

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 648 of 2019**

**IN THE MATTER OF:**

**S.V. Concrete Product Pvt. Ltd.**

**...Appellant**

**Versus**

**Advaitha Ventures Pvt. Ltd.**

**...Respondent**

**Present: For Appellant :      **Mr. Balaji Srinivasan and Mr. Siddhant Kohli, Advocates****

**O R D E R**

**03.07.2019**      Having heard learned counsel for the appellant and being satisfied with the grounds, the delay of 8 days in preferring the appeal is condoned.

I.A. No. 2043 of 2019 stands disposed of.

The Appellant preferred an application u/s 9 of the Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') for initiation of 'Corporate Insolvency Resolution Process' against M/s. Advaitha Ventures Pvt. Ltd., which having rejected by the Adjudicating Authority (National Company Law Tribunal), Bangalore Bench by order dated 12<sup>th</sup> April, 2019, the present appeal has been preferred.

2.      Learned counsel appearing on behalf of the Appellant submits that the Respondent admitted the dues and issued cheques in favour of the Appellant. However, they were bounced due to which case has been instituted against the Directors of the Corporate Debtor. Further, according to the learned counsel for the Appellant, the notice by the Respondent raising certain issues is an afterthought which has been issued after bounced cheques.

3. It is submitted that the suit preferred by the 'Corporate Debtor' do not relate to the present demand wherein the order of injunction was sought and does not relate to the question.

4. From the record we find that the Appellant issued a Demand Notice u/s 8(1) of the I&B Code on 16<sup>th</sup> March, 2018 but much prior to the same the 'Corporate Debtor' issued a letter through a 'Law Firm' on 25<sup>th</sup> January, 2018 (Annexure G) with the 'Corporate Debtor' disputing the supplies made by the Appellant in view of short supply and inferior quality of ready mix concrete. It was alleged that there are certain fake invoices also raised by the Appellant. In an application u/s 9 of the I&B Code, it is not open to the Adjudicating Authority to decide whether the allegation is correct or the statement made by the 'Operational Creditor' is correct or not, which can be decided by the Court of competent jurisdiction.

5. Admittedly, there is a 'pre-existing dispute' and the 'Corporate Debtor' had intimated by lawyer's letter dated 25<sup>th</sup> January, 2018 that there is inferior quality of ready mix concrete, which is much prior to the notice u/s 8(1) was issued, the Adjudicating Authority rightly refused to entertain the application u/s 9 of the I&B Code. We find no merit in this appeal. It is accordingly dismissed.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice A.I.S. Cheema ]  
Member (Judicial)

[ Kanthi Narahari ]  
Member (Technical)

/ns/gc