

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

Company Appeal (AT) (Insolvency) No. 1222 of 2025

IN THE MATTER OF:

Gannon Dunkerley & Company Ltd.

...Appellant

Versus

RDC Concrete (India) Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Sumesh Dhawan, Mr. Dhaval Deshpande, Mr. Amir Arsiwala, Mr. Shaurya Shyam, Ms. Varsha Mohanty, Advocates.

For Respondents: Mr. Abdul Hameed, Sr. Advocate with Ms. Revathi Manivannan, Advocates.

J U D G M E N T

Ashok Bhushan, J.

This Appeal has been filed challenging the order dated 04.08.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench-VI in IA No.3245 of 2025 in CP (IB) No.412 (MB) 2025. By the impugned order, the Adjudicating Authority has rejected IA No.3245 of 2025 filed by the Appellant, the Corporate Debtor for taking additional documents on record. Aggrieved by the order rejecting the application, this Appeal has been filed.

2. Brief facts of the case and sequence of the events are:-

2.1. The Respondent No.1 (Operational Creditor) filed Section 9 petition on 18.12.2024. On 07.04.2025, the application came for consideration before the Adjudicating Authority on which date the Adjudicating Authority issued a notice to the Corporate Debtor, the Appellant herein and fixed 05.05.2025 for appearance and reply of the Corporate Debtor. The Corporate Debtor filed its reply on 02.05.2025. The Operational Creditor was allowed three weeks' time to file rejoinder and next date fixed for 09.06.2025. On 09.06.2025, Operational Creditor filed rejoinder and was directed to remove the defects. On 27.06.2025 which was next date the Adjudicating Authority noticing the willingness of the parties to explore settlement and adjourned the matter for 17.07.2025. 10th July 2025 was fixed by the Adjudicating Authority for negotiation on which date parties met but however, could not arrive at any settlement. On 16.07.2025, IA No.3245 of 2025 was filed by the Corporate Debtor, Appellant herein praying to take on record the additional documents filed by way of additional affidavit. Adjudicating Authority on 17.07.2025 adjourned the matter for 29.07.2025. On 29.07.2025, IA No. 3245 of 2025 was listed. Adjudicating Authority heard both the parties and reserved orders on maintainability of the application and next date of hearing fixed was 20.08.2025. By order dated 04.08.2025, the Adjudicating Authority rejected IA No.3245 of 2025.

2.2. Adjudicating Authority while rejecting the application observed that the Corporate Debtor had adequate opportunity to place the documents on record at two prior stages i.e. along with the reply to the statutory demand notice and at the time of filing the Affidavit-in-Reply dated 02.05.2025. Adjudicating Authority observed that a period of approximately 76 days elapsed between

the filing of the Affidavit-in-Reply and the filing of the application. Present is not a case where Court deems it appropriate to grant leave to the Corporate Debtor to produce additional documents. Aggrieved by the order rejecting IA No.3245 of 2025 for taking additional documents on record, this Appeal has been filed.

3. We have heard Counsel for the Appellant as well as Counsel appearing for the Operational Creditor, Respondent herein.

4. Counsel for the Appellant submits that the present is a case where Corporate Debtor did not pray for extension of any time for filing the reply to Section 9 application and the same was filed within time. It is submitted that in the reply filed to Section 9 application, the Corporate Debtor has referred to contemporaneous correspondence and certain letters were filed along with the reply-affidavit but certain other relevant documents could not be placed for which leave was sought to. It is submitted that the documents ought to be placed where all contemporaneous correspondence showing the deficiency in service and loss suffered by Corporate Debtor which were relevant for consideration of Section 9 application filed by Operational Creditor. It is submitted that no delay has been caused by Corporate Debtor nor at any stage nor any adjournment was sought by the Appellant. It is submitted that before the next date which was fixed by Adjudicating Authority for informing about the settlement, application was filed when the settlement has not resulted any positive result. It is submitted that the Adjudicating Authority committed error in not accepting the relevant documents which are necessary

for deciding the issue raised by the Corporate Debtor in reply to Section 9 application.

5. Counsel appearing for the Respondent opposing the submission of Learned Counsel for the Appellant submits that in the reply notice dated 08.08.2024, the Corporate Debtor has only referred to the verbal concerns regarding alleged irregularities and deficiencies in supplying material. No reference was given to any correspondences, hence, there was no occasion to bring additional documents. Further, it is not proved that the documents which is sought to be produced as on date were not available with the Corporate Debtor. The pleadings were completed in the proceeding and Court has also granted time to both the parties to file their brief submissions and at this stage, Adjudicating Authority has rightly rejected the application for taking additional documents on record, endeavour of the Corporate Debtor to delay disposal of Section 9 application, hence, Adjudicating Authority has rightly rejected the application.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. From the sequence of the events, as noticed above, it is clear that first date after issuance of notice by the Adjudicating Authority was 05.05.2025 and the Corporate Debtor has filed its reply on 02.05.2025. Corporate Debtor did not take any extension of time and complied the order by filing the reply on the date fixed. The Operational Creditor took time for filing rejoinder-affidavit and thereafter when the matter was taken on 27.06.2025 where

Adjudicating Authority passed following order noticing that the parties have expressed their willingness to explore the settlement. On 27.06.2025, following order was passed:-

- “1. After a brief hearing, both the parties expressed their willingness to explore the settlement in the matter. Accordingly, a meeting between the Applicant herein and the Corporate Debtor is fixed for 10.07.2025 at the registered office of the Corporate Debtor at 3:00 PM.*
- 2. Both the parties to report the outcome of the same by way of a joint pursis.*
- 3. Relist this matter on 17.07.2025.”*

8. On 10.07.2025, parties met but could not arrive at any settlement and it was on 16.07.2025, IA No.3245 of 2025 was filed. It is useful to notice certain paragraphs of the application and the case set up by the Corporate Debtor to bring additional documents on record. Paragraphs 7, 9, 10, 11 & 13 are as follows:-

“7. The said alleged claim arises out of supplies of Ready-Mix Concrete (RMC) made by the Petitioner at various project sites of the Applicant/Corporate Debtor pursuant to independent Purchase Orders. It is the consistent case of the Corporate Debtor that RDC Concrete's performance was seriously deficient and caused the Corporate Debtor substantial financial loss. Despite raising multiple grievances, the Petitioner issued a statutory demand notice under section 8 of the Code, which was again very well addressed and replied by the Applicant/Corporate Debtor where the issue of pre-existing dispute was also raised. The

Petitioner, however, proceeded to file the present Section 9 Petition.

9. The Applicant states that the purpose of the present application is limited to the liberty of bringing on record a comprehensive set of contemporaneous documents which are vital to the fair adjudication of the present Company Petition. These documents substantiate the Corporate Debtor's consistent stand that there existed serious and ongoing disputes between the parties much prior to the issuance of the statutory demand notice. They also establish that the Operational Creditor's claim is not only disputed but is also exaggerated and unsubstantiated in law and on facts.

10. The Applicant/Corporate Debtor by way of an Additional Affidavit seeks to place on record extensive project-wise correspondence exchanged between the parties in relation to four major project sites, namely: TSK, JSL, UTCL--Cuttack, and MPWI-Farakka. These communications detail the chronology of supply issues, non-performance, quality deficiencies, interruptions in Ready-Mix Concrete (RMC) supply, and the repeated grievances raised by the Applicant with the Petitioner.

11. The Applicant/Corporate Debtor also seeks to place on record reconciliation statements, internal notes, and cost assessments prepared across different project sites. These documents capture the financial implications of RDC's failure to supply adequate and quality concrete in a timely manner. They include comparative assessments showing variance between quantities billed by the Petitioner and quantities actually accepted or certified by the Applicant's clients. These records form the basis of the recoverable amounts claimed by the Applicant and support its

defence that no admitted liability exists. The Applicant states that the Applicant has already prepared the requisite additional affidavit having the abovementioned documents annexed to it. A copy of the said Additional Affidavit is hereto annexed and marked as Annexure - 2.

13. These documents, though referred to and partially annexed in the Affidavit in Reply, were not filed in entirety earlier due to the voluminous nature of the records and the need for collation from multiple project offices. The Applicant has now completed this exercise and seeks the Hon'ble Tribunal's leave to place these materials on record to assist in the complete and fair adjudication of the matter. The documents sought to be filed form part of the same transactional relationship and go to the root of the dispute. They are directly relevant to the question of maintainability of the Petition, and more specifically, whether the alleged debt is "disputed" within the meaning of Section 9 of the Code."

9. When we look into the reply filed by the Corporate Debtor, the Corporate Debtor has referred to certain correspondences between the parties which was prior to issuance of demand notice which was served on 30.07.2024. By the application, the Corporate Debtor has sought to bring on record the certain contemporaneous correspondence to substantiate the pleas which were already taken in the Affidavit-in-Reply. Adjudicating Authority in the impugned order has taken view that the Corporate Debtor had adequate opportunity to place the documents on record at two prior stages. In paragraph 16 of the order, following was observed:-

“16. Upon consideration, we observe that the Applicant had adequate opportunity to place the aforesaid documents on record at two prior stages:

(a) Along with the reply to the statutory demand notice dated 30.07.2024, which was replied to by the Corporate Debtor vide the Reply Letter dated 08.08.2024; and

(b) At the time of filing the Affidavit-in-Reply dated 02.05.2025.

Despite these opportunities, the Applicant failed to bring these documents on record. It is further noted that a period of approximately 76 days (2 months and 15 days) elapsed between the filing of the Affidavit-in-Reply and the filing of the present application on 17.07.2025. The Applicant herein (i.e. the Corporate Debtor in the captioned Company Petition) has failed to show that the aforesaid documents were not in its custody/possession or despite due diligence, the Applicant could not discover them or that there was a sufficient cause by which the Applicant was prevented from placing those documents on record of this Tribunal.”

10. We are of the view that there is no occasion to submit the documents on record while giving a reply to the demand notice. Reply to demand notice is contemplated in sub-section (2) of Section 8 which provides as follows:-

“8. Insolvency resolution by operational

creditor. - (2) *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, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.”

11. In the reply to demand notice, the Corporate Debtor has to bring to the notice of the Operational Creditor (a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings; (b) the payment of unpaid operational debt. Sub-section (2) of Section 8 does not contemplate filing of any other record or document except those referred to in sub-section (2). We do not subscribe to the view of the Adjudicating Authority that at the time of submitting reply to the demand notice Corporate Debtor had opportunity to place the documents which are sought to be filed along with the IA on record. It is true that at the time of filing of Affidavit-in-Reply, all

necessary documents could have been filed but the question of submission of additional documents only arises when pleadings are complete and any document which may deem necessary by the parties has not been brought on the record. Rule 55 of the NCLT Rules, 2016 empowers the Court to grant leave on such terms as the Tribunal may deem fit subsequent to filing of reply, thus, accepting additional documents after filing reply is contemplated by the rule itself. Adjudicating Authority in the impugned order has referred to the judgment of the Hon'ble Supreme Court in **“Dena Bank vs. C. Shivakumar Reddy and Anr- (2021) 10 SCC 330”**. Adjudicating Authority has referred to paragraph 144 of the judgment (paragraph 142 of the SCC). Another relevant paragraph of the judgment is paragraph 89. Paragraphs 89 and 142 of the judgment are as follows:-

“89. On a careful reading of the provisions of the IBC and in particular the provisions of Sections 7(2) to (5) IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.

142. There is no bar in law to the amendment of pleadings in an application under Section 7 IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 IBC in Form 1. In the absence of any express provision which either prohibits or sets a time-limit for filing of additional documents, it cannot be said that the adjudicating authority committed any illegality or error in permitting the appellant Bank to file additional documents. Needless however, to mention that depending on the

facts and circumstances of the case, when there is inordinate delay, the adjudicating authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the adjudicating authority to entertain and/or to allow the request of the appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.”

12. In paragraph 89, the Hon’ble Supreme Court has categorically laid down that there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed. Paragraph 89 has not been brought into the notice of the Court. It is true that it is the discretion of the Court to accept or not to accept the additional documents but the discretion has to be exercised objectively and judicially.

13. The present is a case where the Corporate Debtor has neither taken any adjournment nor has been prolonging the proceeding. Neither any finding has been recorded by the Adjudicating Authority that the Corporate Debtor is causing delay in disposal of the proceeding. It is true that if a party causes undue delay and is prolonging proceeding, Adjudicating Authority can refuse to exercise its discretion in accepting the document. The facts of the present case, as noted above, clearly indicate that reply was filed by the Corporate Debtor within the time allowed by the Court without seeking any extension of time. Adjudicating Authority itself granted opportunity to explore settlement by its order passed on 27.06.2025 and on 27.06.2025, the next date fixed was

17.07.2025 when parties to report the outcome of the settlement. Before the next date i.e. 17.07.2025, IA No.3245 of 2025 dated 16.07.2025 was filed. We, thus, are of the view that the Adjudicating Authority has erred in observing that 76 days having elapsed between filing of the reply and Corporate Debtor has failed to show that documents were not in its possession despite due-diligence. From the pleadings in the IA No.3245 of 2025 as noted above, the reasons have been given by the Corporate Debtor for praying to take additional documents on record. Counsel for the Respondent sought to contend that in reply to demand notice, Corporate Debtor has only referred to the verbal concerns regarding alleged irregularities and deficiencies in supplying material, hence, there was no occasion to bring additional documents on record. We, in the present case, are only examining the issue as to whether documents ought to have been taken on the record or not. The relevancy of the document has neither been adjudicated by the Adjudicating Authority nor it is necessary for us to express any opinion on the relevancy of the documents which are sought to be brought on the record by the Corporate Debtor and it is for the Adjudicating Authority to consider the same.

14. We need to notice one more judgment of the Hon'ble Supreme Court in ***"Sugandhi (Dead) by legal representatives & Anr. vs. P. Rajkumar (2020) 10 SCC 706"*** which was a case where document filed by Defendant in a suit was not accepted. Revision Petition before the Madras High Court was rejected against which the Appeal was filed. Allowing the Appeal in paragraphs 9, 10 & 11, following was held:-

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

10. Coming to the present case, the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the suit. We are of the view that the courts below ought to have granted leave to produce these documents.

11. Therefore, for the foregoing reasons, the appeal succeeds and it is accordingly allowed. The orders impugned herein are set aside. The application (IA No. 551 of 2018 in OS No. 257 of 2014) filed by the appellant-defendants before the Principal Sub-Judge, Pudukottai, is accordingly allowed. Parties to bear their own costs.”

15. We need to notice one more aspect of the matter. The application IA No.3245 of 2025 came for consideration before the Adjudicating Authority on

29.07.2025 and Adjudicating Authority on that date reserved the orders in IA for issuance of notice and maintainability of the application. It is useful to extract the entire order dated 29.07.2025 which is as follows:-

“IA 3245/ 2025 & CP 412/ 2025

1. This IA has been filed seeking the following prayers:

- i) Allow the present Interlocutory Application be pleased to take on record the additional documents filed by way of an Additional Affidavit, in support of its defence in the captioned Company Petition;*
- ii) Any other order that this Hon’ble Tribunal may deem fit in the facts and circumstances of this case.*

2. We have heard the Counsel for the Applicant in the IA 3245 of 2025.

3. We have also heard the Ld. Counsel for the Respondent in the IA 3245 of 2025 today, who is opposing the IA.

4. We are reserving the orders in IA 3245/ 2025 for issuance of notice and maintainability.

5. As IA 3245 of 2025 has been reserved today for orders on maintainability and issuance of notice. C.P. 412 / 2025 is deferred to be listed on 20.08.2025.”

16. The present is not a case where application filed by the Corporate Debtor was held not maintainable nor any such finding has been entered by the Adjudicating Authority in the impugned order. Adjudicating Authority although have not held that application is not maintainable but rejected the application on merits where order was reserved **for issuance of notice and maintainability**.

17. After having heard counsel for the parties, we are of the view that present was a case where sufficient cause has been made out by the Corporate Debtor in IA No.3245 of 2025 to take additional documents on record. In result, we set aside the order dated 04.08.2025, allow the prayers made in IA No.3245 of 2025 and take additional documents on record. Respondent i.e. Operational Creditor is also allowed three weeks' time to file reply to the additional documents. Both the parties may request the Adjudicating Authority to fix the date after three weeks to hear Section 9 application in accordance with law. We make it clear that we have not expressed any opinion on the merits of the additional documents brought on the record by IA No.3245 of 2025.

18. Appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

22nd August, 2025

Anjali