



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.87/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

Ashu Dutt

...Operational Creditor

v/s.

Northbridge Consulting Private Limited
[CIN: U74140MH2003PTC140306]

...Corporate Debtor

Order Delivered on: 17.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Ms. Sonali Pawar, Ld
Counsel.

For the Corporate Debtor:

Ms. Sharon Patole, Ld. Counsel

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”).



2. The Company Petition is filed on 10.01.2019 claiming an amount of Rs.100,99,30,660/- in default (Principal of Rs. 92,65,41,890/- and Interest @18% p.a. up to 30.09.2018 Rs. 8,33,88,770). The Part IV of Form 5 does not specify any specific date of default.

2.1. It is submitted by the Applicant that he is engaged in Advisory/Consulting services in consideration of services rendered by the applicant, the Corporate debtor had agreed to issue stock options to the Applicant vide Agreement dated 07.10.2008, failing which the Corporate Debtor was liable to compensate an equal amount by paying cash compensation as per formula defined in the said agreement. Since the Corporate Debtor could neither issue stock options nor pay cash in lieu thereof, the amount receivable in cash by the Applicant was agreed to be converted into a secured loan vide Security Agreement dated 11.12.2012 and this Agreement provided in clause 6-c that *“If the debtor is unable to pay secured debt on or before 31.12.2014 in full, the Debtor will offer the entire properties and investments in shares to the Creditor in lieu of full and final payment of debt”*. The Security Agreement dated 11.12.2012 did not contain the amount payable by the corporate debtor under the agreement.

2.2. Another Agreement dated 01.12.2014 was entered between the Corporate Debtor and the Applicant as a follow up to the Security Agreement dated 11.12.2012 whereby it is averred that -

“WHEREAS, it is agreed to convert the Agreement between the Debtor and the Secured Party for the issue of 13.5 million shares or cash in lieu of the shares dated October 7, 2008 and Board Resolution dated October 1, 2008 and AGM held on September 20th, 2008 into a Secured Loan of Rs 40.5 cr (Rupees Forty Crores and Fifty Lacs Only) payable on or before December 1, 2015 secured by all the Immovable properties and Investments in shares held by the Company.



WHEREAS, it is agreed that if the Secured Loan is not paid in full on or before March 31, 2015, the Secured Party will be entitled to take over the immovable properties and Investments of the Debtor and the Debtor undertakes to assign/ transfer / sell/liquidate and/or do any / all acts to fulfil its obligation under this agreement to the Secured Party.

WHEREAS, it is agreed that the amount of the Secured loan will be reduced by the issue of any new shares to Secured Party which will be issued at Rs 10/share and/or transfer / sale of any investments and/ or immovable property to Secured Party to the extent of payment received.

WHEREAS, the Secured Party agrees to unconditionally withdraw any pending Suits/ Petitions in any Court/Tribunal or Judicial body including the Hon'ble CLB and Hon'ble Bombay High Court related to the Compensation Agreement dated October 07, 2008 on or before March 31, 2015

WHEREAS, it is agreed that the Secured Party will be entitled to interest @ 18% if the loan is not repaid by March 31, 2015 and will be entitled to all the Investments and Immovable properties of the Debtor to the extent of the Secured Loan”

2.3. It is submitted by the Applicant that the amount to be paid as per the agreement was due on 01.12.2015 and any delay thereof attracted an interest of 18% p.a. The Applicant has raised several invoices claiming interest for different periods aggregating to Rs. 60,49,30,660/- @ 18% compounded annually on a principal of Rs. 40.50 Cr.

2.4. The Applicant submits that inspite of repeated reminders, the corporate Debtor has not paid the amount.



- 2.5. It is further submitted by the Operational Creditor that the demand notice dated 17.10.2018 recalling the amount due was served to the Corporate Debtor.
3. The Counsel for the Corporate Debtor appeared and submitted that the Applicant and his estranged wife holds entire share capital of the Corporate Debtor and this Application is fall out of various Petitions under sections 241 and 242 of the Companies Act, 2013 filed by his estranged wife in relation to other Companies owned by them, apart from a Divorce Petition and other legal suits arising from their matrimonial dispute. It was further submitted that this Application is liable to be dismissed as not maintainable being in nature of recovery by the Related Directors/Shareholder and this Application has been filed u/s 9 of the Code claiming default of financial Debt.
4. We have heard the Counsel(s) and perused the material on record.
- 4.1. It is observed that the Applicant has filed this Application u/s 9 of the Code claiming default of Rs. 100,99,30,660/- which represents amount of secured loan and interest accrued thereon from 01.04.2013 to 31.03.2018 @ 18% p.a. compounded annually. This secured loan came into existence on account of Corporate Debtor's failure to pay the value of stock options in cash in terms of Agreement dated 07.10.2008. 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 filled 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.

4.2. 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.

5. 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) 87/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 (CIRP) against **Northbridge Consulting Private Limited** ("the Corporate Debtor) is **dismissed**.

Sd/-

PRABHAT KUMAR
Member (Technical)
17/03/2023

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)