

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA
C.P. (IB) No. 178/KB/2021**

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Akshat Pandey.

... Operational Creditor

-Versus-

Avighna Films Private Limited (CIN U74999WB2018PTC226734), a Company incorporated under the Companies Act, 2013, having its registered office at 4/8, Vivek Nagar, Kolkata - 700075

... Corporate Debtor

Date of Hearing: 20.05.2022

Date of pronouncing the order: 14.07.2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Operational Creditor

Mr. Sandip Kumar Bhattacharyya, Adv.

For the Corporate Debtor

Mr. Shounak Mitra, Adv.

Mr. Soham Banerjee, Adv.

Mr. Aditya Chaturvedi, Adv.

ORDER

Per : Rohit Kapoor, Member (Judicial):

1. This Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“*the Code*”) by Akshat Pandey (“*Operational Creditor*”) seeking to initiate Corporate Insolvency Resolution Process (“*CIRP*”) against Avighna Films Private Limited (“*Corporate Debtor*”).
3. The present petition was filed on 15 February, 2021, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.1,14,25,000/- (Rupees One Crore Fourteen Lakh Twenty Five Thousand only).

Submission of the learned Counsel for the Operational Creditor

4. Till 09 April, 2019, the Corporate Debtor had two directors being Pujarini Ghosh and Sohini Ghosh. However, on 10 April, 2019 the Operational Creditor was inducted as an Additional Director in the Corporate Debtor for production of a movie, tentatively named as Rifle or Dial 100.
5. The Operational Creditor produced the movies for a total investment made to the tune of Rs.1,14,25,000/- (Rupees One Crore Fourteen Lakh Twenty Five Thousand only). All payments were made by the Operational Creditor through his bank for the completion of the cinema.
6. On 22 May, 2019 one of the director i.e., Ms. Sohini Ghosh entered into an agreement with one another company Editfx Studios Pvt. Ltd., to restrict any other person other than Ms. Sohini Ghosh to allow post production contents of the movie as well as restrain the director of the movie / cinema towards release of the movie / cinema as well as negation of the proposed return on investment to the Operational Creditor.
7. However, another director of the Corporate Debtor i.e., Pujarini Ghosh did not accept the terms of the agreements between Ms. Sohini Ghosh and Editfx

Studios Pvt. Ltd. Therefore negation of the proposed return on investment to the Operational Creditor also came to an halt.

8. The Operational Creditor *vide* its letter dated 06 January, 2021 under section 8 of the Code to the Corporate Debtor, asked the Corporate Debtor to return the investment amount of the Operational Creditor. In pursuance of the aforesaid letter, Ms. Sohini Ghosh *vide* her notice dated 14 January, 2021 requested for settlement but without any payment. Till date no payment has been received by the Operational Creditor.

Submission of the learned Counsel for the Corporate Debtor

9. The instant applicant is non-compliant under the Code. The Operational Creditor has no locus standi to institute this instant proceeding. Further, the Operational Creditor is trying to misuse the provisions under the Code.
10. Further, no date of default has been mentioned. The alleged debt of the Operational Creditor is barred by limitation and should be rejected as *ab initio*. There is no cause of action against the Corporate Debtor, neither this application states any cause of action..
11. The Corporate Debtor was planning to produce the movie titled 'Rifle'. Through a common acquaintance the directors of the Corporate Debtor came to know that the Operational Creditor was also in the business of producing a movies/cinema. The Operational Creditor became the director of the Corporate Debtor after understanding the commercial prospect of the movie.
12. The Operational Creditor expressed his interest to be a part of the production the said movie and agreed to be in board of directors and to invest in the production of the movie. However, the Operational Creditor mid-way abandoned before the movie could see the light of the day.
13. It is pertinent to mention that the Corporate Debtor had promised the directors to provide funding for the pre-production till the theatrical release of the film but he did not honored his investment. This action of the Operational Creditor led to loss of the Corporate Debtor.

14. However in this case the operational debt claimed by the Operational Creditor does not fall under any of the categories. Hence, the alleged Operational Creditor in this instant case cannot initiate under section 9 of the Code.

Analysis and Findings

15. We have heard the Ld. Counsel appearing for the parties and perused the records and the concerned documents annexed to the Petition. Upon perusal of the record, the issue that arises in this instant matter is that ***‘Whether an investment made by the Director of the Company falls under the definition of Operational Debt?’***.
16. As envisaged under section 5(21) of the Code, an Operational Debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the re-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.
17. Further, section 5(20) of the Code an ‘Operational Creditor’ meaning a person to whom an Operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.
18. As per the definition of the term Operational Debt in the Code, it is clear that a debt is considered to be an operational debt, when it is confined under three categories;
- (i) Goods, or;
 - (ii) Services (including employment), or;
 - (iii) a debt in respect of the re-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

19. However in this instant matter the Petitioner, who is also one of the director of the Corporate Debtor, invested money in the Corporate Debtor for production of a movie. In light of the above facts and circumstances we are of the view that an Investment made by the director of the Company does not fall under the purview of an Operational Debt under the Code. Hence, ***C.P. (IB) No. 178/KB/2021*** the stands ***dismissed***. However, the Petitioner is at liberty to pursue its remedy under law, if any
20. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapur.
Member (Judicial)

The Order is pronounced on 14th day of July, 2022