

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 669 of 2020**

**IN THE MATTER OF:**

**Samay Impex Pvt. Ltd.**

**...Appellant**

**Versus**

**Gujarat Ambuja Exports Ltd.**

**...Respondent**

**Present:**

**For Appellant:**

**Mr. Arvind Kumar Gupta, Ms. Purti Marwaha and  
Ms. Henna George, Advocates.**

**For Respondent:**

**J U D G M E N T**

**06.08.2020:** Appellant's application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code') for initiating Corporate Insolvency Resolution Process against Respondent – Corporate Debtor for having committed default in respect of operational debt of Rs.9,39,730.14/- came to be dismissed in terms of impugned order dated 17<sup>th</sup> February, 2020 passed by the Adjudicating Authority (National Company Law Tribunal) Ahmadabad Bench, Court II on the ground of pre-existing dispute regarding the supply of goods. Aggrieved thereof, the Appellant-Operational Creditor has preferred the instant appeal questioning the legality and correctness of the impugned order.

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2. Learned counsel for Appellant submits that the impugned order is unsustainable as the Corporate Debtor had not raised any quality issue in regard to coal supplied by the Appellant Operational Creditor and that part-payment was made by the Corporate Debtor while payment of 6 invoices for 200 MT of coal was pending amounting to Rs.9,39,730/-. It is submitted that the demand emails dated 13.11.2018, 29.11.2018 and 17.01.2019 demanding the outstanding amount had not been replied to by the Respondent- Corporate Debtor. When confronted with the reply to demand notice furnished by the Corporate Debtor forming page 51 of the appeal paper book that a debit note dated 17.08.2018 for an amount of Rs.11,12,721/- was issued by the Corporate Debtor to Appellant in respect of PO No. 4500191669 dated 18.07.2018 for supply of 1500 MT of steam coal and credit note NO.1717009055 dated 27.10.2018 was issued to Appellant leaving the amount of debit after issuing the credit note at Rs.9,12,721/- towards GCV and that the Corporate Debtor had made last payment of Rs.23,69,023/- vide cheque drawn on Bank of India alongwith payment advice dated 27.10.2018 after reconciliation while disputing the quantum of coal supplied which according to the Corporate Debtor was at 1499.050 MT and not 1504.730 MT resulting into differential amount and that after reconciliation based on the consideration of the debit note and the rebate given later through the credit note, the accounts stood fully settled and paid,

learned counsel for Appellant could not satisfy us as to how the Corporate Debtor could be held to be in default after reconciliation followed by last payment effected through cheque and if there was a dispute with regard to the operational debt and genuineness of the debit note as raised in appeal, same, in the context of the issue being raised in reply to the demand notice would fall within the purview of pre-existing dispute. Admittedly, no complaint in regard to allegations of fabrication of the debit note and genuineness of the cheque in terms whereof payment had been effected by the Corporate Debtor has been lodged by the Appellant – Operational Creditor with the competent authorities. The dispute raised by the Corporate Debtor in reply to demand notice in regard to supply of goods and payment made after reconciliation and settlement of accounts between the two parties taking into consideration the debit note raised by the Respondent much before the issuance of demand notice and the rebate given later through the credit note cannot be said to be illusory or moonshine. Such dispute, being pre-existing i.e. prior to issuance of demand notice and Corporate Debtors plea of having satisfied the Operational Debt after reconciliation of accounts and rebate allowed cannot be resolved in Corporate Insolvency Resolution Proceedings. In the given circumstances, the Adjudicating Authority was right in declining to initiate CIRP against the Corporate Debtor.

3. We find no legal infirmity in the impugned order. The appeal is accordingly dismissed at the very pre-admission stage.

**[Justice Bansi Lal Bhat]  
Acting Chairperson**

**[Dr. Alok Srivastava]  
Member (Technical)**

**[Shreasha Merla]  
Member (Technical)**

*am/gc*