

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 456 of 2019

IN THE MATTER OF:

Praxis Corporate Services Pvt. Ltd. ...Appellant

Versus

Powai Cubicles Pvt. Ltd. ...Respondent

Present:

**For Appellant: Mr. Deepak Biswas, Ms. Subhalaxmi Sen and
Mr. Harish Pandya, Advocates**

For Respondent: Ms. Akanksha Choudhary, Advocate

ORDER

27.08.2019 The Appellant – ‘Praxis Corporate Services Private Limited’ (Operational Creditor) filed an application under Section 9 of the ‘Insolvency and Bankruptcy Code, 2016 (for short, the ‘I&B Code’) for initiation of ‘Corporate Insolvency Resolution Process’ against ‘Powai Cubicles Private Limited’ (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 18th February, 2018 dismissed the application on the ground that the ‘Corporate Debtor’ by reply dated 17th May, 2018 denied the liability stating that there exists a *bona fide* dispute concerning the services rendered by the Appellant and further stated that the nature of dispute and claims arising out of the dispute were well documented in their previous reply noticed dated 6th April, 2018. Learned counsel appearing on behalf of the Appellant submitted that there is no evidence

to show that there is pre-existence dispute prior to the issuance of invoice or Demand Notice u/s 8(1) of the I&B Code. It is informed that the 1st Demand Notice u/s 8(1) was issued on 1st March, 2018 (which was not in form) followed by subsequent Demand Notice on 7th May, 2018 (which was in form).

2. Learned counsel appearing on behalf of the Respondent submitted that the Demand Notice issued on 1st March, 2018 was not in Form 3. From the plain reading of the Demand Notice dated 1st March, 2018, we find that all the averments required and substance of the Form 3 were mentioned in the Demand Notice issued on 1st March, 2018. It is a settled law that the Form is prescribed for the persons of understanding the material with which the notice is to be served on the 'Corporate Debtor' so that the 'Corporate Debtor' understands the seriousness of the Demand Notice so that, if the matter is settled or denied or no subsequent reply is given then it may invite initiation of 'Corporate Insolvency Resolution Process'. All such substance and requirements have been shown in the Demand Notice dated 1st March, 2018. We reject the submission as made on behalf of the 'Corporate Debtor' and in any case the subsequent notice dated 7th May, 2018, in Form 3 was sent pursuant to which the reply was filed by the 'Corporate Debtor' on 17th May, 2018 wherein it denied the liability relying on earlier reply dated 6th April, 2018 to claim that there is an existence of *bona fide* dispute. It is a settled law that the dispute should be pre-existing and it should be prior to issuance of the Demand Notice. There is nothing on record to suggest that the 'Corporate Debtor' has raised any dispute prior to the Demand Notice dated 1st March, 2018. The dispute raised on 6th April, 2018 cannot be relied on to state that there is existence of *bona fide* prior dispute.

3. The Adjudicating Authority having failed to notice the same, we set aside the impugned order dated 18th February, 2018 and remit the case to the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench with a direction to admit the application under Section 9 preferred by the Appellant after notice to the 'Corporate Debtor' (to enable the 'Corporate Debtor' to settle the matter prior to the admission of the application).

The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc