



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-V  
(SPECIAL BENCH)**

**Company Petition No. (IB)-532(ND)/2022**

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016**

**In the matter of:**

**M/s. SSP PRIVATE LIMITED**

**.... Applicant/ Operational Creditor**

**VERSUS**

**M/s. GOVIND JEE DAIRY MILK PRIVATE LIMITED**

**.... Respondents/ Corporate Debtor**

**CORAM:**

**SH. ASHOK KUMAR BHARADWAJ, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 28.03.2023**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

The instant company application is filed on behalf of M/s. SSP Private Limited ('applicant'), under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Govind Jee Dairy Milk Private Limited bearing CIN: U74899DL1987PTC027361 on the ground that the Corporate Debtor committed a default in payment of Rs. 2,48,36,383.56/- which includes Principal amount of Rs.1,42,00,000/- and interest of Rs.1,06,36,383.56/- calculated from 01.11.2014 to 27.04.2022.



2. The Corporate Debtor i.e., M/s. Govind Jee Dairy Milk Private Limited bearing CIN: U74899DL1987PTC027361 is incorporated on 20.03.1987 under the provisions of the Companies Act, 1956 having its registered office situated at F-405, Sudershan Park, Near E.S.I. Hospital, Ring Road, Punjabi Bagh, New Delhi-110015. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
  
3. Succinctly, stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question and averred by the applicant, is that the Applicant and the Corporate Debtor had entered into a purchase order dated 30.01.2013 for the supply, installation and commission of 40 TDP Milk/Baby Food Powder Plant, pursuant to which several invoices were raised between 07.08.2013 to 29.10.2014 by the Applicant herein, for the work undertaken during the period as per the covenant of the Purchase Order dated 30.01.2013. The Applicant adds that the Corporate Debtor had issued a Completion Certificate dated 03.03.2015 to the Applicant, being fully satisfied with the work completed by the Applicant.
  
4. Further, it is also submitted by the Applicant that the Corporate Debtor had defaulted in the repayment of the invoices raised pursuant to the work order, consequent to which the Applicant had sent a letter dated 16.09.2019 to the Corporate Debtor stating the Contractual obligations as per the purchase order being satisfied and an amount of Rs.1,62,00,000/- being outstanding. It was submitted that even after receiving the letter dated 16.09.2019, the Corporate Debtor defaulted in payment of the outstanding invoices and sent a letter dated 03.10.2019 to the Applicant requesting to take back the machinery supplied and further stated that the Corporate Debtor will pay the balance amount after settlement in winter season.



5. It is also submitted that the Applicant being left with no recourse had sent a Demand Notice dated 25.01.2021 under Section 8(1) of Code demanding a sum of Rs.2,23,03,627/- together with an interest of 18% p.a. and the same was delivered to Corporate Debtor on 28.01.2021. The Applicant adds that the Corporate Debtor on knowledge of the petition i.e., C.P.(IB) 454/2021 filed under Section 9 of the Code had acknowledged the outstanding principal debt of Rs.1,62,00,000/- and entered into a settlement agreement dated 13.08.2021 with the Applicant wherein the Corporate Debtor undertook to repay the outstanding Operational Debt in eight installments starting from 16.08.2021 till 07.01.2023, consequent to which the Applicant vide I.A./3952/2021 had withdrawn the C.P.(IB) 454/2021.
  
6. Further, it is submitted that in the light of the settlement between the parties, the Applicant had presented the cheques on 07.11.2021, 07.12.2021, 07.01.2022 and 07.02.2022 issued by the Corporate Debtor for encashment which were returned as dishonored with remarks 'Funds insufficient'. The Applicant submits that being left with no recourse, the Applicant had sent a Demand Notice dated 27.04.2022 under Section 8(1) of the Code, 2016 to the Corporate Debtor demanding the outstanding Operational Debt, in response of which, the Corporate Debtor had issued a reply dated 09.05.2022 raising frivolous and baseless allegations/contentions. Hence, the Applicant prays for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.
  
7. Per contra in the reply filed by the Corporate Debtor, the Corporate Debtor has espoused that the claim of the Applicant is based on unpaid installments as per the settlement agreement and therefore, is not an Operational Debt under Section 5(21) of the Code, 2016. To support the contention, the Corporate Debtor placed reliance on case **Bajaj Rubber Company Private Limited vs. Saraswati Timber Private Limited, IA No. 3247 /ND/ 2022 in CP (IB) No. 1441/ ND/2018, decided on 11.08.2022.**



8. Further, it was submitted by the Corporate Debtor that the claim of the Operational Creditor is barred by the law of Limitation as the invoices relates to the period of 2013-14 whereas the Applicant is taking 16.08.2021 i.e., date of part payment pursuant to the Settlement Agreement dated 13.08.2021 as the date of default, which cannot be considered as date of default and is therefore being barred by Limitation.
9. It was submitted by the Corporate Debtor that the claim of the Applicant is premature and Applicant seeks to enforce a liability which has not yet accrued, because as on the date the liability of the Corporate Debtor as per the Applicant's own records stands at Rs.80,00,000/- and not at Rs.1,42,00,000/- and is therefore below the threshold limit of Rs.1 crore. It is submitted that the payment schedule agreed as per the settlement agreement dated 13.08.2021 is as follows:-

<b>DATE</b>	<b>AMOUNT</b>
16.08.2021	20,00,000/- [Admittedly paid]
07.11.2021	20,00,000/-
07.12.2021	20,00,000/-
07.01.2022	20,00,000/-
07.02.2022	20,00,000/-
07.11.2022	20,00,000/-
07.12.2022	20,00,000/-
07.01.2023	22,00,000/-

10. It was also submitted by the Corporate Debtor that there exists a pre-existing dispute in between the parties. It is submitted that the Petitioner has not only provided sub-standard machineries to the Corporate Debtor, but has also failed in installation and commissioning of Machineries as per the Purchase Order dated 30.01.2013. The Corporate Debtor had placed on record the contemporaneous e-mail communication related to period of 2015-2018 between



the Corporate Debtor and Applicant raising the issue of deficient services rendered and supply of Sub-Standard Machineries by the Applicant. Accordingly, the Corporate Debtor prayed for the dismissal of the present Application filed under Section 9 of the Code, 2016.

11. On behalf of the Applicant, the Rejoinder has been filed to the reply filed by the Corporate Debtor, wherein the submissions of the Corporate Debtor are rebutted and it was submitted that Applicant had initially filed an Application i.e., C.P.(IB)/454/2021 which was withdrawn pursuant to settlement between the parties on 13.08.2021. However, despite the assurance and settlement agreement, the Corporate Debtor had defaulted in the payment of the amount as per the payment terms recorded in the settlement agreement dated 13.08.2021. It was submitted further that the Applicant had issued a fresh Demand Notice under Section 8(1) of the Code, 2016 to the Corporate Debtor demanding the outstanding operational debt.
12. Further, it is submitted that the Corporate Debtor was liable to make payments as per the Purchase Order, invoices raised by the Applicant and the Settlement dated 13.08.2021 and the Corporate Debtor defaulted in making the payment as per the payment schedule of the settlement agreement dated 13.08.2021, therefore, the entire amount became due and the Applicant is at liberty to take all the legal actions against the Corporate Debtor.
13. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant document annexed with the respective submissions have been perused. Before examining the present application on merits, it is vital to assess the maintainability of the present application in the light of provision of limitation as raised by the Corporate Debtor.
14. Sans irrelevant facts, adverting to the factual matrix of the present case, it is an admitted fact that pursuant to the Purchase Order dated 30.01.2013, the Applicant had raised 28 invoices aggregating Rs.12,07,40,000/- during the



period of 07.08.2013 to 29.10.2014 and the Applicant had received last four payments amounting Rs.51,30,000/-, Rs.10,00,000/-, Rs.5,00,000/- and Rs.20,00,000/- through R.T.G.S on 29.03.2014, 14.02.2018, 21.12.2018 and 16.08.2021 respectively. The Applicant in Pt 2, Part IV of Form-5 of the present application had mentioned that default has occurred on several dates and the last default has occurred on 16.08.2021 when only part payment was made and thereafter the default occurred on 21.12.2021, 24.12.2021, 15.01.2022 and 09.02.2022. The statement of Accounts, attached by the Applicant as Annexure-P/3 (Colly.) is reproduced herein below:-

SSP PVT. LIMITED								
STATEMENT OF ACCOUNT OF GOVINDJEE DAIRY MILK (P) LTD AS ON 31.03.2017								
ORDER NO :-	GOVINDJEE/AMUL PROJECT/SSP/POWDER PLANT DT.30.1.2013			PAYMENT TERMS				
ERRECTION :-				For Supply:-				
JOB NO :-	2335			25% ADVANCE ALONG WITH P.O				
EQUIPMENT :-	MILK POWDER PLANT CAPACITY OF -10 TPD			10 % ON SUBMISSION OF DRAWINGS				
				DESPATCH AG P.I				
SUPPLY PRICE :-	11,20,00,000	TAXES & DUTIES EXTRA		55%+ (TAX & DUTIES, PACKING) AFTER INSPECTION AT SSP WORKS BUT BEFORE				
				DISPATCH AG THE SUBMISSION OF P.I				
ERRECTION :-	40,00,000	TAXES & DUTIES EXTRA		5 % AFTER ERECTION				
				5 % WITHIN 30 DAYS OF SUCCESSFUL COMMISSIONING				
	11,60,00,000							
BILL NO.	DATE	BASIC PRICE	PACKING	SALES TAX/SERVIC E TAX	TRANSPORTING	BILL VALUE	PAYMENT RECEIVED	CH/DD NO. & DATE
M-016	07.08.2013	60,00,000		1,20,000		61,20,000	25,00,000	CH.NO.201272 DT.30.01.2013
M-018	09.08.2013	15,00,000		30,000		15,30,000	2,67,00,000	RTGS DT.30.3.2013
M-024	25.08.2013	89,00,000		1,78,000		90,78,000	1,00,00,000	RTGS DT.27.06.2013
M-025	27.08.2013	77,50,000		1,55,000		79,05,000	42,75,000	RTGS DT.07.08.2013
M-027	04.09.2013	69,00,000		1,38,000		70,38,000	1,00,00,000	RTGS DT.23.8.2013
M-028	05.09.2013	22,00,000		44,000		22,44,000	1,08,62,000	RTGS DT.11.09.2013
M-029	05.09.2013	34,00,000		68,000		34,68,000	1,00,00,000	RTGS DT.10.10.2013
M-035	27.09.2013	22,00,000		44,000		22,44,000	1,00,00,000	RTGS DT.06.12.2013
PAYMENT	09.10.2013					25,00,000	74,74,000	RTGS DT.22.01.2014
M-039	19.10.2013	47,50,000		95,000		48,45,000	60,99,000	RTGS DT.14.02.2014
M-040	19.10.2013	44,00,000		88,000		44,88,000	51,30,000	RTGS DT.29.03.2014
M-041	21.10.2013	38,00,000		76,000		38,76,000	10,00,000	RTGS DT.14.02.2018
M-042	22.10.2013	48,00,000		96,000		48,96,000	5,00,000	RTGS DT.21.12.2018
M-043	09.11.2013	12,00,000		24,000		12,24,000	20,00,000	RTGS DT.16.08.2021
M-046	21.11.2013	22,00,000		44,000		22,44,000		
M-047	02.12.2013	8,00,000		16,000		8,16,000		
M-048	10.12.2013	35,00,000		70,000		35,70,000		
M-049	11.12.2013	37,00,000		74,000		37,74,000		
M-050	12.12.2013	65,00,000		1,30,000		66,30,000		
M-052	19.12.2013	83,00,000		1,66,000		84,66,000		
M-053	15.01.2014	5,00,000		10,000		5,10,000		
M-055	28.01.2014	44,00,000		88,000		44,88,000		
M-057	30.01.2014	36,00,000		72,000		36,72,000		
M-062	15.02.2014	47,00,000		94,000		47,94,000		
M-066	23.02.2014	51,00,000		1,02,000		52,02,000		
M-068	28.02.2014	28,00,000		56,000		28,56,000		
M-071	18.03.2014	67,00,000		1,34,000		68,34,000		
M-072	27.03.2014	14,00,000		28,000		14,28,000		
E-002	29.10.2014	35,59,986		4,40,014		40,00,000		
		11,55,59,986	0	26,80,014	0	12,07,40,000	10,65,40,000	
<b>Summary :</b>								
Bill Raised							12,07,40,000	
							10,65,40,000	

ANNEXURE  
7



15. Default is defined in Section 3(12) of the Code, 2016 in very wide terms as meaning non-payment of a debt, once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. Accordingly, the date of default can only be calculated when the invoice becomes due and payable. In order to appreciate the series of event, the necessary dates and events are reproduced below: -

- (i) The Corporate Debtor had defaulted in the payment of the invoices raised from 07.08.2013 to 29.10.2014 and the last invoice (E-002) was raised on 29.10.2014
- (ii) The part- payments towards the invoices were received on 30.01.2013, 30.03.2013, 27.06.2013, 07.08.2013, 23.08.2013, 11.09.2013, 10.10.2013, 06.12.2013, 22.01.2014, 14.02.2014, 29.03.2014, 14.02.2018, 21.12.2018 & 16.08.2021.
- (iii) First Application i.e., C.P.(IB) 454/2021 under Section 9 of the Code, 2016 was filed on 10.03.2021 which was withdrawn on 23.09.2021.
- (iv) The Settlement Agreement between the parties was entered on 13.08.2021 towards the outstanding Principal operational Debt.
- (v) The present application i.e., C.P.(IB)/532/ND/2022, under Section 9 of the Code, 2016 is filed on 09.06.2022.

16. The Hon'ble Supreme Court in **B.K. Educational Services Private Limited Vs. Parag Gupta and Associates [Civil Appeal No.23988 Of 2017 And 439/2018, 436/2018, 3137/2018, 4979/2018, 5819/2018, 7286/2018]** and other cases had clarified that the period of limitation for filing applications for initiation of insolvency proceedings would be three years from the date of default, with Article 137 of the Limitation Act being applicable in case of Applications.

17. However, it is also trite now that an application under Section 9 of the Code, 2016 would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of default when the debt became due, if there were an acknowledgement of the debt or part payment by the Corporate Debtor before expiry of the period of limitation of three years, in which



case the period of limitation would get extended by a further period of three years as envisaged under Section 18 of the Limitation Act, 1963 or under Section 19 of the Limitation Act, 1963 respectively. It is pertinent to note that the effect and operation of Section 18 of the Limitation Act, 1963 or Section 19 of the Limitation Act, 1963 is not to revive a debt, the recovery of which is time barred as per the Limitation Act, but only to extend an existing period of limitation.

18. The contention of the applicant that the present application is within limitation on account of part payment of Rs.20,00,000/- through RTGS on 16.08.2021 from the Corporate Debtor towards the first installment of the Settlement Agreement dated 13.08.2021 cannot be accepted as the same was made much after the expiry of original period of three years of limitation falling on 29.10.2017 ( i.e., three years from the date of last invoice). From the records, it is evident that last invoice was raised on 29.10.2014 and therefore, the original limitation expired on 29.10.2017. It is seen from record that part payments were made between 30.01.2013 to 29.03.2014 by virtue of which the limitation could not have extended beyond the original date of limitation being 29.10.2017. The next payment was made on 14.02.2018 i.e., after the expiry of original limitation of three years, which in the instant case ended on 29.10.2017. During the period from 30.03.2014 to 13.02.2018 neither any part payment was made by the Corporate Debtor nor any document evidencing the acknowledgement of debt by Corporate Debtor is placed on record.
19. Further, the applicant has not produced any other documents to place on record to show that the part -payment was made within a period of three years of the default by the Corporate Debtor towards the repayment of the Operational debt due pursuant to invoices raised from 07.08.2013 to 29.10.2014. Moreover, it is observed that present application (IB/532(ND)/2022) under Section 9 of the Code, 2016 was filed on 09.06.2022 after a period of more than three years from the cause of action/default in the payment of the Operational debt.



20. As regards the contention of the Applicant that there is a continuous acknowledgement of debt and part payments being made at continuous intervals from 2015 to 2021, it is necessary to refer the judgment of Hon'ble Supreme Court in **Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy and Anr [ Civil Appeal No. 1650 of 2020]**, wherein the Hon'ble Supreme Court held and observed that:

“As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.”

21. In so far as Section 18 of the Limitation Act 1963 pertaining to the effect of acknowledgement in writing under Limitation Act is concerned, it is to be taken note of that an acknowledgement of liability must be in writing and also to be signed by a party against whom the property or right is claimed and that too, the same must be within the Limitation period. It cannot be gainsaid that an acknowledgement given after the expiry of the usual period is not sufficient to keep the 'debt' alive. If a claim is barred, the fact that there was a subsequent acknowledgement of liability will by no means resuscitate a barred claim because of the reason that in any Law, there can only be an acknowledgement of an existing / subsisting liability.

22. Further, there is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise to pay a time barred debt. Undoubtedly, the above referred settlement agreement dated 13.08.2021 as relied upon by the Applicant is a valid contract wherein the Corporate Debtor had in writing promised to pay the debt which is time barred. However, such a promise as recorded in settlement agreement dated 13.08.2021 may constitute novation



and can form the basis of a suit independent of the original operational debt but the remedy under Section 9 of the Code, 2016 is barred by law of limitation.

23. As a consequence to our analysis to the facts of the present case and the judgments relied upon, we are of the considered view that the present application filed under Section 9 of the Code, 2016 is barred by the law of limitation. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **I.B./532(ND)/2022 stands dismissed. No orders to costs.**

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**( ASHOK KUMAR BHARADWAJ)**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AT NEW DELHI**  
**COURT-V**

**I.A.6260/ND/2022**  
**IN**  
**IB/532/2022**

*(Application under Rule 11 of the National Company Law Tribunal Rules, 2016)*

**In the matter of:**

SSP Private Limited

... Operational Creditor

Versus

Govindjee Dairy Milk Private Limited

...Corporate Debtor

**AND IN THE MATTER OF:**

**I.A. 6260/ND/2022**

M/s. Govindjee Dairy Milk Private Limited

...Applicant

**Order delivered on:28.03.2023**

**CORAM:**

**SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

The instant interlocutory application bearing I.A./6260/ND/2022 is filed under Rule 11 of the National Company Law Tribunal Rules, 2016 on behalf of M/s. Govindjee Dairy Milk Private Limited ('applicant/Corporate Debtor') inter-alia seeking dismissal of the captioned Company Application i.e., C.P.(IB)/532/2022 filed under Section 9 of the Code, 2016. The prayers of the instant application are as follows: -

- (i) *"To dismiss the captioned petition on the preliminary ground of threshold [ of 1 Cr. as prescribed under Section 4 of 'IBC' ] not being met.*



- (ii) *To impose costs upon the Operational Creditor/Petitioner to mislead this Hon'ble Tribunal by misrepresenting the default amount.*
- (iii) *To pass any such other orders as it may deem fit and proper in the interests of justice.”*

2. Briefly stated, the facts leading to filing this application as averred by the applicant is that the captioned Company Application i.e., C.P.(IB) 532/2022, filed under Section 9 of the Code, 2016 by M/s. SSP Private Limited (“Operational Creditor”) was listed before this Adjudicating Authority on 08.12.2022 wherein after completion of the pleadings, the arguments were presented by both the parties and the captioned Company Application was reserved for orders. It is further submitted that the present Application i.e., I.A./6260/2022 was filed by the Applicant to bring on record the fact that the claim of the Operational Creditor in the main Company Application is premature and the Company Application is liable to be dismissed on the preliminary ground of the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016 being not met. The applicant adds that the applicant had right to place submissions after the matter is reserved. In support of this proposition, reliance has been placed upon the Hon'ble Supreme Court judgement in **Dena Bank -vs- C. Shivakumar Reddy [Civil Appeal No. 1650 of 2020]**.
3. Per contra in the reply filed by the Operational Creditor, the Operational Creditor had rebutted the averments raised by the Applicant/Corporate Debtor in the present Interlocutory Application and submitted that the captioned Company Application bearing C.P.(IB)/532/2022 is in consonance with Section 4 of the IB Code, 2016 as the operational debt in default is far above the pecuniary threshold of Rs. 1 Crore.



4. Heard. Records have been examined in detail. Coming to the factual matrix of the present case, it is an undisputed fact that the arguments in the captioned Company Application i.e., C.P.(IB) 532/2022 case titled M/s. SSP Private Limited vs. M/s. Govind Jee Dairy Milk Pvt. Ltd. filed under Section 9 of the Code 2016, were heard at length on 08.12.2022 by this Adjudicating Authority and the matter was reserved for orders. Further, both the parties were directed to file written submissions along with the precedent law as relied upon by both the Parties and both the parties had filed their respective written submissions. The Applicant/Corporate Debtor had filed the instant interlocutory Application on 20.12.2022 before this Adjudicating Authority with a prayer to dismiss the captioned Company Petition on the ground of being non-maintainable as per Section 4 of the Code, 2016.
  
5. It is a settled law that once the judgement has been reserved in a matter, any subsequent pleadings in the matter, based on facts which were in existence earlier also at the time of filing the reply as well at the time of arguments, cannot be entertained by this Adjudicating Authority and therefore in no way can be considered by this Adjudicating Authority in pronouncing the judgement already reserved in the captioned Company Application. Therefore, we have to decide whether any additional plea can be raised by the respondent after the closure of arguments and judgment is reserved.
  
6. It is trite that the pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial/hearing and giving all such details as his opponent needs to know in order to prepare his case in answer. According to learned Author, in pleadings, material facts should be stated 'in a concise form'. The pleadings should be concise as well as precise. Pleadings would include contentions raised in Application, Counter, Appeal, Reply, Rejoinder.



7. So far as the answer to the question whether the additional plea can be raised by the Corporate Debtor when the matter was already argued and judgment is reserved in the summary proceedings like IBC, 2016 is concerned, from the records, we find that notice was duly served to the Corporate Debtor and this Adjudicating Authority vide order dated 14.07.2022 had granted three week time to the Corporate Debtor/Applicant to file its reply. This Adjudicating Authority, in the interest of justice, had vide order dated 02.09.2022 had given another 10 day's time to the Corporate Debtor to file reply. The Corporate Debtor had filed its reply on 27.09.2022 and the arguments were heard on 08.09.2022. Undoubtedly, the Corporate Debtor had ample time to raise the additional plea in its reply as the additional plea raised in the present interlocutory application is not of any such nature which is discovered afterward of getting the company application reserved for orders. The pleadings in the captioned Company Application are already there and hence, the application under Section 9 of the Code, 2016 have to be dealt with and to be decided on basis of said pleadings.
  
8. As regards to the reliance placed on the citation Dena Bank (Now Bank of Baroda) vs C. Shivakumar Reddy, the Hon'ble Supreme Court while dealing with Section 7 of Code, 2016 application held that there is no bar to the Adjudicating Authority to exercise its discretion to allow the petitioner to amend the pleadings and file additional documents. The facts of the citation relied upon are different from the facts of the present case, as here the present interlocutory application is filed by the Corporate Debtor to raise an additional defence when the arguments in the matter were already heard and closed and the judgment is reserved. Therefore, the citation relied on by the applicant is not helpful in the facts of the present case.
  
9. Thus, from the facts and circumstances which are borne on record and narrated above, and for the reasons stated, we are of the considered view



that the Applicant had filed only a mere additional pleading/reply in the main Company Application under the garb of the present interlocutory application. Nevertheless, to note that the captioned Company Application was reserved for orders much before the filing of the present Interlocutory Application.

10. Resultantly, the **I.A. 6260/ND/2022 in IB/532/2022, being devoid of merits stands dismissed. No orders to costs.**

**Sd/-  
(DR. BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-  
(P.S.N. PRASAD)  
MEMBER (J)**