

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 98 of 2019

IN THE MATTER OF:

M/s. Next Education India Pvt. Ltd.

...Appellant

Versus

M/s. K12 Techno Services Pvt. Ltd.

...Respondent

Present:

For Appellant :

Mr. Kumar Sudeep, Mr. D. Pavan Kumar and Ms. Shradha Gupta, Advocates

For Respondent :

Mr. Anand Sanjay M. Nuli and Mr. Nanda Kumar K.B., Advocates

ORDER

01.08.2019 The Appellant – M/s. Next Education India Pvt. Ltd. ('Operational Creditor') filed an application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016' (for short, '**the I&B Code**') against M/s. K12 Techno Services Private Limited (Corporate Debtor), the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 20th December, 2018 rejected the application on the ground of 'existence of dispute'.

The Appellant brought on record (Form 5) of 'debt' and 'default'. It is also brought on record the Demand Notice u/s 8(1) of the 'I&B Code' was issued on 8th August, 2017. The Adjudicating Authority on the ground that the respondent has filed reply on 8th September, 2017 to the Demand Notice noticed that several disputes had been raised. They have also annexed several correspondence about the defective services provided by the Appellant. However, when we asked, the learned counsel for the Respondent could not lay hand on any of the correspondence to show that prior to Section 8 notice, the Respondent (Corporate Debtor) intimated that there were defective services provided by the Appellant.

It is a settled law that if any dispute is raised prior to the issuance of the invoices or Demand Notice u/s 8(1) of the I&B Code with regard to quality of service or goods or pendency of the suit or arbitration, in such case one may take the plea that there is an 'existence of dispute' but if any dispute is raised after issuance of Demand Notice u/s 8(1) that cannot be termed to be a 'pre-existing dispute'.

We find that the Adjudicating Authority has failed to notice the aforesaid issue and observed that 'debt' in question is not only serious dispute but also barred by limitation and laches and not discussed under which provision the 'Master Service Agreement' with 'Sri Gowtham Academy of General and Technical Education' was consequentially issued on 8th February, 2016 and the reply to the Demand Notice was issued on 8th August, 2017.

For the reasons aforesaid, we set aside the impugned order dated 20th December, 2018 and remit the case to the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench for admitting the application u/s 9 of the 'I&B Code' after notice to the 'Corporate Debtor'. We allow the 'Corporate Debtor' to settle the claim before its admission, if it so chooses.

The appeal is allowed with aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc