

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Insolvency) No. 1279 of 2022

IN THE MATTER OF:

VA Realcon Private Limited

...Appellant

Versus

Avail Holding Ltd.

...Respondent

Present:

For Appellant:

**Mohd. Nazim Khan, RP in person with Shubham
Agarwal, Mr. Shahbaboz Khan**

For Respondent:

**Mr. Samarth Shandilya, Advocate
Mr. Kartikeya Singh, Advocate**

ORDER

23.08.2023: Heard Mr. Mohd. Nazim Khan, RP in person, Ld. Counsel appearing for the Respondent.

This appeal has been filed against the order dated 17.08.2022 by which order the Adjudicating Authority has rejected the Section 9 application filed by the Appellant. When the appeal was taken for consideration on 01.11.2022 the following order was passed by this Tribunal: -

*“01.11.2022: Learned PCS appearing for
the Appellant submits that the
Adjudicating Authority rejected Section 9
Application without issuing notice on the
ground that the Appellant has failed to
bring the proof of sale of shares. It is
submitted that confirmation of the
accounts was already there along with*

Section 9 Application, hence, Application was not required to be rejected. 2. Let 'Notice' be issued to the Respondent through 'Speed Post'. Let the requisites together with process fee be filed within three days from today. The Appellant is required to provide the e-mail address of the Respondent and in that mode also, the service can be effected. The Appellant is also required to furnish the Mobile No. of the Respondent to the 'Office of the Registry'. 3. Let a Reply be filed within three weeks. Rejoinder, if any, may be filed within two weeks thereafter. 4. List the Appeal on 13.12.2022."

3. In pursuance of the notices issued by this Tribunal, the Respondents have appeared and were granted time to file reply more than once.

4. Learned Counsel for Respondent has further made a statement that Respondents are making efforts for out of court settlement which was recorded on 06.04.2023 to the following effect:-

"06.04.2023: Learned Counsel for the Respondent submits that Respondent is making effort to reach out a settlement with

the Appellant. Learned Counsel for the Appellant submits that no settlement has been arrived at so far. As prayed by Learned Counsel for Respondent, Appeal is adjourned for two weeks. List this Appeal on 27th April, 2023.”

5. Today, when the matter was taken, counsel for the Respondent submits that no settlement could be arrived as on date.

6. The present is a case where Adjudicating Authority has dismissed the section 9 application without even issuing notices to the Respondent. Learned Counsel for Respondent submits that had the notice were issued to the Respondent they would have filed the reply and contested the application on merit. We have noted the submission of the Appellant. There is a material that confirmation of accounts was already there along with section 9 application, hence, the application did not deserve to be rejected on threshold. In view of the stand taken by the Respondent that they are taking steps to settle the matter, we are of the view that application need consideration on merit.

7. We, thus, set aside the impugned order dated 17.08.2023 revive the application CP(IB) No. (23)/ND/2022 to be considered afresh.

8. The Respondents are allowed three weeks' time to file the reply to the Section 9 application.

9. The Adjudicating Authority shall consider the application afresh. We however, observe, that it shall be open for the parties to enter into the settlement and bring the settlement, if any, before the Adjudicating Authority for passing appropriate orders. ***The appeal is allowed accordingly.***

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

ss/nn