

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

**Company Appeal (AT) (Insolvency) No. 318 of 2021**

**In the matter of:**

**Meena Jain  
Proprietor, Tanu Traders**

**....Appellant**

**Vs.**

**Silvertoan Papers Ltd.**

**...Respondent**

**Company Appeal (AT) (Insolvency) No. 319 of 2021**

**In the matter of:**

**Sarita Jain  
Proprietor, Pratham Traders**

**....Appellant**

**Vs.**

**Silvertoan Papers Ltd.**

**...Respondent**

**Company Appeal (AT) (Insolvency) No. 320 of 2021**

**In the matter of:**

**Ankur Jain  
Proprietor, Tanya Traders**

**....Appellant**

**Vs.**

**Silvertoan Papers Ltd.**

**...Respondent**

**Company Appeal (AT) (Insolvency) No. 323 of 2021**

**In the matter of:**

**Amit Jain  
Proprietor, Aadi Traders**

....Appellant

**Vs.**

**Silvertoan Papers Ltd.**

...Respondent

**For Appellant:** Mr. Jay Salva, Senior Advocate with Mr. Prabhat Kr. Chaurasia, Advocate.

**For Respondent:** Mr. P. Nagesh, Senior Advocate with Mr. Akshay Sharma, Advocate.

**J U D G M E N T**  
**(03<sup>rd</sup> February, 2022)**

**Ashok Bhushan, J.**

1. These Appeals have been filed against the judgment and order dated 05.03.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench-VI, rejecting separate Applications filed by the Appellants under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code” for short). All these Appeals raising common question of law and facts have been heard together and are decided by this common judgment. It is sufficient to refer the facts and pleadings in Company Appeal (AT) (Ins.) No. 318 of 2021 to decide all these Appeals.

The Appellant, an Operational Creditor, claim to have supplied the Wheat Straws to the Corporate Debtor on oral order placed by the Corporate Debtor between 21.04.2016 to 10.09.2016. Appellant raised invoices aggregating to Rs. 60,71,538/-. The last payment was received on 26.07.2016. Demand Notice dated 20.03.2019 under Section 8 was issued by the Appellant to the Corporate Debtor demanding outstanding amount of

Rs. 35,71,097/- plus interest. Section 8 Notice mentioned that 'amount fell due on 10.09.2016. Notice was replied by the Corporate Debtor vide its Reply dated 24.04.2019 which reply was referred as 'Notice of Dispute under Section 8 (2) (a)'. In the Reply, the Corporate Debtor disputed the claim. It was further pleaded that on 18.02.2017, Corporate Debtor called up a meeting of several reputed business persons of Muzaffarnagar where it was proposed by the Operational Creditor to supply back the quantity of the similar material. Consequently, on 05.03.2017, the material was supplied back to the Operational Creditor. The Operational Creditor filed an Application under Section 9 of the Code dated 26.11.2019 being Company Petition No. IB-3129/(ND)/2019 claiming debt of Rs.35,71,097/- with interest. The Application under Section 9 further mentions that the Corporate Debtor has acknowledged and confirmed the statement of accounts on 01.04.2017 although debt fell due on 10.09.2016. Application under Section 9 was replied by the Corporate Debtor where it was pleaded that payments were made to the Applicants against the material supplied and Corporate Debtor had called a meeting on 18.02.2017 in presence of reputed persons of the district where Applicants had proposed to supply back the quantity of similar material which the Applicant had supplied to the Corporate Debtor in consequence of which on 05.03.2017 material was supplied back. Corporate Debtor mentioned that after receipt of demand notice, notice of dispute was issued by the Corporate Debtor, it was pleaded that facts of supply back can be proved with the corresponding VAT/GST, Excise and Income Tax etc. The Corporate Debtor after looking to the

account confirmation paper dated 01.04.2017 lodged a First Information Report against the Operational Creditor alleging fabrication of document dated 01.04.2017 on which First Information Report has been lodged and criminal proceedings are pending.

**2.** Learned Adjudicating Authority by the impugned judgment rejected the Application under Section 9 on two grounds. Firstly, the Application is barred by time since the document of acknowledgment is being disputed the criminal proceedings are pending against the same and secondly, there are pre-existing dispute between the parties. The Appellant aggrieved by the said order has come up in the Appeal.

**3.** Shri Jay Salva, Learned Senior Counsel for the Appellant submits that by virtue of confirmation of the accounts by the Accountant of the Corporate Debtor on 01.04.2017 there shall be fresh period of limitation and Application under Section 9 cannot be said to be barred by time. It is submitted that the First Information Report alleging fraud and forgery was filed much after filing of the Application under Section 9, hence, cannot be relied. One Shri Devpal, the Accountant of the Corporate Debtor has signed the acknowledgment. Although it is claimed by the Corporate Debtor that decision was taken to re-supply the material, where supply of material by vehicles have been mentioned by Motor Cycle, scooter etc. which belies the claim of re-supply of the material.

**4.** Shri P. Nagesh, Learned Senior Counsel for the Respondent refuting the submissions of the Counsel for the Appellant contends that Application

was clearly time barred since according to the own case of the Applicant, the debt fell due on 10.09.2016 and the Application was filed in November, 2019. It is submitted that the acknowledgment dated 01.04.2017 was a forged document. The Corporate Debtor never acknowledged the debt. The document filed by the Operational Creditor on face of it is clearly forged. It is submitted that the name of the Corporate Debtor is mentioned in account confirmation document as “Silvertoan Papers Mills Ltd.” whereas the correct name of the Corporate Debtor is “Silvertoan Papers Limited”. The signature appended on the document of authorised signatory has also been forged. Person is claimed to have been signed as ‘Devpal’ whereas the correct name of accountant is ‘Deopal’ and signs as ‘Deopal’. The Corporate Debtor after coming to know about the forgery committed in the document dated 01.04.2017 has filed criminal complaint which an F.I.R has been registered on 17.11.2019. Further, return of the stock on 05.03.2017 was fully proved from the returns filed in the Sales Tax Act and the claim of the Appellant that they did not return back is wholly false and frivolous. It is submitted that the date of default in notice under Section 8 dated 20.03.2019 is 10.09.2016 and there was no claim of any extension of limitation in the notice under Section 8 whereas notice of dispute was issued by the Corporate Debtor after receipt of the demand notice where details of dispute and re-supply of the materials have been specifically pleaded.

**5.** We have considered the submissions of the Learned Counsel for the parties and perused the record.

6. The Adjudicating Authority has rejected the Application under Section 9 holding it to be barred by time. It was the case of the Appellant-Operational Creditor itself that amount fell due on 10.09.2016 which is mentioned in Section 8 notice. The Operational Creditor before the Adjudicating Authority claim extension of limitation on the basis of account confirmation dated 01.04.2017 allegedly signed by one Devpal the Accountant of the Corporate Debtor. The Corporate Debtor in reply has disputed the claim of the Appellant and has filed a criminal complaint regarding forgery of the document dated 01.04.2019 on which First Information Report has been registered and criminal proceedings are pending. When the very basis of the claim of the Operational Creditor that their Application is within time is under cloud and is disputed by the Corporate Debtor, no error has been committed by the Adjudicating Authority by not placing reliance on account confirmation document dated 01.04.2017 for giving extension of the limitation to the Operational Creditor.

7. In addition to above, there is one more reason due to which the Application under Section 9 deserves a rejection. A notice of demand dated 20.03.2019 was issued by the Operational Creditor under Section 8 claiming the outstanding amount which was replied by notice dated 24.04.2019. Subject of the reply dated 24.04.2019 is as follows:-

*“Subject: Notice of dispute under Section 8(2)(a) of the Insolvency and Bankruptcy Code in response to your Demand Notice, allegedly issued under the Insolvency and*

*Bankruptcy Code, 2016 and Rules and Regulations made there under.”*

8. In reply notice, the claim of the Appellant for outstanding amount was disputed. In reply, it was pleaded that the Corporate Debtor had supplied back the similar material on 05.03.2017. In paragraph 6 under the heading ‘concealment of material facts’ wherein clause (d), following was stated:-

*“d) That aggrieved by your mischievous behaviour and nuisance created by you at our client’s business premises, our client called up a meeting dated 18.02.2017 in the august presence of the reputed business persons of Muzaffarnagar namely Mr. Pankaj Agarwal, Chairman Muzaffarnagar Paper Manufactures Association, Mr. Naushad Ahmad, Village Pradhan, Daulatpur Village apart from the Managing Director of our client Company Mr. Amrish Kumar, other Directors at our Mill, situated at 9<sup>th</sup> KM Stone, Bhopa Road Muzaffarnagar to settle out the dispute. That in such meeting you yourself had categorically proposed to supply back the quantity of the similar material which you had supplied to our client. Consequently, against your proposal, our client has supplied the material to you on 05.03.2017 and thereafter nothing remains due to be paid from our client side. The said fact can also be corroborated from the various returns and balance sheet of our client. The copies of bills are attached herewith as **Annexure-A** and the copy of the Ledger is also attached herewith as **Anne xure-B**.”*

9. In paragraph 13 of the reply notice, following was stated:-

*“13. That without prejudice to the instant notice of dispute, our client is in the process of initiating appropriate legal action e.g. filing a criminal complaint under the Provision of Indian Penal Code for fraud, forgery, misrepresentation, Defamation and Criminal breach of trust.”*

10. It is relevant to notice that the reply notice of the Corporate Debtor dated 24.04.2019 was responded by the Appellant by way of letter dated 02.07.2019, response has been filed as Annexure A-10 filed by the Appellant herself. The claim of the Corporate Debtor that the materials have been supplied back has been denied. In reply to paragraph 6(d) where the Corporate Debtor has categorically pleaded regarding supply back of the similar materials, it has been answered by the Operational Creditor in paragraph 6(a)-(e) which is to the following effect:-

*“6(a)-(e). That the contents of para 6(a) to 6(e) under response are blatant lie and same has been illegally manufactured to falsely and malafidely create dispute in the case hence, the contents of para 6(a) to para 6(e) are wrong and vehemently denied. It is submitted that your client is put to strict proof thereof to corroborate the false and frivolous averments made under the paras under response. It is further submitted that your client have forged and manufactured false bills, ledger accounts etc. in order to achieve their malafide and deceitful designs. That the averments in the paras under response are also proven to be false and*

*fabricated from the fact that our client supplied the materials during April, 2016 to September, 2016 and your client after accepting all the materials supplied by our client without any demur or protest, has also made part payments aggregating to Rs.25,00,441/- through RTGS and the last payment was made by your client on 26.07.2016. It is correct that our client was supplier to your client and had supplied wheat straw and loose baggages to your client as detailed in demand notice dated 20.03.2019. It is wrong and vehemently denied that the materials supplied by our client was of inferior quality. It is wrong and specifically denied that there was any meeting held on 18.02.2017. It is also wrong and vehemently denied that our client proposed to supply back similar material to your client. It is submitted that your clients have stated false averments with malafide intention to avoid payment of outstanding dues or our client.”*

**11.** The allegation of supply back of the material is being disputed. The claim of supply back of the material was raised by the Corporate Debtor on 05.03.2017 in response to meeting dated 18.02.2017. The notice under Section 8 was issued by the Operational Creditor on 20.03.2019 i.e. much after the claim of the Corporate Debtor to supply back the material which was in 2017 i.e. two years thereafter. The Operational Creditor disputing the claim of supply back of the similar material itself is a dispute which is clearly mentioned in the reply notice of the Corporate Debtor. These issues could not have been gone into the proceeding under Section 9 and there being pre-existing dispute between the parties the Application under Section 9 filed by

the Appellant has rightly been rejected. We thus, are of the view that no case has been made out to interfere with the order passed by the Adjudicating Authority rejecting Section 9 Application. There is no merit in the Appeals. All the Appeals are dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Dr. Alok Srivastava]  
Member (Technical)**

**New Delhi**  
Anjali