

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH (COURT– II)
KOLKATA**

C.P. (IB)/1318(KB)2019

*A petition under Section 9 of the Insolvency and Bankruptcy Code 2016 read
with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of:

Kajaria Iron & Steel Co. Private Limited, a company incorporated under the Companies Act 1995 and being a company within the meaning of Companies Act, 2013, having CIN: U27100WB2008PTC127611 and having its registered office at 27, Sailender Road, P.O. and P.S. Liluah, Howrah - 711204, in the state of West Bengal.

..... .. Operational Creditor

-Versus-

Asit Iron Foundry Private Limited, a company incorporated under the Companies Act 1956, and being a company within the meaning of Companies Act, 2013, having CIN: U70100WB1992PTC056392 and having its registered office at Baltikuri, Bakultala, Howrah- 711113, in the state of West Bengal.

..... Corporate Debtor

Date of Pronouncement: 29th December, 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/ physical):

- | | |
|------------------------------------|----------------------------|
| 1. Mr. S.K. Tiwari, Adv. |] For Operational Creditor |
| 2. Mr. Jayesh Kumar Choradia, Adv. |] |

1. Mr. Sayantan Bose, Adv.] For Corporate Debtor
2. Ms. Madhurima Das, Adv.]

ORDER

Rohit Kapoor, Member (Judicial):

1. This court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the Code”) by **Kajaria Iron & Steel Co. Private Limited** (“Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Asit Iron Foundry Private Limited** (“Corporate Debtor”).
3. The Corporate Debtor is a private limited company incorporated on 25 August 1992. The nominal share-capital of the company is ₹25,00,000/- and the paid-up share- capital of the company is ₹2,06,680/-.
4. The total amount claimed by the Operational Creditor is ₹40,32,000/-, including interest of ₹4,32,000/-. The date of default is 1st July 2018.
5. It is submitted that Part –I of this petition contains particulars of the Operational Creditor. Part-II of this petition contains particulars of the Corporate Debtor. Part –IV of the petition contains details Operational debt. Part – V contains the particulars of the documents, records and evidence of default.
6. The Operational Creditor has relied on the various documents in support of its claims, including:
 - a) Copy of Master Data of the Corporate Debtor are enclosed herewith marked with Annexure VI;
 - b) Copy of the Bank statement for the period 01.06.2018 to 31.03.2019 are enclosed herewith marked with Annexure V;
 - c) Demand Notice under section 8 of Insolvency and Bankruptcy Code 2016 dated 30.05.2019 marked with Annexure II;
 - d) Lease agreement dated 21.10.2017, being Annexure VII;

- e) Copy of letter dated 30th June 2018, being Annexure VIII;
- f) Copy of letter dated 6th April 2019, being Annexure IX;
- g) Affidavit under section 9 (3) (b) of the Code being Annexure X.

7. *Submissions on behalf of the Operational Creditor:*

7.1 The Operational Creditor had deposited an interest free security deposit amounting to a sum of ₹36,00,000/- with the Corporate Debtor while entering into an agreement for leave and license agreement dated 06.04.2017.

7.2 The Operational Creditor surrendered the lease property and handed over the possession of the same on 30.06.2018 to the Corporate Debtor, the Operational Creditor had sent repeated requests and reminders to the Corporate Debtor, for refund of its security deposit. However, the Corporate Debtor has not made the payment of the same, till date.

7.3 It is further submitted that the Operational Creditor had issued Demand Notice dated 30.05.2019, through its Counsel vide Speed Post. The Demand Notice dated 30.05.2019 was duly delivered to the Corporate Debtor by Speed Post on 01.06.2019. The Corporate Debtor, after service of the Demand Notice has not issued any reply. As such, no material and/or relevant dispute has been raised by the Corporate Debtor with respect to the Operational Debt.

7.4 Hence, the Operational Creditor has filed the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 before this Hon'ble Tribunal.

8. *Submissions on behalf of the Corporate Debtor:*

8.1 The Corporate Debtor has claimed that the instant petition is neither maintainable since there are pre-existing disputes between the parties in regards the refundable security deposit claimed by the Operational Creditor.

- 8.2 According to the Corporate Debtor, the instant proceeding is a counterblast to a notice issued by the Corporate Debtor on 6th April, 2019 calling upon the Operational Creditor to make payment of a sum of Rs.29,09,571/- towards cost of repair and restoration of the factory premises of the Corporate Debtor, which had been let out to the Operational Creditor.
- 8.3 It has also been submitted that the Operational Creditor had neglected to pay the consideration payable by it for the months of July, 2018 and August, 2018 and for a period of 19 days in September, 2018 when it remained in possession of the leased property. Further, the post- dated cheque bearing No. 006647, dated 6th July, 2018, issued by the Operational Creditor was returned dishonoured with the endorsement 'Payment stopped by Drawer (page 30 of the reply affidavit).
- 8.4 Thereafter, the Corporate Debtor contacted the Operational Creditor who intimated that in view of their difficulty the Corporate Debtor may adjust the consideration payable by the Operational Creditor (including the sum payable towards GST) for the months of July 2014, August 2019 and the period of 1 September, 2019 to 19th September, 2014 out of the sum of Rs 36,00,000/- kept in deposit by the Operational with the Debtor to secure performance by the Operational Creditor of its obligation to pay under the agreement dated 21 October, 2017. In view of the same, the Corporate Debtor became entitled to adjust and adjusted from the deposit of the Operational Creditor a sum of Rs.18,64,400/- towards rent for the period 1 July, 2019 to 19th September, 2014. Further, a sum of Rs. 51,040/- was adjusted towards unpaid electricity dues which were payable by the operational Creditor under the agreement. (Annexure D of the reply affidavit at page 32-33 of the reply affidavit).

9. **Analysis and Findings:**

- 9.1 We have heard the Ld. Counsel on behalf of the Operational Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused the record.
- 9.2 Section 5 (20) of the Code provides that “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; Further, section 5 (21) provides the definition of “operational debt” which means a claim in respect of the provision of goods or services including employment or a debt in respect of the 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.
- 9.3 Going by the abovementioned provisions, it is clear that an operational debt can only be claimed in respect of goods or services provided by the Operational Creditor to the Financial Creditor. In the instant matter, the Operational Creditor has supplied no goods, nor provided any services to the Corporate Debtor. The subject matter of the instant petition is the security deposit given by the Operational Creditor, which is not covered under the scope of operational debt.
- 9.4 In this regard, we would further refer to Hon’ble National Company Law Appellate Tribunal’s (NCLAT) decision in the matter of ***Jindal Steel and Power Limited v. DCM International Limited***¹, wherein it was held that:

“Admittedly, the Appellant is a tenant of Respondent- ‘Corporate Debtor’. Even if it is accepted that a Memorandum of Understanding has been entered between the parties in regard to the premises in question, the Appellant being a tenant, having not made any claim in respect of the provisions of the goods or

¹ Company Appeal (AT) (Insolvency) No. 288 of 2017

services and the debt in respect of the provisions of the goods or services and the debt in respect of the repayment of dues does not arise under any law for the time being in force payable to the Central Government or State Government, we hold that the Appellant tenant do not come within the meaning of 'Operational Creditor' as defined under sub-section (20) read with sub-section 21 of Section 5 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to 'I&B Code') for triggering Insolvency and Bankruptcy Process under Section 9 of the 'I&B Code'."

9.5 The Hon'ble NCLAT, in the matter of **Mr. Satish Mittal v. Ozone Builders & Developers Pvt. Ltd.**², has again reiterated the said stance and held as under:

"6. Admittedly, the appellant has not made any claim in respect of goods. The appellant has also not rendered any services for which he is entitled to claim any amount. It is not the case of the appellant that he was in employment or a debt in respect of repayment of dues arising under any law is due to him. As the dues to which the appellant claim does not arise under any law for the time being in force and merely based on the receipt, we find no ground to interfere with the impugned order of rejection of application under section 9 in absence of any merit."

9.6 Therefore, in the light of the provisions of the Code as well as the above-mentioned judgments, this Adjudicating Authority is satisfied that a refundable security deposit in case of lease agreements will not fall within the ambit of operational debt and that the petitioner is not an Operational Creditor under section 5(20) of the Code. As such, the instant petition is not maintainable and liable to the **rejected**.

² Company Appeal (AT) (Insol.) No. 75 of 2017

- 9.7 Consequently, **C.P.(IB) No. 1318/KB/2019** shall stand rejected. Needless to say, the petitioner is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.
- 9.8 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 9.9 Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 29th day of December, 2022

SM(LRA)