NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.381/2022 & IA No.967/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 23.06.2022 in CP (IB) No.67/BB/2021
passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench, Bengaluru)

In the matter of:

First WalkIn Technologies
Having its registered office at :
#736, 4th Floor, Gupta House,
7th Cross, 3rd Block,
Koramangala, Near BDA Complex,
Bengaluru - 560 034 … Appellant
V
Coffee Day Pvt. Ltd
Having its Corporate Office at :
23/2, Coffee Day Square,
Vittal Mallya Road,
Bangalore – 560 001
Karnataka, India ... Respondent

Present :

For Appellant : Mr. Antony R. Julian, Advocate

JUDGMENT

(Virtual Mode)

Justice M. Venugopal, Member (Judicial)

Heard the Learned Counsel for the 'Petitioner' / 'Appellant', Mr. Antony R. Julian in IA No.967/2022 in Comp. App. (AT)(CH)(Ins)

No.381/2022, seeking to file a 'copy of the Plaint in Comm. O.S. No.229/2021 (filed by the 'Respondent' before the 'Commercial Court, Bengaluru'), and the same is 'Allowed', because of the 'Plea' made on behalf of the 'Petitioner' / 'Appellant', that the same is required for the determination of the instant Comp. App. (AT)(CH)(Ins) No.381/2022. No Costs.

<u>Background:</u>

2. The Appellant / Petitioner / Operational Creditor has preferred the instant Comp. App. (AT)(CH)(Ins) No.381/2022 before this 'Tribunal', as an 'aggrieved person', being dissatisfied with the 'Impugned Order' dated 23.06.2022 in CP (IB) No.67/BB/2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench, Bengaluru).

3. The 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench, Bengaluru) while passing the 'Impugned Order' dated 23.06.2022 in CP (IB) No.67/BB/2021 at 'Paragraph No.18' had observed the following: -

> *"It is the settled law that the relevant date for determining the existence of a dispute is the date of the demand notice issued under Section 8 of the IBC, 2016. In the instant case, the Petitioner at the first instance, issued Annexure-8 Demand Notice dated 04.09.2020 for which the Respondent/Corporate Debtor given a reply vide Annexure-A9 dated*

03.10.2020, wherein categorically mentioned about the various disputes pending between the parties. Admittedly, the Petitioner having realized that Annexure-A8 demand notice dated 04.09.2020 was not in accordance with the facts and transactions occurred between the parties, issued a fresh Annexure-A10 notice dated 05.03.2021 again under Section 8 of the IBC, 2016. Further, admittedly the Petitioner in his final notice u/s 8 of the IBC, 2016, vide Annexure-A10 dated 05.03.2021 has specifically discarded the earlier demand notice dated 04.09.2020. As a result, the date of the valid Demand notice issued by the Petitioner was on 05.03.2021 (Annexure-A10) and the Respondent / Corporate Debtor is able to show that there were disputes between the parties vide Annexure-A6 dated 27.03.2020 i.e., even prior to the issuance of the discarded demand notice dated 04.09.2020 and also from the reply dated 03.10.2020 of the Respondent/Corporate Debtor which was much prior to the date of issuance of the demand notice dated 05.03.2021. Hence, we are of the view that the Respondent/Corporate Debtor able to show the existence of the dispute between the parties prior to the relevant date i.e., prior to 05.03.2021. Hence, this ground is held against the Petitioner."

and dismissed the CP (IB) No.67/BB/2021, by making an observation, that the 'Orders' shall not preclude the Appellant / Petitioner, from availing any other remedy, in accordance with 'Law'.

Appellant's contentions:

4. The Learned Counsel for the Appellant / Petitioner / Operational Creditor submits that the 'impugned order' of 'Dismissal', dated 23.06.2022 in CP (IB) No.67/BB/2021 (filed under Section '9' of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the I&B (AAA) Rules, 2016)

passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) is an ‘incorrect one’ in the ‘eye of the Law’. Furthermore, it is represented on behalf of the Appellant / Petitioner / Operational Creditor that the ‘Tribunal’ had committed an error in resting upon the ‘Impugned Order’ dated 23.06.2022 in CP (IB) No.67/BB/2021, based on the ‘Reply’ to the ‘First Demand Notice’ dated 03.10.2021, furnished by the Respondent.

5. The Learned Counsel for the Appellant contents that the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) had not taken into account of the ‘clear’ and ‘unambiguous’ ‘Demands’ of ‘Liability’, made on the part of the Respondent and related ‘Documents’.

6. The stand of the Appellant is that the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) had failed to take into account the consideration of the fact that the ‘Case’ filed by the ‘Respondent’ before the ‘Hon’ble Commercial Court’, was filed after the receipt of the ‘Demand Notice’, thus falling clearly outside the ambit of a ‘pre-existing dispute’, as per Section 8 (2) of the Insolvency & Bankruptcy Code, 2016.

7. Advancing his argument, the Learned Counsel for the Appellant comes out with a ‘Plea’ that the CP (IB) No.67/BB/2021 filed by the Appellant / Petitioner / Operational Creditor, before the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) was fully satisfying the ingredients of Sections ‘8’ and ‘9’ of the Insolvency & Bankruptcy Code, 2016.

8. Expatiating his submission, the Learned Counsel for the Appellant puts forward an argument that the reliance placed by the Respondent in respect of the ‘Commercial Suit No.229/2021’, as an ‘existing dispute’, between the parties, is a ‘malafide’ endeavour to escape from the ‘Liability’ under the Insolvency & Bankruptcy Code, 2016.

9. The Learned Counsel for the Appellant had issued a final ‘Demand Notice’, as per Section 8 (1) of the Code, 2016 on 05.03.2021 to which the Respondent had not sent the ‘Reply’, within the ‘statutory period’ of ‘10 Days’, only to establish on ‘false defence’ of a ‘pre-existing dispute’. The Respondent had preferred the ‘Commercial Suit in OS No.229/2021’, before the ‘Hon’ble Commercial Court’ in Bangalore. But, the said ‘Suit’ was filed by the Respondent, after the service of ‘Demand Notice’, by the Appellant.

10. The clear cut contention of the Appellant is that the 'aforesaid Commercial Suit in OS No.229/2021' was filed by the Respondent, after service of 'Demand Notice' by the Appellant and in this regard refers to the 'Decision' of this 'Tribunal' in '***Apya Capital Services Pvt. Ltd. v Guardian Homes 2020 SCC Online NCLAT 803***, wherein it is observed as under: -

> *"Therefore, it is futile on the part of the Corporate Debtor to raise the grievance that there was a dispute relating to the quality of service. As already noticed no suit or arbitration proceedings were pending on the date of filing of application under Section 7 in regard to quality of service to bring the same within the ambit of the dispute as contemplated under Section 5(6)(b) of the 'I&B Code' to disentitle the Appellant-Financial Creditor from initiating Corporate Insolvency Resolution Process. No such dispute was even brought to the notice of the Appellant Financial Creditor as the demand notice served under section 8(1) of the I&B Code was not responded by the Corporate Debtor".*

11. According to the Appellant, 'No Dispute', had existed between the parties, during the 'Term of Agreement', when the Appellant had performed its obligations in an 'efficient' and 'timely manner'. The Learned Counsel for the Appellant projected an argument that the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench, Bengaluru) had

incorrectly relied upon, on an E-mail dated 27.03.2020, as the 'Document', proving a 'pre-existing dispute', between the parties, while failing to take into account, the fact that the Respondent through an E-mail dated 19.03.2020 in the same trail of E-mail had acknowledged that the remaining amount was reconciled by the Parties to a sum of Rs.2,15,24,585/-.

12. The Learned Counsel for the Appellant emphatically points out that the Respondent, in the instant Case, had fabricated a 'dispute' on the 'deficient service' of the 'Appellant', without an 'iota of evidence' on 'Record', illustrating its 'malafide intentions' and 'actions' in the matter.

13. The Learned Counsel for the Appellant brings to the 'Notice' of this 'Tribunal' that the Respondent had specifically acknowledged through its 'written communications' dated 19.03.2020 and 27.03.2020 issued to the Appellant that it was liable to pay the amounts to the Appellant, for the services provided by it and in fact Mr. Jayaraj, who was employed with the Respondent as the 'Group Chief Finance Officer' and Mr. Sundar, who was employed with the Respondent, as 'Chief Financial Officer', were aware of the payments that were made and owed to the Appellant.

14. The version of the Appellant is that the Respondent had failed to effect payment in respect of the amounts owed by it to the Appellant and

indeed a ‘Legal Notice’ dated 13.08.2020, was issued to the Respondent, demanding the payment outstanding to it (Principal sum of Rs.2,36,59,289/- payable for the services rendered to it by the Appellant and the principal amount of Rs.44,73,424/- payable for the services rendered by the Fourthlion Technologies Pvt. Ltd.

15. According to the Appellant, a ‘Demand Notice’, dated 04.09.2020 was issued by the Appellant, to the Respondent, demanding the payment of the ‘Operational Debt’, being the ‘Principal Sum’ of Rs.2,36,59,289/- and the Respondent had issued the ‘Reply Notice’, on 03.10.2020 through its ‘Lawyers’.

16. Not resting with the above, the Appellant had issued a ‘Final Demand Notice’ on 05.03.2021 for a Principal Sum of Rs.1,75,73,690/-, comprising all sums, which had remained unpaid to it, against the invoices raised, prior to 25.03.2020.

17. The Learned Counsel for the Appellant raised a ‘Plea’ that the Respondent had not issued a ‘Reply’ to the Appellant, despite the lapse of ‘10 days’, after the receipt of the ‘Demand Notice’. An ‘E-mail’ communication was addressed by the Appellant’s Learned Counsel to the ‘Group CFO’ of the Respondent pointing out to him that the Respondent had failed to respond to the Appellant’s ‘Demand Notice’ dated 05.03.2021.

18. While rounding up, the Learned Counsel for the Appellant prays for setting aside the 'Impugned Order' dated 23.06.2022 in CP (IB) No.67/BB/2021, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Bengaluru Bench, Bengaluru).

BIRD'S EYE VIEW on I & B Code, 2016:

19. It is pointed out that an 'Adjudicating Authority', is to determine, whether there is a 'plausible contention', which requires more investigation and ensure that the 'Dispute', is not raised on patently, feeble legal 'Plea(s)' or 'Assertions of Fact', which are unsupported by Material evidence. The 'Adjudicating Authority' ('Tribunal') must satisfy that there exists 'Genuine' and 'Reasonable' 'Dispute'.

DEBT :

20. Section 3 (11) of the Insolvency & Bankruptcy Code, 2016 defines 'debt' meaning a 'liability' or 'obligation' in respect of a 'Claim', which is due from any person and includes a 'Financial Debt' and 'Operational Debt'.

DEFAULT :

21. Section 3 (12) of the Insolvency & Bankruptcy Code, 2016 defines 'default' meaning 'non-payment' of 'debt', when whole or any part or instalment of debt has become due and payable and has not repaid by the debtor or the Corporate Debtor, as the case may be.

DISPUTE:

22. Section 5 (6) of the Insolvency & Bankruptcy Code, 2016 defines 'dispute' includes suit or arbitration proceedings relating to :

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;

23. This 'Tribunal', points out that an 'Application' / 'Petition', under Section 9 of the Insolvency & Bankruptcy Code, 2016, requires strict 'proof' of 'Debt', and 'Default'. If a communication issued earlier to the 'Demand Notice' under Section 8(1) of the Insolvency & Bankruptcy Code, 2016 indicates 'Dispute', it can be taken into account by the 'Adjudicating Authority' ('Tribunal').

24. As a matter of fact, that the 'Corporate Debtor' must exhibit that the 'pre-existing Dispute' or that the 'Dues', are not payable in 'Law'. As such, the 'Adjudicating Authority' ('Tribunal') is to subjectively satisfy itself, whether there is a 'pre-existing Dispute', before the 'Receipt' of 'Demand Notice'. It is to be remembered that neither the 'Adjudicating Authority', ('Tribunal') nor the 'Appellate Authority', can go into the 'veracity' and 'authenticity' of such 'Disputed

Documents' or 'contentious issues' in detail, because of the fact, that the 'Proceedings' under the Insolvency & Bankruptcy Code, 2016 are 'summary' in nature.

25. In fact, the 'Disputed Questions' relating to 'Claim' or 'Counter Claim', cannot be decided by the 'Adjudicating Authority' ('Tribunal') in an 'Application' under Section 9 of the Insolvency & Bankruptcy Code, 2016. Suffice it for this 'Tribunal', to make a mention that in a 'Petition' under Section 9 of the Insolvency & Bankruptcy Code, 2016, the 'Question' on 'Merit of Dispute', cannot be gone into by an 'Adjudicating Authority' ('Tribunal'). Of course, the 'Adjudicating Authority' ('Tribunal') is to examine before 'Admitting', or 'Rejecting' an 'Application' under Section 9 of the Insolvency & Bankruptcy Code, 2016, 1) Whether the 'Dispute' raised by the 'Corporate Debtor', qualifies as a 'Dispute', as defined under Section 5 (6) of the Insolvency & Bankruptcy Code, 2016; and 2) The 'Adjudicating Authority' ('Tribunal') can examine whether 'Merits of Dispute', given by the 'Corporate Debtor', satisfy the 'Condition' specified under Sub Section 2 (8) of the Insolvency & Bankruptcy Code, 2016.

26. It is a settled ‘Law’, that when there is an ‘existence’ of ‘Dispute’, earlier to the issuance of ‘Demand Notice’, the ‘Adjudicating Authority’, (‘Tribunal’) must ‘reject’ the ‘Application’, as per the decision of the Hon’ble Supreme Court of India in Mobilox Innovations Private Ltd. v Kirusa Software Private Ltd. 2018 1 SCC Online 353.

APPRAISAL :

27. Before the 23.06.2022 in CP (IB) No.67/BB/2021 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru), the Appellant / Petitioner / Operational Creditor in Form 5 Part IV (Particulars of ‘Operational Debt’) had mentioned that the total amount of debt was Rs.2,46,48,956/- and it was clearly mentioned that the ‘Debt’ comprises of both amounts that were payable before 25.03.2020 and amounts that fell due for payment after 25.03.2020. Moreover, as per Section 10A of the Insolvency & Bankruptcy Code, 2016, according to the Appellant / Petitioner / Operational Creditor for the purposes of the instant Insolvency Application, the unpaid ‘Operation Debt’, which fell due for payment before 25.03.2020, and hence, the sum of ‘Default’ and payable to it, was Rs.1,75,73,690/- (being the Principal Amount). Besides the above, it

is the ‘Plea’ of the Appellant that the ‘Respondent / Corporate Debtor’ had specifically acknowledged through its ‘Written Communications’ dated 19.03.2020 and 27.03.2020 issued to the Appellant / Petitioner / Operational Creditor that it was liable to render payments to the Appellant for the services provided by it and relied on the contents of ‘text communications dated 19.03.2020 and 27.03.2020’.

28. The Learned Counsel for the Appellant points out that the Respondent / Corporate Debtor was intending to launch a ‘Digital Application’, called the ‘CCD Mobile App’ for its customers and had engaged the services of the Company known as ‘Fourthlion Technologies Pvt. Ltd. through the ‘Agreement’ for ‘Digital Application Development Services’ dated 05.05.2016. On 04.06.2018, an ‘Addendum’, was executed to the ‘Digital Application Development Services Agreement’ dated 05.05.2016, and the same was executed between the ‘Respondent’ / ‘Corporate Debtor’ and the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’, because the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’ is the ‘Assignee’ of the ‘Rights’ and ‘Liabilities’ of M/s. Fourthlion Technologies Pvt. Ltd. Also, that under the ‘Digital Application Development Services Agreement’, executed with the ‘Corporate Debtor’, in terms thereof, the ‘Operational Creditor’, had

rendered services to the 'Corporate Debtor', as agreed to its complete satisfaction.

29. The specific case of the 'Appellant' is that for the 'Services' rendered under the 'Agreement', the 'Appellant' / 'Petitioner' / 'Operational Creditor' had raised '12 invoices' on the 'Respondent' / 'Corporate Debtor' between 04.02.2019 and 10.02.2020, also, the 'Appellant' / 'Petitioner' / 'Operational Creditor' had raised 'invoices' for the work done between 16.03.2020 and 06.08.2020. Therefore, the aggregate 'principal sum', was Rs.2,36,59,289/-, but, on account of mutual 'set offs', 'deductions' and 'statutory restriction' in 10A of the Insolvency & Bankruptcy Code, 2016, a 'principal sum of Rs.1,75,73,690/-', was due from the 'Respondent' / 'Corporate Debtor', to the 'Appellant' / 'Petitioner' / 'Operational Creditor'. Further, case of the 'Appellant' is that even though the 'Respondent' / 'Corporate Debtor' had acknowledged its 'Debt', through 'E-mail Communications' dated 19.03.2020 and 27.03.2020, no payment was forthcoming and the 'Appellant' / 'Petitioner' / 'Operational Creditor' was forced to issue a 'Legal Notice' dated 13.08.2020 to the 'Respondent' / 'Corporate Debtor', demanding a sum of Rs. 2,36,59,289/- for the services rendered by the 'Appellant' / 'Petitioner' / 'Operational Creditor' and Rs.44,73,424/- for the services rendered by the Fourthlion Technologies Pvt. Ltd.

30. The ‘Appellant’, also issued a ‘Demand Notice’ dated 04.09.2020, claiming ‘payment’ for the ‘unpaid Operational Debt’, being a sum of Rs.2,36,59,289/-. On 03.10.2020, the ‘Respondent’ / ‘Corporate Debtor’ through its ‘response’ had disputed the same, on the ground, that since there was a ‘suspension on the initiation of the ‘Corporate Debtor Insolvency Resolution Process’ (CIRP), for any default arising on or after 25th March, and, therefore, the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’ cannot initiate any proceedings under the Insolvency & Bankruptcy Code, 2016. As such, the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’ had not relied upon on the said ‘Demand Notice’, and issued a ‘Final Demand Notice’ dated 05.03.2021, for the payment of principal sum of Rs.1,75,73,690/-. However, no ‘Reply’ was issued by the ‘Respondent’ / ‘Corporate Debtor’, although more than ‘10 Days’ had lapsed, after the receipt of ‘Demand Notice’.

31. It transpires that on 26.03.2021, the Learned Counsel for the ‘Respondent’ / ‘Corporate Debtor’ had issued ‘Notice of Dispute’, in response to the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’s’ ‘Demand Notice’ dated 05.03.20221 and that the ‘Appellant’ has filed a ‘detailed Rejoinder’ on 03.04.2021, in response to ‘Notice of Dispute’, received from the ‘Respondent’ / ‘Corporate Debtor’, on 07.04.2021. The ‘Appellant’ /

'Petitioner' / 'Operational Creditor', had filed an 'Application' to initiate the 'Corporate Debtor Insolvency Resolution Process' (CIRP), in the matter of 'Respondent' / 'Corporate Debtor'.

32. The 'Appellant' / 'Petitioner' / 'Operational Creditor', on 13.08.2020 addressed a letter to the 'Respondent' / 'Corporate Debtor', inter alia, stating that the 'Appellant' / 'Petitioner' / 'Operational Creditor' has rendered services in the 'Agreement' and had raised 'invoices', periodically, which were payable by the 'Respondent' / 'Corporate Debtor', within a period of '15 Days' from the 'dates of invoices' and further that the 'Respondent' / 'Corporate Debtor' was called upon to pay a sum of Rs.2,36,59,289/- to the 'Appellant' and Rs.44,73,424/- to Fourthlion Technologies Pvt. Ltd., within 'Seven Days' from the date of receipt of the 'Notice'.

33. In fact, the 'Appellant' / 'Operational Creditor' had issued a 'Demand Notice' to the 'Respondent' / 'Corporate Debtor' dated 04.09.2020 in 'Form 3', wherein the total sum of 'Debt' was mentioned as Rs.2,36,59,289/- and this was a 'Principal Amount', due to be paid by the 'Respondent' / 'Corporate Debtor' to the 'Appellant' / 'Operational Creditor'. Further, according to the 'Appellant' / 'Operational Creditor', the 'invoices' were due and payable from the 'Debt', on which they were raised

on the 'Respondent' / 'Corporate Debtor' and payable within '15 Days' from the date of 'Invoices'.

34. The 'Respondent' / 'Corporate Debtor' had issued a 'Reply' dated 03.10.2020 (for the 'Demand Notice' dated 04.09.2020 of the 'Appellant' / 'Operational Creditor'), wherein 'numerous disputes' were 'mentioned of' and that were pending between the parties.

35. The 'Appellant' / 'Petitioner' / 'Operational Creditor', after coming to know that the 'Demand Notice' dated 04.09.2020 was not in 'conformity' with the 'facts and transactions' that had taken place between them, had issued an another 'Fresh Notice' dated 05.03.2021, as per the ingredients of Section '8' of the 'Insolvency & Bankruptcy Code, 2016. In this connection, this 'Tribunal', pertinently points out that in the 'Fresh Notice' dated 05.03.2021, the 'Appellant' / 'Operational Creditor' had 'brushed aside' the prior 'Demand Notice' dated 04.09.2020.

36. On perusal of the contents of 05.03.2021 'Notice' (Form 3) issued by the 'Appellant' / 'Operational Creditor' side to the 'Respondent' / 'Corporate Debtor', demanding payment in respect of the 'unpaid operational debt', which felt due, for payment before 25.03.2020 and that the 'Respondent' / 'Corporate Debtor' was in 'default' and, therefore, liable to pay the 'Appellant' / 'Petitioner' / 'Operational Creditor', the principal sum

of Rs.1,75,73,690/-. The said ‘unpaid operational debt’ for the period earlier to 25.03.2020, according to the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’, was admitted and acknowledged, as payable to the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’ by the ‘Respondent’ / ‘Corporate Debtor’, as per the ‘E-Mails dated 19.03.2020 and 27.03.2020.

37. On perusal of the ‘Reply’ of the ‘Respondent’ / ‘Corporate Debtor’ dated 03.10.2020, it patently and latently indicates that among other things that the ‘Appellant’ / ‘Operational Creditor’, had failed to perform and ensure performance of its ‘Reciprocal obligations’ and, therefore, was not entitled to make ‘any claim’ against the ‘Respondent’ / ‘Corporate Debtor’ or the Coffee Day Group of Companies.

38. Added further, in the aforesaid dated 03.10.2020 (for the ‘Demand Notice’ dated 04.09.2020) issued to the Coffee Day Global Service under the Insolvency & Bankruptcy Code, 2016, it was mentioned that the ‘Service Agreement’ dated 05.05.2016 executed between the ‘Respondent’ / ‘Corporate Debtor’ and Fourthlion could not be relied upon by the ‘Appellant’ / ‘Operational Creditor’ and to that extent the ‘Demand Notice’ was misconceived and further that ‘this Agreement’ was terminated, etc. Besides this, at Paragraph ‘9’ of the ‘Reply’ dated 03.10.2020 of the ‘Respondent’ / ‘Corporate Debtor’, it was clearly mentioned that ***“in fact,***

our client has, in the past, pointed out several deficiencies in the alleged services provided by your client". This has led to disputes between the parties that are alive and subsisting. These 'disputes', have existed much prior to September 4, 2020, etc.

39. It is to be pointed out that the 'Proceedings' under the Insolvency & Bankruptcy Code, 2016 are 'summary in nature'. If the dispute raised is plausible and a tangible one and not a 'moonshine' defence taken by the concerned party, then, the 'Petition', under Section '9' of the Insolvency & Bankruptcy Code, 2016 cannot be admitted by the 'Adjudicating Authority' in the considered opinion of this 'Tribunal'. In fact, when the 'defences' / 'disputes' raised between the parties, in the instant case, unerringly points out that it has to be resolved before the 'Competent Civil Court', by the parties, by adducing 'oral' and 'documentary' evidence.

40. Before the 'Adjudicating Authority', the 'Respondent' / 'Corporate Debtor' had filed a 'detailed Reply'. It transpires that the disputes pertaining to the existence and extent of alleged 'Debt', the 'Liabilities' / 'Claims' / 'Counter Claims' and issues pertaining to the violation of the contentions and warranties under the 'Agreement', executed between the parties are a 'subject matter' of 'conclusion' and 'trial' in the 'Commercial Suit', pending before the 'Hon'ble Commercial Court, Bangalore'.

41. The main ‘Company Petition’ before the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) was on 09.04.2021. The ‘Agreement’ for the ‘Digital Application Development Services’ was executed on 05.05.2016 between the Parties and the ‘Addendum’ was dated 04.06.2018. The categorical ‘Plea’ of the ‘Appellant’ / ‘Operational Creditor’ is that by virtue of the ‘Reconciliation Statement’ dated 27.03.2020, where the amount was reconciled between the Parties, although according to the ‘Appellant’, the ‘Respondent’ had purportedly disputed the ‘total sum’ and hence, had saved the ‘Limitation Period’ and, therefore, the ‘Main Petition’ (CP (IB) No.67/BB/2021) is maintainable.

42. Be that as it may, on a careful consideration of the contentions advanced on behalf of the ‘Appellant’ / ‘Operational Creditor’ and in view of the contents of ‘Reply’, ‘Notice’ issued by the ‘Respondent’ / ‘Corporate Debtor’, clearly indicates that the ‘Claim’ of the ‘Appellant’ / ‘Operational Creditor’ for the purported ‘default’ sum of Rs.1,75,73,690/-, being the due amount from the ‘Respondent’ / ‘Corporate Debtor’ to the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’ is not free from ‘Disputes’ / ‘Controversies’. To put it differently, it is ‘crystalline clear’, that there was a ‘pre-existing Dispute(s)’ between the ‘Appellant’ / ‘Petitioner’ /

‘Operational Creditor’, and the ‘Respondent’ / ‘Corporate Debtor’, and in such circumstances, filing of the CP (IB) No.67/BB/2021 is, per se, not maintainable in the eye of ‘Law’. Viewed in that perspective, the conclusion arrived at, by the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) in CP (IB) No.67/BB/2021 dated 23.06.2022, in dismissing the ‘Application’, is free from any ‘Legal errors’. Consequently, the ‘Appeal’ is ‘devoid of merits’ and it fails.

Disposition:

In fine, the Comp. App. (AT)(CH)(Ins) No.381/2022 is ‘dismissed’, but, without Costs.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

18/11/2022

ghk/tm