

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

Company Appeal (AT) (Insolvency) No. 416 of 2023

&

I.A. No. 1382, 1369 of 2023

IN THE MATTER OF:

JHS Svendgaard Laboratories Ltd.

...Appellant

Versus

HT Media Ltd.

...Respondent

Present:

For Appellant: Mr. Harsh Sethi, Ms. Anushree Malaviya, Mr. Anant Nigam, Advocates

For Respondent: Mr. Vanita Bhargava, Ms. Wamika Trehan, Mr. Siddhant Kumar, Advocates

ORDER

18.04.2023: Heard Learned Counsel for the Appellant as well as Respondent.

2. This Appeal has been filed against the Order dated 03rd January, 2023 by which order the Adjudicating Authority has dismissed Section 9 Application of IBC, 2016 filed by the Appellant. The Adjudicating Authority after hearing the parties took the view that email communication between the parties indicate that there was pre-existing dispute hence the issues can not be decided in the proceeding. In paragraph 21 to 23, following has been observed:

“21. In addition to the above, there were further email communications between the parties on 12.07.2021, 11.08.2021, 14.09.2021, 06.10.2021, 14.01.2022 and 17.01.2022.

22. *Thus, it is evident that there has been difference of interpretation between the parties in regard to the overall tenure of the agreement under reference. Whereas, the Applicant vide its email dated 02.06.2021 has contended that the extension of the term of the Agreement by 6+6 months given by the Respondent in 2018 has already increased the total term period of the Agreement to 2022-23, the Respondent has denied such an extension and stated that the Agreement was valid only till January, 2022 only. We are unable to see any unambiguous email or document on record, by the Respondent to the Applicant, which could demonstrate beyond doubt that the Respondent had either extended the overall term of the Agreement or admitted that the Agreement was in existence after January 2022. Furthermore, there is no addendum to the original Agreement between the parties, which could establish that the tenure of the entire agreement was extended. Hence, in our considered view, the Application has been pursued for a disputed debt. Needless to say, that this Adjudicating Authority is not a dispute redressal forum.*

23. *Further, this Bench observes that the Demand Notice in the instant case was issued by the Applicant on 21.02.2022, whereas all the above referred e-mail communications are of the dates prior to the issuance of the demand notice, which makes us to conclude that there is a pre-existing dispute between the parties in relation to the tenure and extension of the Agreement.”*

3. Learned Counsel for the Appellant challenging the Order contends that the email at page 76 of the Appeal Paper Book indicate that there was

extension of six months period hence the period of the total term was extended for six months that is up to June, 2022.

4. We have looked into the email where it has been stated that “extension of six months for first year ad spend”. The said email can not be read that overall period of tenure of the agreement was extended for six months.

5. Be that as it may, there being email as referred by the Adjudicating Authority between the parties before issuance of Section 8 Notice, there was pre-existing dispute between the parties hence it was not a case for admission of Section 9 Application and Application has rightly been rejected.

6. Learned Counsel for the Respondent submits that there is dispute resolution clause in the contract and if so advised, the Appellant can take recourse as per law. We have not expressed any opinion on the merits of the claim of the parties. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

Basant/nn