10.03.2022. The relevant paragraph of this case read as under :-

*“12. ***Section 8(2) of the Code provides that the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor- (a) existence of a dispute. Section 9(1) of the Code provides that After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process. Section 8(2) when read with Section 9(1), it is clear that Section 9(1) enables the*

Operational Creditor to file Section 9 application if no payment has been received by the Operational Creditor from Corporate Debtor or no notice of the dispute under sub-section (2) of section 8 has been received. The statutory scheme under Section 8 and 9 does not indicate that in an event Reply to Notice is not filed within 10 days by Corporate Debtor or no Reply to Notice under Section 8(1) have been given, the Corporate Debtor is precluded from raising the question of dispute.”

5. Counsel for the Appellant has referred to the communication between the parties before this court which are appended with the memo of appeal to contend that if these communications are taken into consideration then the issue of pre-existing dispute shall be decided in their favour.

6. On the other hand, Counsel for the Respondent, while vehemently opposing the present appeal has submitted that despite the fact that the communication is there between the parties which is referred to by the Appellant in the memo of appeal as well as before this court in the course of hearing, yet there is no case made out to hold that there was a pre-existing dispute.

7. The issue of pre-existing dispute goes to the root of the application filed under Section 9 of the Code because if it is established that there was a pre-existing dispute before filing of the application under Section 9 then the same is not maintainable and has to be dismissed.

8. Therefore, while holding that the Tribunal has committed an error in ignoring the emails/ letters exchanged between the parties before the notice issued under Section 8 of the Code on 08.05.2023 which according to the

Appellant shows that there was a pre-existing dispute and according to the Respondent that there was no such pre-existing dispute but these letters could not have been ignored by the Learned Tribunal only the premise that since the Appellant failed to file reply to the notice issued under Section 8 of the Code and also the reply to the petition under section 9 was filed belatedly therefore, there the communication between the parties cannot be taken seriously.

9. We are of the considered opinion that finding of the Learned Tribunal is not acceptable as it is contrary to the well settled law that even if no reply is filed to the notice issued under Section 8 of the Code, the court is obliged to look into the material produced before it by the Corporate Debtor for proving that there was a pre-existing dispute between the parties before the issuance of notice under Section 8 of the Code.

10. With these observations, we set aside the Impugned Order and allow this appeal. The main petition bearing CP No. 36/ALD/ 2023 is hereby restored and is remanded back to the Learned Tribunal to be decided in accordance with law, after taking into consideration the emails/ letters exchanged between the parties before 08.05.2023 when the notice under Section 8 was issued.

11. The parties shall appear before the Tribunal on **02.07.2025**.

12. While passing this order, we make it clear to Counsel for the Parties and also to the Learned Tribunal that while passing this order, we have not decided the issue of pre-existing dispute and has left the same for the Tribunal to decide after going through the material on record, which was

earlier ignored on the pretext that the reply to the notice was not given. I.A.'s, if any, are closed. The parties may also file additional documents if so required. The Tribunal is requested to expedite the disposal of the application filed under Section 9.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

Sim/RR