

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

**Company Appeal (AT) (Insolvency) No. 1029 of 2024
& I.A. No. 3516 of 2024**

In the matter of:

Chandra Nirman Pvt. Ltd

....Appellant

Vs.

Orient Paper & Industries Ltd.

...Respondent

For Appellant

Mr. Sanyam Jain, Advocate.

For Respondent

ORDER

(Hybrid Mode)

02.07.2024: This Appeal has been filed against the order dated 01.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal) Cuttack Bench, Cuttack by which Section 9 application filed by the appellant has been dismissed on the ground of pre-existing dispute.

2. Learned Counsel for the Appellant submits that in the proceeding under Section 34 of the Arbitration & Conciliation Act, 1996, the Corporate Debtor has admitted the amount which is due to the Operational Creditor. He has referred to the application filed at page 450-451 of the paper book.

3. Adjudicating Authority has, after hearing the parties, returned following findings in paragraphs 9 and 14:-

“9. Section 8(2)(a) of IBC 2016 refers that the pending arbitration proceedings filed before the receipt of demand notice under section 8(1) of IBC 2016 is an existing dispute. In this case the petitioner sent section 8(1) demand notice dated 28.03.2022 (Annexure J of petition) by post on 30.03.2022. They were served on 01.04.2022, 04.04.2022 and

07.04.2022. The reply notice dated 18.04.2022 (Annexure K of petition), on the same date e-mail reply was served upon the petitioner, postal reply served on 22.04.2022. In the reply notice it is mentioned about the passing of additional award by the Arbitrator dated 29.01.2019 and referred about the pending two Arbitrations before two different courts at Jabalpur and Shahdol and pending OF the Transfer petition filed by the petitioner to transfer the Arbitration Application pending before the Jabalpur District court to Shahdol District court. Thus, the respondent raised the existence of dispute in its reply notice. Then the petitioner filed this petition in this Adjudicating Authority on 21.07.2022 after expiry of more than three and half months without assigning any reasons.

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14. In the circumstances an application filed against an arbitral award under section 34 of the Arbitration and Conciliation Act 1996 Act would be construed as a 'pre-existing dispute' under the IBC 2016. As such, an arbitration award which is under challenge cannot be enforced as an 'operational undisputed debt' under section 9 of the IBC, and it is answered to the point that a pre-existing dispute exist between the parties.”

4. The demand notice in the present case was dated 28.03.2022. it was served on 01.04.2022 and thereafter reply notice was also given to the demand notice. Reply notice mentioned about passing of additional award by the arbitrator dated 29.01.2019 and referred about the pending two arbitrations in two different courts at Jabalpur and Shahdol. It was also mentioned that

the transfer petition was filed by the petitioner to transfer the arbitration application pending before the Jabalpur Court. It is clear that the arbitration proceedings were pending between the parties since before issuance of demand notice.

5. The submission of the counsel for the appellant is based on pleadings in application under Section 34 and submits that in view of the pleadings, there is acknowledgment of dues of the operational creditor, hence, application ought to have been admitted under Section 9. We do not find any substance in the aforesaid submission when the dispute is pending prior to demand notice. This is a pre-existence dispute and in Section 9 proceeding the court will not proceed to determine the amount to which the operational creditor may be entitled because those are the subject matter of the arbitration proceedings. Hence, Adjudicating Authority did not commit any error in rejecting Section 9 application on the ground of pre-existence dispute.

6. We do not find any error in the order of the Adjudicating Authority. The appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

Anjali/nn