

2023 LiveLaw (SC) 270

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., C.T. RAVIKUMAR; J.
CIVIL APPEAL NO.1775 OF 2021; March 27, 2023
M/S NEXT EDUCATION INDIA PRIVATE LIMITED
versus
M/S K12 TECHNO SERVICES PRIVATE LIMITED

Insolvency and Bankruptcy Code, 2016; Section 9 - When a petition under Section 9 of IBC is filed based on several invoices and some of the invoices are time barred, then NCLT must consider the remaining invoices which are within limitation and whether they cross the minimum threshold of Rs. 1 Crore. The Section 9 petition cannot be dismissed on the sole ground that some of the invoices are time barred.

For Appellant(s) Mr. Dama Seshadri Naidu, Sr. Adv. Mr. Kumar Sudeep, AOR

For Respondent(s) Mr. Debal Kumar Banerjee, Sr. Adv. Mr. Anand Sanjay M Nuli, Adv. Mr. Suraj Kaushik, Adv. Mr. Nanda Kumar K B, Adv. Ms. Akhila Wali, Adv. Mr. Shiva Swaroop, Adv. Mr. Dharm Singh, Adv. M/S. Nuli & Nuli, AOR

ORDER

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 17-03-2021 passed by the National Company Law Appellate Tribunal (NCLAT), New Delhi, Principal Bench in Company Appeal (AT) (Insolvency) No.98/2019, by which the NCLAT has dismissed the said appeal confirming the order passed by the National Company Law Tribunal(NCLT), Bengaluru Bench dismissing the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) filed by the appellant solely on the ground that the claim was barred by limitation, the original applicant has preferred the present appeal.

At the outset, it is required to be noted that, in fact, the appellant herein, who claimed to be `Operational Creditor` raised 187 different invoices for the Digital Classroom Solution Services provided for the period between 12.03.2011 and 30.06.2017. The amount under different invoices were unpaid, which gave rise to the appellant to initiate the proceedings under Section 9 of the IBC before the NCLT. The NCLT considering the starting point of limitation as 12.03.2011 held that the claim is barred by limitation. However, the NCLT did not take into consideration the subsequent invoices at least preceding three years from the date of filing of Section 9 application, which ought to have been considered. Under the circumstances, the NCLT ought to have considered the invoices at least for the period preceding three years from the date of the application under Section 9, rather than considering the starting point of limitation as 12.03.2011. Under the circumstances, the order(s) passed by the NCLT and affirmed by the NCLAT are unsustainable.

Learned counsel appearing on behalf of the respondent has pointed out that, as such, the respondent is a going concern and commercially viable and has already paid Rs.4.5 crores to the appellant and, therefore, there is no question of declaring it as insolvent.

The aforesaid aspects are required to be considered by the NCLT. However, the view taken by the NCLT that the claim is barred by limitation is unsustainable.

In view of the above and for the reasons stated hereinabove, the present appeal succeeds. The impugned judgment and order(s) passed by the NCLT and that of the NCLAT dismissing/rejecting application under Section 9 of the IBC on the ground that the claim is barred by limitation are hereby quashed and set aside and now the matter is remitted to the NCLT to consider Section 9 application afresh in accordance with law and on its own merits. All the contentions/defences which may be available to the respective parties including the case on behalf of the respondent that the respondent company is economically and commercially sound and a running company and, therefore, is not required to be declared as insolvent are kept open, which may be considered by the NCLT in accordance with law and on its own merits.

The present appeal is accordingly allowed. No costs.

However, it is made clear that the respondent shall not be permitted to raise the pre-existing dispute as the same has been negated by the NCLAT.

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