

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

Company Appeal (AT) (Insolvency) No. 330 of 2022

IN THE MATTER OF:

Mr. Anil J. Nemaavarkar

...Appellant

Versus

M/s. Kumar Builders Mumbai Realty Pvt. Ltd.

...Respondent

Now Known as

M/s. Kumar Urban Development Pvt. Ltd.

Present:

For Appellant: Mr. Sidharth Joshi, Advocate Ambareen, Mr. Lakpa Doma Sherpa, Advocates

For Respondent:

ORDER
(Virtual Mode)

05.04.2022: Heard Learned Counsel for the Appellant. This Appeal has been filed against the Order passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) on 09.12.2021 by which Application being CP(IB) 2121/MB/2019 filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'Code') has been rejected.

2. The Learned Counsel for the Appellant claimed to be Operational Creditor and has filed Section 9 Application for debt of Rs. 64,44,2706.00/- including interest. Appellant claimed to be appointed Vice-President (Coordination) by the

Corporate Debtor on 3rd June, 2013. The Appellant's case is that his service were terminated on 04th June, 2016 thereafter he filed various complaints against the Corporate Debtor including 'Police Complaint' dated 06th June, 2016. He also filed complaint before the Labour Authority and thereafter filed this Application on 04th June, 2019 under Section 9 of the Code.

3. The Adjudicating Authority after hearing the Appellant has dismissed the Application. The Adjudicating Authority has held that there is 'pre-existing dispute' between the parties hence the Application under Section 9 of the Code cannot be admitted. In paragraphs 28 to 32 details of the pre-existing disputes between the parties have been noticed.

4. The Appellant's Demand Notice under Section 8 of the Code is dated 22nd May, 2018 after which the Application was filed on 04th June, 2019. The several complaints and disputes which have been noticed in paragraph 28 to 32 are before the Demand Notice given by the Appellant under Section 8 of the Code.

5. We are not convinced with the submissions of the Learned Counsel for the Appellant that there was no dispute raised before the Demand Notice under Section 8 was issued by the Appellant. Appellant himself has filed large number of complaints including Police Complaint and Complaint before the Labour Authority regarding his claim and making other serious allegations against the Corporate Debtor. We are of the view that Insolvency and Bankruptcy Code is not for resolving such dispute, the remedy of the Appellant with regard to his

services benefits if any, lies elsewhere and Adjudicating Authority has rightly rejected the Application noticing the 'pre-existing dispute' between the parties.

The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

[Ms. Shreesha Merla]
Member (Technical)

Basant/nn