

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IBA/88//2020

Under Section 9 Rule 6 of the IBC, 2016

**In the matter of M/s. Computer Age Management Services Pvt.
Ltd.**

**Mr. M.S. Subramaniam,
Greenways Road, Chennai-600028**

.... Applicant

Vs.

M/s. Computer Age Management Services Private Limited

.... Respondent

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Applicant : Mr. M.S. Subramaniam – party in person

*For Respondent : Mr. Sivasankaran, Advocate
Mr. Sathya Ganesh, Advocate*

Per : R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on 27.04.2021

Under consideration is an application filed pursuant to Section 9 of the I & B Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules) by M.S. Subramaniam, party in person (Applicant) against

IBA/88/2020

M/s. Computer Age Management Services Private Limited
(Respondent). This Application was filed on 30.12.2019.

2. The Applicant submits that he joined as Deputy Manager vide call letter dated 22.03.2000 (page.31) issued by the Respondent Company. After discharging his duties, the Applicant tendered his resignation on 10.07.2009 and claims an amount of Rs.37,09,367/-as pre-retirement and post-retirement benefits till 16.07.2012. The Applicant has narrated his anguish and long legal battle before various fora for recovery of dues which are pending till date and that the applicant is aged 65 years, physically challenged and partially short of hearing. The Applicant further states that till date, the respondent has not given him relieving letter and hence he claims that he continues to be in service till date.

3. The Respondent has filed a reply dated 4th September 2020. The Respondent has raised that there is a pre-existing dispute between the parties after the applicant had retired from the

organisation and during employment, the applicant has indulged in various defamatory activities against the Company. The Respondent states that there is a pending dispute before EPF Tribunal. According to the Respondent, the applicant has resigned from the Company on 10th July 2009 but the applicant claim that he had retired on 15th July 2012 and therefore the default has occurred on 15th July 2012 at the latest. The respondent also states that under Section 9 (3) (b) IBC, the applicant did not file any affidavit on dispute as mandatorily required. In the demand notice under Section 8, the applicant has also wrongly mentioned the name of the Respondent. The Respondent further states that the applicant has claimed Rs.37,09,367/- towards salary from 15th July 2012.

4. In response to the counter, the applicant has also submitted a detailed rejoinder narrating the sequence of events which led to the resignation of the applicant and pending defamation suit and also dispute pending before the EPF Tribunal.

5. Heard both the parties. We have gone through pleadings, documents and oral submissions by both the parties. The present

application was filed on 30.12.2019. The Central Government, in exercise of its powers under Section 4 of the IBC, 2016 published a Notification dated 24.03.2020, in which the jurisdiction of this Tribunal has been raised to Rs.1,00,00,000/- (Rupees One Crore) as the minimum amount of default for the purpose of triggering insolvency. Hence, this Adjudicating Authority has jurisdiction to hear this application filed prior to 24.03.2020 in the relevant time this Adjudicating Authority had jurisdiction to entertain debt of rupees one lakh and above.

6. It is seen that this applicant has approached this Adjudicating Authority on 30.12.2019 by filing an application under Section 9 of IBC, 2016. It is pertinent to mention here that the Hon'ble Supreme Court in *BK Educational Services Private Limited -vs- Parag Gupta and Associates*, held "that the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. The right to sue, therefore, accrues when a default occurs. If the default has occurred



over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act”.

Hence, the present application is ***barred by Limitation.***

7. In the matter of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, the Hon’ble Apex Court held as follows:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is

important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.

There is clearly *pre-existing dispute* between the parties in the present matter.

8. In terms of the above, the present application is *barred by limitation* and there is clearly *pre-existing dispute* between the parties. Accordingly, this Insolvency and Bankruptcy Application IBA/88/2020 is **dismissed**. No costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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