

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

**Company Appeal (AT) (Insolvency) No.1562 of 2023
& I.A No. 5613 of 2023**

IN THE MATTER OF:

Asian Diamond BVBA

...Appellant

Versus

DA Jewels Pvt. Ltd.

...Respondent

Present:

**For Appellant: Mr. Manu Aggarwal, Mr. Shubham Budhiraja and
 Ms. Ishita Pandey, Advocates.**

For Respondent:

ORDER

18.12.2023: Heard learned counsel for the Appellant. This Appeal has been filed against the order dated 19.09.2023 by which Section 9 application filed by the Appellant has been dismissed on the ground of pre-existing dispute.

2. Learned counsel for the Appellant submitted that the email which has been relied by the Adjudicating Authority dated 03.05.2019 was not addressed to the Appellant and further the Jangad receipt was not signed by the Appellant.

3. We have considered the submissions of learned counsel for the Appellant and perused the record.

4. The Appellant has filed application under Section 9 claiming payment towards certain diamonds which was handed over to the Corporate Debtor.

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The Corporate Debtor has replied the Demand Notice on 04.11.2019 in which he disputed the claim and said that no amount is payable since the Corporate Debtor has already handed over the diamonds in lieu of payment, the Corporate Debtor has received receipts of which also. The Adjudicating Authority has referred to the emails which was relied by the Corporate Debtor, in Para 14. In para 17, the Adjudicating Authority after hearing the parties came to the conclusion that there is existence of plausible dispute between the parties. Following has been observed in Para 14 and 17:

“14. The respondent has attached email correspondence which is dated 03.05.2019 which is extracted hereunder:

“To

*Sir/Mam,
Atradius*

Your mail dt.21.2.2019 is sent on me 26.2.2019 on my mail address, you have no authority to issue such a mail demanding the amount of so called transaction for which your client namely Asian Diamonds BVBA has not given true and correct information with regards to the transaction taken place between us and your client. Your client's persons namely Prakash Sanghavi, Rameshbhai Sanghavi and Rohitbhai Sanghavi came to our office on 28.1.2019 and on that day the entire dispute was settled and the entire due amount was squared up by handing over polished Diamonds worth of 1,15,806 USD, and on that day itself Jangad Receipt was signed by Mr. Rohitbhai Sanghavi as receiver of the goods i.e. polish diamonds worth of 1,15,806 USD. Which was handed over by us to your client and thereafter nothing was remained to be paid. However, owner of Asian Diamonds BVBA namely Hasmukhbhai

Sanghavi along with other two persons came to my office on 4.2.2019 and issued threat to keep ready more amount on the next day i.e. on 5.2.2019 Hasmukhbhai Sanghavi and other people came to my office and took away more polished diamonds worth of 35,000 USD by issuing threat and putting me into fear. I state that on 8.2.2019 again Prakashbhai Sanghavi and other persons came to my office and taken away 13 sets of Diamond Polishing Machine (Ghanti) along with other materials total worth of Rs 6,30,000/-. I have proof of CCTV footages of these incidents.

It seems your client has not disclosed these facts to you that I have paid and squared up the entire due amount to your client which is now being demanded by you. Therefore, nothing is remained to be paid to your client. You are mislead by your client by not providing true and correct information to you. You have no authority to recover any amount."

It is stated that the said email was never responded by the Operational Creditor."

"17. Heard both the Counsels and perused the records supply has not been denied. However, the defence of the Corporate Debtor cannot be ignored, due to the reason that the Corporate Debtor has produced 1 Jangad receipt and 2 emails which are dated 04.01.2019 and 03.05.2019 addressed to Operational Creditor, his emails were never replied by the Operational Creditor and there is no whisper for the same in the rejoinder filed by the Operational Creditor. In our view, there is existence of plausible dispute between the parties."

5. It is submitted by the Appellant that the email dated 03.05.2019 was not addressed to the Appellant. The email dated 03.05.2019 was in response to email dated 21.02.2019 which was sent by the Appellant on 26.02.2019. The email sent by the Corporate Debtor indicate the entire issue raised between the parties, where the Corporate Debtor denied any outstanding amount. Further, the receipt which was claimed by the Corporate Debtor was the receipt of the diamonds received on behalf of the Appellant, which were all before the date when Demand Notice was issued. This indicate that at the time when Demand Notice was issued, there were dispute between the parties. We are of the view that the Adjudicating Authority has rightly rejected the Section 9 application there being a pre-existing dispute. Appeal is dismissed. However, it is always open for the Appellant to take such remedy as permissible in law with regard to its claim.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

Archana/nn