

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No.4768 /IBC/MB/2018**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 6 of the Insolvency and  
Bankruptcy (Application to  
Adjudication Authority) Rule 2016)

*In the matter of*

**Wellspring Helathcare Pvt. Ltd**

Forbes Building, 5<sup>th</sup> Floor (East Wing)

Charanjit Rai Marg,

Fort, Mumbai-400001.

.....**Operational Creditor**

**Vs**

**Jatoyah Investments & Holdings  
Limited**

(CIN: U67120MH1992PLC069777)

Registered office at: 207-208 Allied A

Wing, St. John's Road, Bandra

(West), Mumbai-400050

.....Corporate Debtor

**Order delivered on: 05.08.2021**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Ms. Nidhi

**For the Respondent:** Mr. Dinesh Dubey

***Per: Shri H.V. Subba Rao, Member (Judicial)***

**ORDER**

1. The above Company Petition is filed by M/s Wellspring Healthcare Private Limited hereinafter called as “Operational Creditor” claiming to be an “Operational Creditor” under section 9 of the Code for ordering initiation of CIRP against M/s Jatoyah Investment and Holding Pvt. Ltd the Corporate Debtor herein.
2. The applicant is claiming an amount of 46,20,000/- including interest of Rs. 26,40,000/- being the mutually agreed pre-determined genuine compensation for the costs and loss of business said to have been incurred by the Petitioner herein.
3. The Corporate Debtor filed detailed reply mainly opposing the above Company Petition contending that the Demand Notice under section 8 of the Act was served on the Chartered Accountant of the Respondent by e-mail and not on the Corporate Debtor Company. The Corporate Debtor further contends that the applicant is not an “Operational Creditor” and the amount claimed by him is not an “Operational debt” within the meaning of the Code and there is no “Operational Creditor” and “Corporate Debtor” relation between the parties. Apart from the above pleas, the “Corporate Debtor” also raised several issues which are not necessary to be decided in this petition and therefore are not reproduced here.
4. Heard both sides and perused the record. The fate of the above Company Petition is purely depending on the maintainability issue and the facts are not in dispute. Therefore, the only question that needs to be answered in the above Company Petition is:

1. *Whether the petitioner qualifies as an “Operational Creditor” and the amount claimed by the applicant is an “Operational Debt” within the meaning of the Code? And*
  2. *Whether the above CP is maintainable?*
5. In order to answer the above issue it is important to read the definition of “Operational Creditor” and “Operational Debt” which are mentioned hereunder:
- I. *“Operational Creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*
  - II. *“Operational Debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the (payment) of dues arising under any law for the time being in force and payable to the Central Government, any state Government or any local authority;*

It is an admitted case of the Petitioner in his petition itself that the amount claimed by the Petitioner is due towards mutually agreed genuine pre-determined compensation for the cost incurred due to the pre-mature termination of leave and licence agreement by the Corporate Debtor.

Therefore, it is very clear from the above definitions that the Petitioner does not qualify as an “Operational Creditor” and the amount claimed by it is an “Operational Debt” within the meaning of the Code.

Therefore, the above Company Petition has to be dismissed on the above score itself. Since the above Company Petition is liable to be dismissed on the issue of maintainability, the other issues need not be dealt with.

6. Accordingly, the same is hereby rejected.
7. However, this order does not preclude the Petitioner from recovering the above amount from the Respondent by approaching an appropriate legal forum.

**Sd/-**

**CHANDRA BHAN SINGH  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**