

Adjudicating Authority would not be justified in drawing a conclusion in respect of there being dispute as regards debt and default merely on the strength of an Arbitration Agreement, NCLAT held

CASE TITLE	Sodexo India Services Pvt Ltd Vs. Chemizol Additives Pvt Ltd ¹
CASE CITATION	Comp. App. (AT) (Insolvency) No. 1094 of 2020
DATE OF ORDER	22.02.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

An appeal has been preferred against the impugned order dated 8th June, 2020 wherein an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 and the Adjudicating Authority disposed of the Application directing the Corporate Debtor, in the first instance, to make endeavours for resolution in respect of outstanding debt, failing which the Appellant would be at liberty to invoke arbitration clause contained in Agreement dated 14th December, 2015.

Decision:

Hon'ble NCLAT, disposed off the appeal with following observations:

"4. ...In absence of pre-existing dispute having been raised by the Corporate Debtor or it being demonstrated that a suit or arbitration was pending in respect of the operational debt, in respect whereof Corporate Debtor was alleged to have committed default, the Adjudicating Authority would not be justified in drawing a conclusion in respect of there being dispute as regards debt and default merely on the strength of an Agreement relied upon by the Appellant – Operational Creditor, notwithstanding the fact that such Agreement provided for reference of a dispute arising between the parties in relation to a claim through arbitration..."

8. For the aforesaid reasons, we are unable to persuade ourselves to go along and support the impugned order. The Appeal is allowed and impugned order is set Comp. App. (AT) (Insolvency) No. 1094 of 2020 7 aside. The Adjudicating Authority is directed to pass an order of admission in respect of the Application filed by the Appellant-Operational Creditor under Section 9 of the I&B Code within two weeks of communication of this order. However, the Adjudicating Authority shall be at liberty to provide an opportunity to the Respondent-Corporate Debtor to settle the claim of Appellant-Operational Creditor."

QR CODE FOR FULL ORDER/JUDGEMENT:



¹<https://nclat.nic.in/Useradmin/upload/20659300766034919f72754.pdf>