

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1228 of 2023 & I.A. No. 4336 of
2023**

IN THE MATTER OF:

NTT Data Business Solutions Pvt. Ltd.

...Appellant

Versus

Trident Ltd.

...Respondents

Present:

For Appellant: Appeared but not marked name in appearance list

For Respondent:

ORDER

29.09.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 17th July, 2023 by which Order Section 9 Application filed by the Appellant has been dismissed.

3. Corporate Debtor-Trident Ltd. entered into contract with the Operational Creditor. A bank guarantee was also issued. The case of the Corporate Debtor was that there was certain deficiency in the service as per the agreement by the Operational Creditor and notice under Section 21 of Arbitration and Conciliation Act, 1996 was given to the Operational Creditor dated 14th June, 2021. The Corporate Debtor invoked arbitration clauses and appointed Hon'ble Justice R.K. Jain (Retd) as Arbitrator and Appellant was requested to appoint second Arbitrator within seven days. Learned Counsel for the Appellant submits that notice of arbitration was replied stating that there is no dispute between the parties. The Appellant thereafter gave a notice under Section 8 of the I&B Code, 2016 on 21st June, 2021 and thereafter filed Section 9 Application. The Adjudicating Authority rejected the Application

holding that there is a pre-existing dispute between the parties. The Adjudicating Authority returned a finding that there was pre-existing dispute between the parties hence the Application cannot be admitted.

4. Challenging the said order, this Appeal has been filed. Learned Counsel for the Appellant submits that there was no pre-existing dispute between the parties and there was valid reason for which timelines could not be achieved by the Appellant and when the arbitration notice was issued it was replied stating that there is no dispute between the parties.

5. The Adjudicating Authority has in paragraph 11 of the Order examined the issue of pre-existing dispute and noted that notice of arbitration was issued on 14th June, 2021 and notice under Section 8 of the Code was issued on 21st June, 2021, that is much before the demand notice an Arbitrator was appointed. The Adjudicating Authority has also referred to the meeting dated 18th June, 2021 and email dated 18th June, 2021 received from the Operational Creditor and came to the conclusion that there was a pre-existing dispute.

6. We have looked into the notice dated 14th June, 2021 which was issued by the Corporate Debtor and notice in detail points out the deficiency in service and has thus given a notice for resolving the disputes between the parties by means of arbitration. The mere fact that notice of arbitration was replied by Operational Creditor stating that there is no pre-existing dispute cannot be reason to ignore the dispute as was raised in the notice dated 14th June, 2021

which is elaborate and details the deficiency in service as per the Corporate Debtor.

7. We thus are of the view that the Adjudicating Authority has not committed any error in rejecting Section 9 Application. We however make it clear that it shall be open for the Operational Creditor to take all its pleas and defences in an appropriate legal proceeding including the arbitration.

With these observations, we dismiss the Appeal.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

Basant/nn