

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

**Company Appeal (AT) (Insolvency) No. 354 of 2018**

**IN THE MATTER OF:**

**Yantra Harvest Energy Pvt. Ltd.**

**...Appellant**

**Vs.**

**Bharat Pumps & Compressors Ltd.**

**...Respondent**

**Present: For Appellant: - Mr. Rahul Sripat, Mr. Rohit Chaudhary and Mr. Anchit Sripat, Advocates and Mr. Nesar Ahmad, PCS.**

**For Respondent:- Mr. Navneet Kumar Jain and Mr. Pankaj Bhagat, Advocates.**

**ORDER**

**10.07.2018—** This appeal has been preferred by the Appellant- ('Operational Creditor') against the order dated 29<sup>th</sup> May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad in Company Application No. (IB) 95/ALD of 2017, whereby and whereunder the application preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been rejected on the ground of 'existence of dispute'.

2. Learned Counsel for the Appellant submitted that there was no dispute in existence as the Respondent agreed to pay 12% interest with the principal amount which is apparent from some of the records.

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3. From the record, we find that the 'Corporate Debtor' took specific plea which has been noticed by the Adjudicating Authority that before issuance of the demand notice under Section 8(1) in reply to notice under Sections 433(e) and 434(1)(a) of the Companies Act, 2013, the 'Corporate Debtor' raised the dispute relating to the quality of service. However, according to learned counsel for the Appellant, such reply has not been received.

4. This apart, we find that the 'Corporate Debtor' filed e-mail correspondence dated 24<sup>th</sup> November 2015 and 19<sup>th</sup> November, 2015 and from the documents attached, including the e-mail dated 18<sup>th</sup> November, 2015, it is clear that 24-hours continuous run test on above 12 numbers VFD was to be carried out but such matter was not carried out by the 'Operational Creditor' and pending for balance nine numbers were shown therein. As per the purchase order specs/approved documents 24-hours continuous run test has to be carried out on each VFD before dispatch and the aforesaid activities were not completed for balance nine numbers of VFD's, it was alleged that contract was not fully executed.

5. In view of the fact that there is an 'existence of dispute', we hold that the Adjudicating Authority has rightly rejected the application under Section 9 of the 'I&B Code'. However, the order passed by the Adjudicating Authority and this Appellate Tribunal will not come in the

way to the Appellant to move before a court of Competent Jurisdiction for appropriate relief. The appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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