

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

**Company Appeal (AT) (Insolvency) No. 197 of 2018**

**IN THE MATTER OF:**

**M/s. Madhumitha Software Services**

**...Appellant**

**Vs.**

**APITCO Ltd.**

**...Respondent**

**Present: For Appellant: - Mr. Ashok Kumar and Mr. Mithlesh Kr. Singh, Advocates.**

**For Respondent:- Mr. Sidharth Jain and Mr. T.N. Divya, Advocates.**

**O R D E R**

**10.05.2018-** The Appellant claimed to be an 'Operational Creditor' and filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") against M/s. APITCO Ltd. ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, by impugned order dated 22<sup>nd</sup> March, 2018 dismissed the application on the ground of 'existence of dispute'.

2. Learned counsel for the Appellant tried to impress the Appellate Tribunal that there is no existence of dispute. However, we find that in reply to demand notice under section 8(2) of the 'I&B Code', the 'Corporate Debtor' by letter dated 22<sup>nd</sup> August, 2017 intimated that in

Contd/-.....

terms of the agreement the amount has been paid. The 'Corporate Debtor' also mentioned the defects and the counter claim, relevant portion of which is quoted below:

“ xxx xxx xxx

*Until May 2016, my client got support from you after considerable delays to enable completion of the training for only 3571 candidates, while training for more than 500 trainees was disrupted in between abruptly which indicated a clear sabotage by you to provide support as Master Facilitator which has been a breach of trust from your side resulting into a total chaos, financial loss, loss of reputation and goodwill of my client. The trainings including placements for 3571 candidates should have been completed within a year time, but it got delayed for nearly two years leading to financial loss & loss of reputation in front of the Ministry.”*

“xxx xxx xxx

*(3) It is submitted that the total number of*

*candidate for whom the training could be successfully completed was 3571. Thus, the total eligible amount payable to you as per agreed terms for the 3571 candidates is Rs. 3,32,81,720/-. But, the total advances paid by my client to you is a sum of Rs. 6,30,90,196/-. My client has paid an excess amount of Rs. 2,45,08,476/- only to ensure proper coordination and completion of the project, which you are liable to refund the same to my client since you are responsible for abrupt closure of the support services. Thus, to preempt and to avoid the refund of the said amount, you have issued the present false notice to my client.”*

3. In view of the aforesaid ‘existence of dispute’, we are not inclined to interfere with the impugned order passed by the Adjudicating Authority. The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/uk