

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP. No. 1485/2017

Under section 9 of IBC, 2016

In the matter of
Mitcon Consultancy & Engineering
Services Pvt. Ltd.
1st Floor, Kubera Chambers,
Shivaji Nagar,
Pune - 411005 ... Petitioner

Vs.

M/s. Vitthal Corporation Ltd.
Flat No.104, Suwarnanand Park,
Plot No.48,49 Laxmi Park Colony,
Navi Peth, Pune,
PUNE - 411030 ... Respondent

Order delivered on: 15.02.2018

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)
Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Petitioner : Mr. Prasad Sapte, Advocate

For the Respondent : None present.

Per V. Nallasenapathy, Member (T)

ORDER

1. This Insolvency and Bankruptcy Petition is filed by the Petitioner seeking to invoke the Corporate Insolvency Resolution process against the Corporate Debtor on the ground that the Corporate Debtor defaulted in making payment to the extent of ₹50,27,750/-, the break up being ₹34,06,889/- towards principal, ₹6,20,861/- towards interest at the rate of 18% per annum from the date of default i.e. 30.9.2017 and legal expenses to the extent of ₹10,00,000/-, under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule 2016.

2. Since the Petitioner has included the legal cost of ₹10,00,000/- in the claim it is necessary to look into the definition of "Operational Debt " as provided under the I&B Code, 2016.

3. Section 5(21) of I&B Code, provides that Operational Debt means a claim in respect of Goods or Services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Govt., any State Govt., or any local authority.

4. It is evident on reading of Section 5(21) of I&B Code, legal expenses as claimed by the Petitioner cannot be included in the category of Operational Debt. Since the claim is inclusive of legal expenses which is not permissible under law, the claim of the Petitioner cannot be entertained and the Petition has to fail.

5. In view of the above discussion, this Adjudicating Authority hereby dismisses this Petition with liberty to the Petitioner to proceed in accordance with law.

6. The Registry is hereby directed to communicate this order to both the parties.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S. V. PRAKASH KUMAR
Member (Judicial)