



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV**

CP-3609/MB-IV/2019

Under Section 9 of the I&B Code, 2016
In the matter of:

Ashu Dutt

...Applicant

V/s

Ashu Dutt Network Pvt. Ltd

[CIN: U74900MH2003PTC143364]

...Respondent

Order Dated: 28.04.2023

Coram:

Mr. Prabhat Kumar

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner/Intervenor

:

Ms. Nidhi Singh, Adv. For
the Intervenor present.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition is filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Mr. Ashu Dutt (“Operational Creditor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Northbridge Consulting Private Limited, (“the Corporate Debtor”).



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2. The Company Petition is filed on 11.10.2019 claiming an amount of Rs.115,89,18,596/- in default (Principal of Rs. 109,33,19,430/- and Interest @18% p.a. up to 31.07.2019 Rs. 6,55,99,165). The Part IV of Form 5 does not specify any specific date of default.
3. This company was dismissed for non-prosecution vide order dated 12.02.2020 passed by Court-III of Mumbai of this Tribunal. The Applicant has filed an IA-1945/2021 seeking restoration of CP-3609/2019 while considering the restoration this Application this Bench orally directed on 08.03.2022, the Counsel for the Applicant to file separate application for condonation of delay of three(3) days in filing of restoration application. Accordingly, the Applicant filed another IA-1822/2022 seeking condonation of delay. We have perused the material in this connection and of the considered view that both IAs deserves to be allowed. Consequently, CP-3609/2019 stands restored.
4. It is submitted by the Applicant that he is known brand in Financial Services having been Marquee Anchor at CNBC, Bloomberg TV, ET NOW NDTV, Star News. Corporate Debtor is engaged in business of Media. The Applicant had executed 2 separate Secured Debt Agreements dated 11.12.2012 and 01.12.2014 with Corporation Debtor for payment of Rs.40.5 Crores. These, agreements were executed in lieu of inability of the Corporate Debtor to pay the compensation of the Applicant either in the form of shares or cash as per agreement dated 07.10.2008.
 - 4.1. The amount was to be paid as per the agreements was Rs.40.5 Crores. Due on 01.12.2015 any delay invited an interest of 18%. However, inspite of repeated reminders, the Corporate Debtor has not paid the amounts. The Applicant had raised several invoices amounting to Rs.115,89,18,596/-.
 - 4.2. The Applicant made several follow ups for recovery of the outstanding amounts. However, Corporate Debtor failed to repay



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the same. Following thereon demand notice was also served on Corporate Debtor however; no payments were released by Corporate Debtor.

5. One IA-1945/2021 has been filed by Mrs. Aneesha Dutt, stating to be majority shareholders of the Corporate Debtor, thorough its constituted attorney. The Applicant therein has sought service of the petition in CP-3609/2019 and has sought to reserve her right to file reply in the petition. She has further apprised that the matrimony dispute is going on with the Petitioner and he is attempting to liquidate the companies, where she is majority. This Bench finds that notice in the petition is required to be served on the Corporate Debtor which is claimed to be served by the Petitioner. Further, if she has anything to say in the matter she could have submitted before this Bench subsequent to filing of this IA. Accordingly, this Bench dismisses IA No.1945/2021. However, the facts is stated in this Application shall be considered while disposing of CP-3609/2019.
6. We have heard the Counsel(s) and perused the material on record.
 - 6.1. It is observed that the Applicant has filed this Application u/s 9 of the Code claiming default of Rs. 115,89,18,596/- which represents amount of secured loan and interest accrued thereon from 01.04.2019 to 31.07.2019 @ 18% p.a. compounded annually. This secured loan came into existence on account of Corporate Debtor's failure to issue 13.5 million shares or cash in lieu of the shares, whereupon the applicant is stated to have enter into security agreement dated 11.12.2012 and 01.12.2014. We feel that it is a case of conversion of operational debt (claim arising from value of stock options payable in cash) into financial debt vide agreement dated 11.12.2012. In other words the agreement dated 11.12.2012 discharges the Corporate Debtor from the Operational debt by acknowledgement of liability of secured loan, which is a financial



debt. In Application u/s 9 of the Code can be filed by Operational Creditor to whom an Operational debt is due by the Corporate Debtor. In the present case the Operational Debt stands discharged by conversion of said debt into the secured loan. Accordingly, no operational debt exists as on date of filing of the Application. Further, payment of interest on the said secured loan cannot be considered as Operational debt. Hence, the present Application filed u/s 9 of the Code is not maintainable in the absence of any operational debt being in existence.

- 6.2. From the perusal of case records with this Bench it is noticed that there are 7 Petitions filed u/s 241 & 242 of the companies Act, 2013, including one petition pertaining to Corporate Debtor numbered as TP/91(MB)2015, are pending since year 2015 and these petitions pertain to allegation of operation mismanagement made by wife of the Applicant against him. Even if it is considered that the amount claimed is an operational debt, as claimed by the Applicant, there exist a prior dispute in relation to affairs and management of the Corporate debtor by the Applicant himself.
7. In view of this also, this Application u/s 9 of the Code deserves to be dismissed as not maintainable on the ground that this Application is motivated from the dispute between the promoters and does not seek resolution of the Corporate Debtor.

ORDER

1. The petition bearing CP(IB) 3609/MB-IV/2019 filed by Mr. Ashu Dutt, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process



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(CIRP) against Ashu Dutt Network Private Limited (“the Corporate Debtor) is **dismissed**.

Sd/-

Prabhat Kumar

Member (Technical)

SVR/28.04.2023

Sd/-

Kishore Vemulapalli

Member (Judicial)