

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

**Company Appeal (AT) (Insolvency) No. 1278 of 2019**

**IN THE MATTER OF:**

**Gandhar Oil Refinery (India) Ltd.**

**...Appellant**

**Vs**

**Madhucon Sugar and Power Industries Ltd.**

**...Respondent**

**Present:**

**For Appellant: Mr. Nitin Saravanan, Ms. Arunima Singh and  
Ms. Shreya, Advocates.**

**For Respondent:**

**ORDER**

**09.12.2019:** This appeal has been filed by the Appellant – ‘Gandhar Oil Refinery (India) Ltd.’ (Operational Creditor) against order dated 29<sup>th</sup> August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad whereby the application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) for initiation of Corporate Insolvency Resolution Process against ‘Madhucon Sugar and Power Industries Ltd.’ has been rejected on the ground of pre-existing dispute.

2. Learned counsel appearing on behalf of the Appellant submits that there is delay of 14 days, for which a ground has been shown and therefore being satisfied, we condone the delay.

3. On merit, it was submitted that there is no pre-existing dispute and email which has been relied upon has not been addressed to the Corporate Debtor and does not amount to pre-existing dispute. It is submitted that with regard to quality of coal, there is no evidence as no verification has been made through a third party or independent agency in terms of the contract.

4. In the present case, we find that the Respondent (Corporate Debtor) sent an email to the Appellant on 25<sup>th</sup> October, 2017 wherein with respect to dispatch of coal from Gangavaram Port, it is informed that the Coal was not of good quality. It was further informed that Cargo Analysis Report was also sent and the Corporate Debtor will suffer more loss towards transportation cost because of the coal quality, which will affect the boiler efficiency.

5. In an application under Section 9, the question of merit of the dispute cannot be decided but if it is found that the Corporate Debtor has raised dispute highlighting the quality of the goods, the Adjudicating Authority having no jurisdiction to decide the dispute has rightly rejected the application under Section 9 of the I&B Code.

6. For the reason aforesaid, we are not inclined to interfere with the impugned order. The appeal is accordingly dismissed. I.A. No. 3696 of 2019 stands disposed of.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

*am/gc*