

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

**Company Appeal (AT) (INS) No.164 of 2019**

[Arising out of Order dated 31.01.2019 passed by National Company Law Tribunal, New Delhi in Company Petition No. IB-1060/ND/2018]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Mr. Naveen Kumar Dixit  
Shareholder of  
M/s. Callina Care  
Overseas Private Limited,  
R/o. Flat No.1204,  
Ruby-1, Gardenia Glamour  
Society, Sector – 3,  
Vasundhra,  
Ghaziabad – 201 012

.....

Appellant

**Versus**

1. M/s. Jaswant  
International Private  
Limited,  
11/5B. First Floor,  
Pusa Road,  
New Delhi – 110005

Applicant/  
Operational Creditor

Respondent No.1

2. M/s. Callina Care  
Overseas Private Limited,  
Through the Interim  
Resolution Professional,  
Mr. Piyush Moona,  
A-16/18, Site -IV,  
Industrial Area,  
Sahibabad,  
Ghaziabad, U.P.

Respondent/  
Corporate Debtor

Respondent No.2

**For Appellant:** **Shri Ramji Srinivasan, Senior Advocate with Shri Rahul Jain, Ms. Smitakshi Talukdar and Ms. Sylona Mohapatra, Advocates**

**For Respondents:** **Shri Abhishek Anand and Shri Anant A. Pavgi, Advocates (Respondent No.1)**

**Shri Anshul Gupta and Shri Piyush Moona, Advocates (Respondent No.2)**

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

**A.I.S. Cheema, J. :**

1. This Appeal has been filed by shareholder of Respondent No.2 – M/s. Callina Care Overseas Private Limited (Corporate Debtor) against the Order of admission of Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC - in short), which was filed by Respondent No.1 – M/s. Jaswant International Private Limited (Operational Creditor) before the Adjudicating Authority (National Company Law Tribunal, New Delhi - Court No. IV). The Adjudicating Authority by Order dated 31<sup>st</sup> January, 2019 admitted the application and passed consequential orders.

2. The Operational Creditor claimed that it is engaged in the business of manufacturing multi-layer plastic films and supplied the same to the Corporate Debtor. Invoices had been raised and debt due and payable by the Corporate Debtor was of Rs.40,41,763/- which included interest. Operational Creditor claimed that in spite of reminders, the debt was not cleared and Notice dated 29<sup>th</sup> May, 2018 under Section 8 of IBC was sent to the Corporate Debtor. According to

the Operational Creditor, the Corporate Debtor thereafter on 30<sup>th</sup> June, 2018 claimed for the first time that it had received a complaint from one of its clients “Arazplast” regarding quality of the material and that Arazplast had deducted USD 80,000 from the dues of Corporate Debtor.

3. The learned Adjudicating Authority considered that the Corporate Debtor had not appeared before it although proof of service had been filed. The Adjudicating Authority considered the Application under Section 9 of IBC and finding the same to be complete, proceeded to admit the same and consequential Orders were passed initiating the CIRP process.

4. Against the Impugned Order, present Appeal has been filed by the Appellant. The Appellant claims that the Operational Creditor was to supply plastic film of thickness of 12 microns but supplied film having density of 18 microns because of which, its client - Arazplast imposed penalty on the Corporate Debtor of USD 80,000 and the amount was deducted from the bill of Respondent No.2 (Corporate Debtor). The Appellant has pointed out that letter at Annexure – A3. The letter appears to be dated 15.08.2016. The Appeal claims that this issue was intimated by Respondent No.2 to Respondent No.1. The Appellant also relies on letter dated 20.11.2017 said to have been sent by the said Arazplast (Annexure A-4), by which Arazplast discontinued business with Respondent No.2 (Corporate Debtor). The Appellant claims that on receipt of such letter dated 20.11.2017 from Arazplast, it sent a letter

dated 23<sup>rd</sup> December, 2017 (Annexure A-5) to the Operational Creditor (Respondent No.1) and thus, the Appeal claims that there was a pre-existing dispute. The Notice under Section 8 dated 29<sup>th</sup> May, 2018 is at Annexure – A-6 and it is stated that the Appellant had responded to the Notice by its letter dated 28.06.2018 (Annexure A-7) (which appears to be copy of the letter at Annexure – A5 said to have been sent on 23<sup>rd</sup> December, 2017).

5. The Respondent No.1 – Operational Creditor has in Reply Affidavit (Para – 7), clearly denied that the Corporate Debtor has sent letter dated 23<sup>rd</sup> December, 2017 informing that there was defective material. The Respondent No.1 has claimed that no evidence has been placed on record that any such letter was ever sent and delivered to the Operational Creditor. The Respondent No.1 claimed that such document has been fabricated.

6. Although the Appellant claims that the Adjudicating Authority did not give Appellant a hearing, the Impugned Order shows that the Adjudicating Authority had proof of service on the Corporate Debtor. We have heard the Appellant to see if remitting back the matter would serve any purpose. Although the Appellant claims existence of a dispute and the Appeal claims that a letter like Annexure – A5 dated 23<sup>rd</sup> December, 2017 was sent to the Operational Creditor, there is no proof of service of such letter filed on record. The plea is thus unsupported by evidence. When the Operational Creditor has in Reply Affidavit denied receipt of

any such letter, the Appellant is unable to show pre-existing dispute. In the circumstances, remitting back the matter would not serve any purpose and the learned Adjudicating Authority having found the Application complete and having admitted the Application under Section 9, the Impugned Order calls for no interference on our part.

7. For reasons mentioned above, there is no substance in the Appeal. The Appeal is rejected.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

New Delhi

8<sup>th</sup> May, 2019

*rs/sk*