



NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH-COURT-1

CP (IB) No.10/CHD/HRY/2020

[An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

Pierian Services Private Limited

CIN: U74140KA2002PTC031404

Having its registered address at:

979, 19th Main, 13th Cross

B.S.K, 2nd Stage,

Bengaluru - 560070, Karnataka

.....Applicant/Operational Creditor

Versus

GEMS Education Solutions India Private Limited

CIN: U80900HR2014PTC052664

Having its registered address at:

GEMS Education Solutions India Private Limited

C-310, 3rd Floor, Unitech Business Zone,

Nirwana Country, South City 2,

Gurgaon, Haryana - 122002, India.

.....Respondent/Corporate Debtor

Order Pronounced On: 14.08.2025

**Coram: Harnam Singh Thakur, Member (J),
Kaushalendra Kumar Singh, Member (T)**

Appearance:

For Petitioner : Ld. Adv. Mr. Animesh Sharma, Mr. Ayush Koul,

For Respondent : Ld. Adv Mr. Puneet Sharma



J U D G M E N T

This petition has been filed on 20.12.2019, by Mr. Chetan Venugopal, Authorized Representative of Pierian Services Private Limited (Applicant) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**the 'Code'**) for initiating Corporate Insolvency Resolution Process ('CIRP') against GEMS Education Solutions India Private Limited (Corporate Debtor). The default amount stated by the applicant is Rs. 31,79,368/- (Principal Amount Rs. 31,79,368/-. The date of default stated by the operational creditor is 17.05.2019.

2. The averments made by the applicant in its petition and presented/argued by the learned counsel for the applicant are summarized hereunder:

(i) The Applicant, engaged in finance, accounting, HR, payroll, and business process services, entered into a Master Services Agreement (hereinafter referred as 'MSA') dated 31.10.2018 with the Respondent/Corporate Debtor, engaged in management consulting for the education sector. A Statement of Work (hereinafter referred as 'SOW') dated 13.02.2019 required the Applicant to provide professional services relating to accounting, finance, and tax compliances, with payments due within 15 days of receipt of invoices. The Applicant provided services and raised eight invoices duly received and acknowledged by the Respondent's Senior Manager, Mr. Nirav Agarwal, including: (i) INV-2018-19/2956 (12.02.2019 – January 2019 shadow & go-live activities), (ii) INV-2018-19/3295 (12.03.2019 – February 2019 go-live activities), (iii) INV-2018-19/3524 (29.03.2019 – March 2019 go-live activities), (iv) INV-2018-19/3648 (30.03.2019 – travel reimbursement), (v) INV-2019-20/0224 (30.04.2019 –



April 2019 go-live activities), (vi) INV-2019-20/0236 (07.05.2019 – travel reimbursement), (vii) INV-2019-20/0326 (17.05.2019 – travel reimbursement), and (viii) INV-2019-20/0328 (17.05.2019 – May 2019 services & June 2019 advance billing). The total outstanding principal amount is ₹31,79,368/-. A bank certificate dated 19.11.2019 under Section 9(3) IBC confirms non-payment.

(ii) On 14.08.2019, the Applicant issued a statutory demand notice under Rule 5 of the IBBI (Application to Adjudicating Authority) Rules, served on 23.08.2019. The Respondent replied belatedly on 12.09.2019, beyond the statutory period under Section 8(2) IBC, falsely denying receipt of invoices despite email communications and signed copies acknowledging them with instructions to “book the invoice.” The Respondent raised defences claiming: (i) an agreement with K12 Techno Services Pvt. Ltd. had been terminated in May 2019, shifting liability away; and (ii) the Applicant abandoned services on 06.05.2019 without 45 days’ notice. The Applicant refuted these as baseless, noting that services and invoicing continued beyond May 2019 and that inter-se disputes with K12 did not affect Respondent’s liability under the direct contract with the Applicant.

(iii) The Applicant further pointed out that Section 12.3 of the Master Services Agreement deems non-payment of undisputed invoices within 60 days as a material breach. No notice of breach or abandonment was ever issued by the Respondent prior to the demand notice. The allegations were deemed an afterthought to evade payment obligations. The invoices remained undisputed until the demand notice, and the Respondent failed



to produce evidence supporting its claims. The Applicant therefore asserts that a clear operational debt exists, due and payable, with no pre-existing dispute, satisfying the conditions for admission of the application under Section 9 of the IBC.

3. In this context, defence placed by the respondent in its affidavit in reply vide diary no.00010/2 dated 22.10.2021 and submission made thereon and as presented/argued by the learned counsel for the respondent are summarized as under:

(i) The respondent/corporate debtor contends that the present application for initiation of CIRP is not maintainable due to non-compliance with Sections 8 and 9 of the IBC, 2016, and the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. It is alleged that the demand notice dated 14.08.2019 was neither issued in consonance with Rule 5 of the said Rules nor served as per the mandatory procedure, rendering the petition liable to dismissal. The dispute arises out of a “Term Sheet for Providing School Services” dated 10.10.2018 executed between K12 Techno Services Pvt. Ltd. and the respondent, GEMS Education Solutions India Pvt. Ltd. (GEMS), wherein GEMS and its associate company, Dreams India Education Management Solutions Pvt. Ltd., outsourced the entire school management and operational services to K12. Clause 9 of the Term Sheet vested decisions on funding, administration, structure, employees, and operations with K12, resulting in the transfer of several K12 employees onto GEMS’ payroll, including Mr. K. Himakiran, who later signed the disputed Master Service Agreement (MSA) dated 31.10.2018 and



Statement of Work (SOW) dated 13.02.2019 on behalf of GEMS, but allegedly at the behest of K12.

(ii) The respondent asserts that both the MSA and SOW were executed without its knowledge, consent, or board approval, and were orchestrated by K12 and its employees in collusion with the operational creditor, Pierian Services Pvt. Ltd., to raise unlawful claims. According to the respondent, these agreements were created to tight-cast GEMS into liability for obligations that rightfully rested with K12, given that K12 was the actual executor of the work under the Term Sheet. The Term Sheet was allegedly breached by K12, which terminated it abruptly via email on 06.05.2019, ending all services and removing employees immediately. Subsequent dealings by Pierian with GEMS were without authorization, and the respondent maintains that all agreements post-Term Sheet execution were to the exclusion of GEMS' participation or knowledge, thereby lacking legal sanctity. K12's operations were described as reckless and in breach of material obligations, leaving GEMS to bear losses.

(iii) Following the wrongful termination, GEMS attempted to negotiate a settlement with K12 between 12.05.2019 and 16.05.2019, but K12 allegedly failed to hand over necessary documents to formalize closure, a responsibility shared by Pierian. The respondent claims Pierian also failed to deliver transitional financial data, original employee claim records required under tax laws, and other compliance-related information, despite repeated requests. Further, Pierian did not clarify the utilisation of an advance payment of ₹ 74,00,000, expenses at Guntur, and other pending



tax/financial details. The respondent alleges that Pierian acted entirely at K12's behest and, along with K12, engaged in fraudulent practices to arm-twist GEMS by misusing the Term Sheet and fabricating supporting documents, including eight disputed invoices (Annexures A-3 to A-11).

(iv) In essence, GEMS argues that the petition is a product of collusion between K12 and Pierian, who jointly created and executed documents without GEMS' authorization, misusing the administrative changes under the Term Sheet to place K12's loyal employees on GEMS' rolls and have them sign agreements in GEMS' name. The respondent disputes any binding liability under the MSA or SOW, asserting abandonment of contractual obligations by the operational creditor without proper termination, failure to comply with transitional and statutory requirements, and withholding of critical records. Given these disputes, procedural violations, and alleged fraudulent conduct, the respondent seeks dismissal of the petition as untenable in law and fact.

4. In this context, the applicant operational creditor in support of its contentions has filed written arguments by the Operational Creditor vide Diary No. 00010/3 dated 10.08.2022, and the same is summarized as under:

(i) The Applicant/Operational Creditor asserts that the Respondent/Corporate Debtor's reply to the demand notice was issued ten days beyond the statutory period under Section 8(2) of the Insolvency and Bankruptcy Code, 2016, making it time-barred. The Respondent's denial of having received the invoices is stated to be entirely false, as invoices were regularly emailed to and acknowledged by Mr. Nirav Agarwal, Senior



Manager (Finance & Accounts) at GEMS Education Solutions India Pvt. Ltd., who signed them and, in some cases, noted “book this invoice” to instruct booking. Copies of these emails and signed invoices are on record, along with the ledger account maintained up to 22.11.2019 (Annexure A-13), payment follow-up emails (Annexure A-14), and invoice approval emails (Annexure A-15). The Applicant contends that the contradictory stand taken by the Respondent is a fabricated defence to evade liability under the IBC.

(ii) The Respondent’s claim that liability does not arise because its agreement with K12 Techno Services Pvt. Ltd. was terminated in May 2019 is described as a complete eyewash. The Applicant points out that the Respondent had directly executed a Master Services Agreement dated 31.10.2018 and Statement of Work dated 13.02.2019 with the Applicant, under which the debt accrued. K12 acted solely as the Respondent’s agent in dealings with the Applicant, as evidenced by a Letter of Authorization dated 18.10.2018 (Annexure A-16). The Applicant maintains that any inter-se dispute between K12 and the Respondent does not affect the Respondent’s liability towards the Applicant under the said agreements.

(iii) The Applicant also denies the allegation that it willfully withdrew services on 06.05.2019 without giving the 45-day written notice stipulated in the MSA. The Respondent has provided no evidence to substantiate this claim. On the contrary, services continued beyond 06.05.2019, and three invoices dated 07.05.2019 and 17.05.2019 were signed by Mr. Nirav Agarwal without objection. No notice or communication regarding alleged



abandonment was issued by the Respondent, and invoices were never disputed prior to the Applicant's demand notice of 14.08.2019. The Applicant submits that the Respondent's claims of breach are an afterthought made with mala fide intent to avoid payment. A tabular chart of the total outstanding dues is on record as Annexure A-18.

5. In this context, the Respondent has filed written arguments vide Diary No. 00010/4 dated 01.02.23, and the same is summarized as under:

(i) The Respondent/Corporate Debtor contends that the present application under Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016, along with the demand notice dated 14.08.2019, has not been issued or served in compliance with Rule 5 of the IBC (Application to Adjudicating Authority) Rules, 2016, and that the mandatory procedures therein have been blatantly ignored. It is submitted that a "Term Sheet for Providing School Services" dated 10.10.2018 (Annexure R-1) was executed between K12 Techno Services Pvt. Ltd. ("K12") and the Respondent/Corporate Debtor ("GEMS"). Clause 9 of this Term Sheet, as elaborated in the Reply's Preliminary Submissions (Page 6), provided that K12 would take over management of certain schools earlier managed by GEMS and Dreams India Education Management Solutions Pvt. Ltd. Employees transferred from K12's payroll to GEMS were authorised to act on behalf of GEMS, but in reality, acted at K12's direction. The Respondent alleges that the signatories to the Master Services Agreement dated 31.10.2018 (Annexure A-1) and the Statement of Work dated 13.02.2019 (Annexure A-2), including Mr. K. Himakiran, were K12 employees, and that these agreements were



executed at K12's behest. The Respondent disputes the validity of these agreements, alleging they were orchestrated by K12 in collusion with the Operational Creditor to create unlawful claims against GEMS.

(ii) The Respondent states that K12 illegally terminated the Term Sheet on 06.05.2019 (Annexure R-2), along with agreements with Dreams and GEMS, with immediate effect. Following this termination, all subsequent agreements or MOUs signed by the Operational Creditor were allegedly unauthorised and without GEMS' knowledge, as per Para 4-5 of the Preliminary Submissions (Pages 13-15). It is claimed that K12 operated in violation of the Term Sheet from inception, and after termination, failed to provide the necessary documents to initiate closure/transition procedures, despite repeated emails from 12.05.2019 to 16.05.2019 (Annexures R-3 and R-4). The Respondent further alleges that the Operational Creditor also failed to comply with obligations under the MSA, including providing transitional financial/tax data, details of ₹ 74,00,000/- advance receipts, Guntur expense records, and original employee claims as required under income tax laws. In the Respondent's view, the Operational Creditor abandoned the contract without formally terminating it as per the MSA, failed to hand over required data, and therefore cannot raise any claim.

(iii) The Respondent asserts that the MSA (Annexure A-1) and SOW (Annexure A-2) cannot bind GEMS because they were unauthorised, performed without its consent, and fraudulently executed by K12 personnel misrepresented as GEMS employees. Emails from 12-16 May 2019 and the chart at Annexure R-4 are said to evidence the Operational Creditor's non-



compliance with contractual and statutory obligations. It is also emphasised that Clause 4.1 and Clause 7 of the MSA require disputes to be resolved through arbitration, and thus the present application is liable to be dismissed on that ground alone. The Respondent concludes that the Operational Creditor's initiation of the Corporate Insolvency Resolution Process without first seeking amicable settlement or invoking arbitration reveals mala fide intent, and that the true dispute is between K12 and GEMS, not between the Operational Creditor and GEMS.

6. After hearing both parties and a careful perusal of the records produced before us, the date of default as mentioned in the Affidavit filed vide diary no. 00010/6 dated 05.02.2024 of the Petition is 17.05.2019 and the petition was filed on 20.12.2019, which is well within the period of limitation of three years. The registered office of the Corporate Debtor is situated in the state of Haryana. Hence, the jurisdiction to preside over the matter lies with this Adjudicating Authority.

7. The first issue for consideration is ***"Whether the Operational Creditor has established the existence of an operational debt, due and payable, exceeding the minimum threshold prescribed under the Insolvency and Bankruptcy Code, 2016."***

The Applicant has placed on record eight invoices (Annexures A-3 to A-11) covering the period January 2019 to May 2019, supported by a bank certificate dated 19.11.2019 under Section 9(3)(c) of the Code confirming non-payment. The ledger account (Annexure A-13) tallies with the claim of ₹ 31,79,368/-. These invoices pertain to services in finance, accounting, and tax compliance, falling squarely within the definition of "operational debt" under Section 5(21) of the



Code. The Respondent does not dispute that the services described in these invoices fall within the contractual scope, but attempts to shift liability onto K12 Techno Services Pvt. Ltd.

8. The next issue herein arises that ***“Whether the invoices forming the basis of the claim were duly served upon and acknowledged by the Corporate Debtor.”***

The Respondent’s plea that it never received the invoices is contradicted by contemporaneous documentary evidence. The Applicant has produced:

- i) Emails addressed to the Respondent’s Senior Manager (Finance & Accounts), Mr. Nirav Agarwal, enclosing the invoices;
- ii) Signed hard copies of the invoices bearing Mr. Agarwal’s signature, in some instances with the express notation “book this invoice,” indicating approval for processing;
- iii) Payment follow-up emails and ledger entries corresponding to each invoice.

Therefore, we find that these documents to be authentic and unrebutted. Mere bald denial cannot prevail over specific, dated communications and signed acknowledgements originating from within the Respondent’s finance department.

9. The third issue arises is ***“Whether there existed any “pre-existing dispute” prior to the issuance of the statutory demand notice under Section 8 of the Code.”***

Under Section 8(2) of the Code, a corporate debtor must, within ten days of receipt of the demand notice, bring to the operational creditor’s attention the existence of



a dispute. Here, the statutory demand notice was served on 23.08.2019; the Respondent's reply was issued only on 12.09.2019 beyond the statutory period. Furthermore, the so-called disputes raised therein (i.e., involvement of K12, alleged lack of authority, purported abandonment of services) were never communicated contemporaneously during contract performance or immediately after receipt of invoices. The record shows services were rendered and accepted even after the alleged 06.05.2019 termination date. Following the Supreme Court's ruling in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*** [(2018) 1 SCC 353], these afterthought allegations do not constitute a genuine, pre-existing dispute.

10. Now, the question arises is “***Whether the Master Services Agreement dated 31.10.2018 and the Statement of Work dated 13.02.2019, signed by persons acting for the Corporate Debtor, are binding upon it notwithstanding the respondent's plea of lack of authority and involvement of K12 Techno Services Pvt. Ltd.***”

The Respondent's contention that the Master Services Agreement and Statement of Work were unauthorised and executed by K12 personnel without its consent is unsustainable in law. The agreements were signed by Mr. K. Himakiran, reflected as an authorised signatory of the Respondent. Even if it is assumed arguendo that such persons were employees seconded from K12, ***the legal maxim Qui facit per alium facit per se (he who acts through another, does the act himself) applies.*** A principal is bound by the acts of its authorised agents, whether actual or ostensible, especially where third parties act in reliance on such authority. The Respondent enjoyed the benefit of the services rendered under these agreements



and raised no objection to the authority of its signatory until after default. Commercial law does not permit a party to approbate and reprobate.

11. At last, the issue left is ***“Whether the application suffers from any procedural infirmity rendering it non-maintainable.”***

The objection that the demand notice was not served in accordance with Rule 5 of the IBBI (Application to Adjudicating Authority) Rules, 2016 is devoid of merit. The Applicant has filed proof of dispatch and delivery attached at Annexure -P 11 of the petition; the Respondent has admittedly replied to the notice, thereby waiving any alleged defect in service. As to the arbitration clause, it is well-settled (***Mr. Shahi Md. Karim Vs. M/s. Kabamy India LLP,(2023) ibclaw.in 106 NCLAT***) that the existence of an arbitration agreement does not bar the maintainability of an application under Section 9 if the statutory requirements are met.

12. In view of the foregoing discussion, this Adjudicating Authority is satisfied that an operational debt of ₹31,79,368/- stands established as due and payable by the Corporate Debtor for services rendered by the Operational Creditor, duly supported by contemporaneous invoices, email communications, and signed acknowledgements. There is no pre-existing dispute within the meaning of the Code prior to the issuance of the statutory demand notice. The Master Services Agreement dated 31.10.2018 and Statement of Work dated 13.02.2019 are binding upon the Corporate Debtor, and the plea of lack of authority is a belated and untenable defence. All procedural requirements under Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016, stand complied with. On the basis of



the facts the application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

- i. Corporate Debtor – **GEMS Education Solutions India Private Limited** is admitted in the Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.
- ii. The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.



- iv. In Part III of Form No.5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. Accordingly, we have considered the name of Mrs. Sapna Gupta for appointing as an Interim Resolution Professional from the panel provided by the Insolvency and Bankruptcy Board of India. The Law Research Associate of this Tribunal has checked the credentials of Mrs. Sapna Gupta, wherein her AFA Certification is valid upto 31.12.2025 and there is nothing adverse against her. In view of the above, we appoint Mrs. Sapna Gupta, Registration No. IBBI/IPA-001/IP-P01324/2018-2019/12056, email: sapnaarun.ca@gmail.com, Mob. No.931611788, as the Interim Resolution Professional.
- v. The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- vi. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.
- vii. The IRP shall perform all functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending



every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- viii. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- ix. The Financial Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Twa Lacs only) to the IRP to meet out the initial CIRP cost within two weeks from the date of receipt of this order for smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.
- x. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven working days and upload the same on website immediately after pronouncement of the order.



- xi. The IRP shall also serve a copy of this order to various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.
- xii. The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this order.

13. As a result, the Company Petition CP (IB) No. 10/Chd/Hry/2020 stands admitted.

Sd/-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)
August 14, 2025
AKS

Sd/-
HARNAM SINGH THAKUR
MEMBER (JUDICIAL)