

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**Company Petition No. (IB)-36(PB)/2021**

*Order under Section 9 of Insolvency & Bankruptcy Code, 2016*

**IN THE MATTER OF:**

Rajesh Sabharwal ... Operational Creditor

Vs.

M/s. Desein Private Limited ... Corporate Debtor

**Order delivered on 27.04.2021**

**CORAM:**

**SH. B.S.V. PRAKASH KUMAR**  
**HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Mr. Vishal Ranjan and Mr. Nitin Kaushik, Advocate

**ORDER**

1. The present petition has been filed under section 9 of Insolvency and Bankruptcy Code, 2016, ("IBC") read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016, by Mr. Rajesh Sabharwal (Operational Creditor) against M/s Desein Private Limited, (Corporate Debtor) for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor company for its inability to liquidate its outstanding dues.
2. As per the brief facts of this matter, the petitioner claiming to be a former employee of the Corporate Debtor; worked in between the

period starting from December 1977 to till May 2019. The Petitioner was employed as an engineer and retired as a Director. Further the Petitioner has submitted that, the Corporate Debtor has not paid his salary for eight months i.e. commencing from October 2018 to May 2019, along with other legitimate dues, despite completing, all duties diligently. The documents relating to the same has been rightly annexed with this petition.

3. The Corporate Debtor is indebted to the operational creditor for total sum of Principal Amount of Rs. 41,81,024/- plus interest @ 15% per annum from the due date, in respect of services provided by the petitioner in the course of his employment.
4. Further, the petitioner also have sent a demand notice dated 31.01.2020 as a last resort under section 8 of the I & B Code, 2016, demanding the pending dues. Despite several reminders almost by all modes the corporate debtor is not willing to return the outstanding dues within the stipulated time or upto the date of filling this petition. Therefore, the petitioner filed this petition before this Tribunal for the initiation of CIRP as provided in the Insolvency and Bankruptcy Code, 2016.
5. This petition prima facie holds no consideration as the Notification dated 24.03.2020 issued by the Central Government, enhanced the minimum default amount for filing cases under section 7, 9 and 10 of the Insolvency and Bankruptcy Code from one lac rupees to one crore rupees based on the proviso to Section 4 of the I & B Code.

6. The petitioner herein had filed this section 9 petition after the threshold limit has been increased by the Central Government to one crore rupees on 24.03.2020, the claim amount in the petition is less than one crore against the corporate debtor.
7. However, this Bench has already given enough clarity about the pecuniary jurisdiction of this Tribunal, with effect from 24.03.2020. In the previous order passed by this Bench having IB-30(PB)/2021 Titled **“Flight Lieutenant Rupa R. Gaur (Retd). Vs. M/s. Mode Advertising & Marketing Private Limited”** The relevant para(s) are reproduced as under:

*i. As to monetary jurisdiction, “class” is one, that is the class which crosses the threshold of one crore rupees to file cases. This sub-classification, applicable in other situations, is irrelevant to determination of monetary jurisdiction to file cases. If we take Section 7 as an illustration, in Section 7, it is obvious that the default date would be before 24.03.2020 at least for cases which were filed immediately after the date of notification i.e., 24.03.2020. In such a scenario, does it mean Section 7 petition could be filed after 24.03.2020 because the date of default was before 24.03.2020? Since the default with threshold limit is the cause of action for initiating insolvency petitions, the word “default” has come in section 4, but not to make default date without threshold as criteria for filing cases.*

ii. *The applicability of law will be one and the same regardless of nature of debt, Section 8 is only an additional safeguard to avoid frivolous cases where dispute is pre-existing, this cause of action is only a kind of filtering of disputed matters in relation to goods and services, it is no way concerned with filing cases.*

iii. *As to other argument that it is a delegated legislation, therefore it shall not have any retrospective effect, we, after careful consideration, are of the view that it is not a point for consideration whether it has retrospective effect or prospective effect, because its applicability has started from 24.03.2020, if date of issual of section 8 notice had been assumed as the date for filing case, the point of retrospective effect would come into picture. In the foregoing discussion, we have already made clear that threshold limit will become the criteria for determination for filing case, if by 24.03.2020 default is for one crore, it could be filed, if not, it will be hit by the notification. So, section 8 will in no way come in between in determination of monetary jurisdiction for filing cases, therefore filing date is the criteria but not receipt of section notice by the corporate debtor.*

iv. *Though it has no bearing on the issue, since the petitioner counsel raised a point that it is a delegated legislation, we must clarify that this notification is not a delegated legislation because the statute (section 4*

*proviso) itself contains within itself the whole legislation on the matter with which it deals, the only point left to the Government is a leverage to increase the amount of default up to one crore rupees. This one crore limit is also mentioned in the statute. If it had not been mentioned about the quantum of increase in the legislation, it could be understood that increase of threshold will become a policy decision to be taken up by the legislature. When the legislature frames law and leaves the change of quantum of threshold up to one crore to the Executive, the leverage to exercise monetary jurisdiction scale from one lakh to one crore is left to the Executive. This kind of legislation would be a conditional legislation. Conditional legislation is always to be construed as part of the parent legislation. When legislation has decided the scale of monetary jurisdiction, it is to be deemed as part of legislation, not a delegated legislation. Moreover, this conditional legislation will not have a recurring effect because the window for increase to one crore is notified. Non-recurring effect is one of the elements of conditional legislation.*

8. Before filing a case under insolvency jurisdiction, creditor shall meet the criteria prescribed in the Code. When a case does not fall within the ambit of IBC, it is always open to the creditor to proceed before the Civil Court.

9. Therefore, this Insolvency petition is hereby **dismissed as misconceived on the premise that it has not met the threshold limit of default as set out by notification dated 24.03.2020 issued under Section 4 of the I & B Code.**

**Sd/-**

**(B.S.V PRAKASH KUMAR)  
ACTG. PRESIDENT**

**Sd/-**

**(HEMANT KUMAR SARANGI)  
MEMBER (TECHNICAL)**