

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

CP (IB) No.3854/MB-IV/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

Ashu Dutt

...Operational Creditor/Applicant

V/s.

Dutt Capital Advisors Pvt. Ltd.

[CIN: U67190MH2005PTC156219]

... Corporate Debtor/Respondent

Order dated: **18.07.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances :

For the Petitioner/ Intervenor :

Mr. Santosh Paul, Ld. Sr.
Counsel a/w Mr. Hubab
Sayyed and Nidhi
Faganiya, Adv. For the
Corporate Debtor present.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

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. Dutt Capital Advisors Private Limited, ("the Corporate Debtor").

2. The Company Petition is filed on 31.10.2019 claiming an amount of Rs.39,72,39,391/- in default (Principal of Rs. 36,44,39,809/- and Interest @18% p.a. up to 30.07.2019 Rs. 3,27,99,582). The Part IV of Form 5 does not specify any specific date of default.
3. It is submitted by the Applicant that he is engaged in advisory/ consulting services. The Corporate Debtor is engaged in business of Advisory/ Consulting. The Applicant had executed Secured Debt Agreements dated 30.09.2014 with Corporation Debtor for payment of Rs.13.5 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.
 - 3.1. The amount was to be paid as per the agreements was Rs.13.5 Crores, due on 01.12.2015, any delay invited an interest of 18%. However, in spite of repeated reminders, the Corporate Debtor has not paid the amounts. The Applicant had raised several invoices amounting to Rs.39,72,39,391/-.
 - 3.2. The Applicant made several follow ups for recovery of the outstanding amounts. However, Corporate Debtor failed to repay the same. Following thereon demand notice was also served on Corporate Debtor however; no payments were released by Corporate Debtor.
4. We 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. 39,72,39,391/- which represents amount of secured loan and interest accrued thereon from 01.04.2019 to 30.09.2019 @ 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 entered into security agreement dated 30.09.2014. 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 30.09.2014. In other words, the agreement dated 30.09.2014 discharges the Corporate Debtor from the Operational debt by acknowledgement of liability of secured loan, which is a financial debt. An 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.

- 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/93/2015, 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 exists a prior dispute raised by the other shareholders 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)/3854/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 Dutt Capital Advisors Private Limited (“the Corporate Debtor) is **dismissed**.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)

Dubey/