

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

(IB)-1669(ND)2019

IN THE MATTER OF:

**Mr. Amitava Das
1539, Rajdanga
Main Road, Kolkata -700107**

...Operational Creditor

VERSUS

**Lloyd Insulations (India) Limited
Plot No.2, Punj Sons Premises
Industrial Area, Kalakji
New Delhi-110019**

... Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 31.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Kaushik Chatterjee and Mr. Sansar Kumar,
Advocates

For the Respondent : Mr. Tushar John and Mr. Shabeen Khannam, Advocates



JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Amitava Das (for brevity 'Operational Creditor') with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Lloyd Insulations (India) Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s. Lloyd Insulations (India) Pvt. Ltd. is a Company incorporated on 06.06.1977 under the provisions of Companies Act, 1956 with CIN No. U74210DL1977PLC008629, having its registered Office at Plot No. 2, Punj Sons Premises, Industrial Area Kalkaji, New Delhi-110019.

3. The Authorized Share Capital of the Respondent Company is Rs.30,00,00,000 and its Paid up Share Capital is Rs.30,00,00,000 as per the Master Data of the Company annexed.

4. It is submitted by the Operational Creditor that he was working in the Kolkata office of the Company at the post of Deputy General Manager- HR & Admin, from the date of his appointment since 16.12.2015 to his retirement on 31.01.2019.



5. It is stated by the Operational Creditor that his employment was governed by the terms and conditions mentioned in the Letter of Appointment dated 14.12.2015 issued by the Corporate Debtor.

6. It is submitted by the Operational Creditor the service conditions, inter alia, contained a provision which entitled him to receive "Petrol Reimbursement" @ Rs.1500 + 110 Litres per month as an essential component of his salary and towards compensation for the services rendered by him to the Corporate Debtor. It is further submitted by the Operational Creditor Mr. Das that he used his personal vehicle for arriving to and departing from his work place.

7. He has further stated that requisite sums towards "Petrol Reimbursement" were disbursed to him without any objection or demur by the Corporate Debtor for the period from December, 2015 to March 31, 2017 uninterruptedly.

8. However, since April 1, 2017, the Corporate Debtor suddenly stopped reimbursing Mr. Das the standard monthly sum of Rs.1500 or the price of 110 liters of petrol towards the Petrol Allowance, for reasons not known or disclosed to him. Upon enquiries, the Administration & Accounts Departments of the company informed to Mr. Amitava Das orally that in order to avail "Petrol Reimbursement", he would have not only required to bring his private vehicle to the office but also keep the vehicle parked at the said premises during his duty hours. However, no

such intimation was issued to him in writing nor such a condition featured in the contract of his employment.

9. It is further submitted by the Operational Creditor that in spite of repeated requests, and reminders vide his letters and emails dated 06.04.2018, 21.07.2018, 26.07.2018 on the subject, the Corporate Debtor refused to pay the Operational Creditor his dues.

10. It is stated that vide their Letter dated 31.12.2018, the Corporate Debtor intimated the Operational Creditor that he would be entitled to collect his total dues towards full and final settlement after his retirement. On receiving the aforesaid letter, the Operational Creditor reminded the Corporate Debtor that his final settlement will include among others, the amount outstanding of "Petrol Reimbursement".

11. It is submitted by the Operational Creditor that on 16.02.2019, the Operational Creditor received a letter along with a Cheque of Rs.94,695 towards the full and final settlement of his dues. It is added that the aforesaid letter contained no particulars on the basis of which the amount was computed.

12. It is stated by the Operational Creditor that the total liability of the Corporate Debtor comes to Rs.2,13,729, for which it had sent a Demand Notice dated 18.03.2019 under the Section 8 of IBC 2016 vide Speed Post at the Registered Office of the Corporate Debtor. It is further submitted



by the Operational Creditor that the Corporate Debtor had replied to the Demand Notice vide their Letter dated 02.04.2019. The same has been averred in its Affidavit filed under Section 9(3)(b) of IBC, 2016.

13. That the Corporate Debtor has filed its reply on 11.09.2019 and submitted that as per the Employment Letter of Mr. Amitava Das, the Operational Creditor was entitled to a "Petrol Reimbursement" @ Rs. 1500 + 110 Litre per month. It has been clarified by the Corporate Debtor that Mr. Das was entitled to reimbursement on the basis of actual expenditure on petrol and not just as a matter of right. It is further submitted by the Corporate Debtor that the Operational Creditor on various occasions had written emails regarding the petrol reimbursement, in response to which the Corporate Debtor had categorically informed vide their Letter dated 28.01.2019 that the 'petrol reimbursement' is not permissible as he had never brought his car to the office nor he had ever used his car for the office use. The Letter further clarifies that the Petrol Reimbursement is being made to the employees as per the company's policy who are bringing the car to office and using the same for office purpose.

14. The Corporate Debtor has further submitted that prior to April 2017, the Operational Creditor was given petrol reimbursement as he used his car for commuting to the office and refueled his car at the designated Camac Service Centre. For the subsequent period, he did not use his own car.



15. It is further stated by the Corporate Debtor that the Operational Creditor himself in the said Demand Notice has mentioned the fact that the reimbursement the petrol shall be subject to satisfaction of the company that the vehicle was registered in the name of the employee and the petrol is purchased from particular petrol pump namely M/s Camac Service Centre.

16. That the Corporate Debtor has filed an additional Affidavit on 07.01.2020 for bringing additional documents on record. The Corporate Debtor has annexed an Office Circular dated 15.03.1997, which contain guidelines towards Reimbursement of conveyance expenses. The same is reproduced below :

Annexure - 4 14

LLOYD INSULATIONS (INDIA) LIMITED
OFFICE CIRCULAR

Ref : 14/LII-08/ 244

March 15, 1997

To : LII - MUMBAI (Sh.SPM/TNR)
LII - DELHI (Sh.KCS/RDSC)
LII - CHENNAI (Sh.SKK)
LII - CALCUTTA (Sh.SPO/GAM)
LII - PITHAMPUR (BBVR)

SUBJECT : **REVISION OF CONVEYANCE REIMBURSEMENT**

The management is pleased to revise reimbursement limits for conveyance expenses with effect from 1st March, 1997 as follows :

- (A) For Employees using their own Scooter/Motor Cycles : Rs.500/- per month as fixed charges + actual petrol bills upto a maximum of 35 litres per month.
- (B) For Employees using their own Cars : Rs.1,500/- per month as fixed charges + actual petrol bills upto a maximum of 110 litres per month.

NOTE :

1. To avail the conveyance reimbursements it is necessary that the employee uses his/her own vehicle for official work and for travelling from home to office and back.
2. Employees have to maintain a log book and properly maintain the mileage for official work and personal work and submit the bills every month on actuals.
3. The limit of 35 litres and 110 litres of petrol is to be strictly observed. If however, in some instances, there are bills over this limit for official work, the same may be allowed as special case on monthly basis to be specifically approved by concerned Vice President/Executive Director.
4. In view of this revised system, additional reimbursements for travelling outside Municipal limits shall automatically fall away since the reimbursement is at actuals.

Please implement the above immediately and advise your Accounts Department to release payments accordingly.


(C.P. KHANNA)

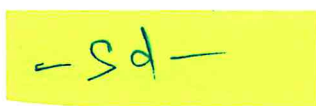
cc : Sh.NPP
Sh.PPM, LII-Mumbai
Sh.NS, LII-Mumbai
Co. Secretary


TRUE COPY

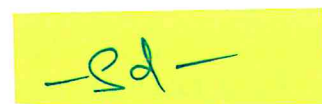
17. After hearing submissions of both the Parties, this Bench is of the view that claims towards reimbursement of a perk are subject to relevant guidelines of the Employer concerned. In the instant case, the usage of car for the office use and refueling from a designated petrol pump were the prerequisites for claiming the petrol reimbursement. Further, while responding to the email of the Operational Creditor, the Corporate Debtor vide its Letter dated 28.01.2019 has clarified the circumstances under which petrol reimbursement cannot be granted. This was before issuance of the Demand Notice by the Operational Creditor on 18.03.2019. Thus, the dispute raised by the Corporate Debtor through its correspondence regarding petrol reimbursement before the issuance of Demand Notice is a pre-existing dispute. The dispute requires further investigation and adducing of evidence, which cannot be undertaken summarily by this Tribunal.

18. In view of the same, the Petition is rejected.

19. It is, however, made clear that any of the observations made in this Order shall not be construed as an expression of opinion on the merits of the claim and the right of the Operational Creditor before any other forum shall not be prejudiced on account of rejection of the instant petition.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)