

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

Company Appeal (AT) (Insolvency) No. 742 of 2022

IN THE MATTER OF:

Tirupati Starch and Chemicals Ltd.

...Appellant

Versus

Industrial Enviro & Engineering Services Pvt. Ltd.

...Respondent

Present:

For Appellant: PCS Pratik Tripathi

For Respondent:

**ORDER
(Virtual Mode)**

13.07.2022: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 25th April, 2022 by which Order, the Adjudicating Authority has rejected the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC in short). The Appellant-Operational Creditor had issued a Purchase Order dated 26th May, 2018 to the Corporate Debtor for supply and installation of 'West Water Recycle System'. As per the Purchase Order, the amounts were paid to the Corporate Debtor and the Corporate Debtor has also delivered the 'West Water Recycling Plant' on the site of the Applicant vide different delivery challans and subsequently the Appellant claims to have cancelled the entire Purchase Order by Email dated 05.10.2020. Subsequent to the cancellation of the entire

Purchase Order, the Appellant has filed Section 9 Application of IBC claiming refund of the entire amount paid and alleged the default of not refund of the amount. The notice was issued in the Section 9 Application. Corporate Debtor appeared and has opposed the Application and Reply was filed stating that work was performed by the Corporate Debtor as per the Order. The claim of the Operational Creditor was denied. The Adjudicating Authority after hearing the parties took the view that there has been a genuine dispute raised by the Corporate Debtor for which several materials were on the record one of the Email dated 23.12.2019 i.e much before the Email cancelling the Purchase Order was quoted in Paragraph 15. On the basis of materials on record, the Adjudicating Authority was satisfied that there was genuine pre-existing dispute hence the Application was rejected.

3. Learned Counsel for the Appellant submitted that Corporate Debtor has never challenged the Cancellation of Purchase Order and has not even replied the Demand Notice. The Adjudicating Authority has noticed in the Impugned Order that Corporate Debtor has filed the Affidavit in Reply before the Adjudicating Authority and has taken pleas which has been noticed by the Adjudicating Authority.

4. We are of the view that there were substantial materials on record to indicate that there was genuine pre-existing dispute raised by the Corporate Debtor. The submission of the Appellant that no objection was raised by the Corporate Debtor to the Cancellation of the Purchase Order is without any

substance. The Adjudicating Authority has rightly rejected the Application under Section 9 of IBC on account of pre-existing dispute.

The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Mr. Barun Mitra]
Member (Technical)

Basant/nn