

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT III

I.A. 1204/2023 And C.P.(IB)-85/(MB)/2022

(Company Petition is filed Under Section 9 of Insolvency and Bankruptcy Code, 2016) and

(Interlocutory Application is filed Under Section 10A of Insolvency and Bankruptcy Code, 2016)

Arrina Education Services Pvt. Ltd.

.... Applicant (Corporate Debtor/Respondent)

IN THE MATTER OF,

Collegedunia Web Pvt. Ltd.

(CIN: U80103DL2013PTC262063)

Registered Office at: RZ-672-41E, Gali No. 27G, Sadh Nagar-II, Palam Colony, New Delhi-110045

Also having Office Address at: Plot Nos. 418-419, AIHP Signature Tower, Udyog Vihar, Phase-IV, Gurugram-122015.

.....Operational Creditor/Petitioner

Vs.

Arrina Education Services Pvt. Ltd.

(CIN: U80301MH2012PTC225975)

Registered Office at: 7th Floor, Bhaveshwar Arcade, L.B.S. Marg, Ghatkopar (West) Mumbai-400086.

.....Corporate Debtor/Respondent

Order Reserved On : 12.05.2023

Order Pronounced On : 21.06.2023

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearance:

For the Petitioner/Operational Creditor : Mr. Alok Sharma,
Advocate

For the Corporate Debtor : Mr. Ranjeev Carvalho,
Advocate

ORDER

Per: H. V. Subba Rao, Member (Judicial)

1. The above Company Petition is filed by Collegedunia Web Private Limited hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against Arrina Education Services Private Limited hereinafter called as Corporate Debtor by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 1,18,85,550/-.)
2. The Corporate Debtor filed Affidavit in Reply opposing the above Company Petition various grounds including the ground of pre-existing disputes.
3. Besides filing the affidavit in reply in the main Company Petition, the Corporate Debtor also filed the above Interlocutory Application challenging the maintainability of the Main C.P.(IB)-85/(MB)/2022 on the ground that the above Company Petition is hit by the provisions of Section 10A of the Code. The brief facts of the above application are as follows:
 - I. *That Arrina Education Service Private Limited, the Applicant herein, is filing the instant Interlocutory Application seeking dismissal of the captioned Petition under section 10A of the Insolvency and Bankruptcy Code, 2016.*
 - II. *The Petitioner had filed an Application under section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency proceedings against the Applicant.*
 - III. *The Applicant through its reply dated 24th March, 2022 stated that there exists a pre-existing dispute.*
 - IV. *The Petitioner issued an invoice to the Applicant on 31.12.2020 which fell due for payment on 31.01.2021 as per the terms of the invoice under*

the General Service Agreement entered between the parties. As per the payment terms of the GSA, the Applicant had to make payment towards the invoice within 30 days on issuance of the invoice.

As per the claim of the Petitioner, the default occurred on 31.01.2021 which falls under the prohibitory period under section 10A of the code and the same has been stated by the Petitioner at page 12 of the Petition that the date of default occurred on 31.01.2021.

V. It is submitted that as per Petitioner's own submissions, documents, petition and agreement between the parties, the alleged default could only have arisen on 31.01.2021 which clearly falls within the prohibitory period mentioned under section 10A of the Code and therefore the Petition is not maintainable,

VI. In the view of section 10A under the code, the Applicant is filing this instant Interlocutory Application praying that the captioned Petition be dismissed as not maintainable.

4. Heard Mr. Ranjeev Carvalho, counsel appearing for the Applicant/Corporate Debtor and Mr. Alok Sharma, counsel appearing for the Respondent/Operational Creditor.
5. Before going into the merits of the above application, it is important to mention here that the Respondent/Operational Creditor filed the instant Company Petition bearing No. C.P.(IB)-85/(MB)/2022 against the Corporate Debtor claiming an Operational Debt of Rs. 1,18,85,550/- with subsequent interest @ 18% per annum. Since the fate of the main Company Petition is depending on the outcome of the above Interlocutory Application filed by the Corporate Debtor, it is important to decide the above application at the first instance.
6. It is observed from Part-IV of the petition that it is the specific case of the Petitioner that the date of default in the instant case is 31.01.2021 being 30 days from the date of invoice i.e. dated 31.12.2020. The Operational

Creditor mentioned the same date of default and the date of invoice in the demand notice dated 14.04.2021 issued to the Corporate Debtor. Therefore, as rightly contended by the Corporate Debtor and even according to the Operational Creditor's own case, the subject matter of invoice is dated 31.12.2020 and the date of default is dated 31.01.2021 after excluding the period of 30 days which are within the 10A period. Here issuance of demand notice after 10A period will not change the date of default or the cause of action for the application. It is appropriate to mention here that as per the law laid down by the Hon'ble Supreme Court in *Ramesh Kymal Vs. M/s Siemens Gamesa Renewable Power Pvt Ltd.*, no Section 7 and Section 9 petition can never ever be filed basing on the default occurred during the 10A period.

7. Therefore, after hearing both sides and upon perusing the material available on record, this Bench is in complete agreement with the submissions of the counsel appearing for the Corporate Debtor and has no option except to hold that the above Company Petition is hit by Section 10A of the Code and is liable to be rejected.
8. Accordingly, the above Interlocutory Application is allowed. In consequence of allowing the above application, the main Company Petition also fails and is liable to be dismissed.
9. Accordingly, the above Company Petition bearing No. C.P.(IB)-85/(MB)/2022 is dismissed as it is hit by Section 10A.
10. Since the above Company Petition bearing No. C.P.(IB)-85/(MB)/2022 is dismissed on the ground of maintainability under Section 10A, the other

issues raised by the Corporate Debtor in the main Company Petition need not be looked into nor considered.

11. With the above observations and directions, the I.A. 1204/2023 **is allowed** and C.P.(IB)-85/(MB)/2022 is **dismissed**.

Sd/-
MADHU SINHA
MEMBER (Technical)

Shubham

Sd/-
H. V. SUBBA RAO
Member (Judicial)