



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

CP (IB)/27(KOB)/2022

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

1. Autokast Retired Employees welfare (AREWU), Represented by its Secretary UMESAN P, Employee No. 391, Autokast Ltd., S/o. G Parameswaran Pillai, Chitira, Mra D 45, golden Garden Line, Mukkola, Nettayam P.O, Thiruvananthapuram – 695 013.
2. Balachandran Kartha G, Employee No. 344, Autokast Ltd., S/o. D Gopalakrishnan Unni, Amalsruthy, Puthanambalam, Mayithara P.O, Cherthala, Alappuzha – 688 539.
3. Radhakrishnan M a, Employee No. 356, Autokast Ltd., S/o. Achuthan Nair, Chillrickal H, Parapilli Road, Thiruvankulam P.O, Ernakulam – 682 305.
4. Chandrashekar S, Employee No. 392, Autokast Ltd., S/o. Sadasivan, Thampees Melekonam, Parasuvaikal P.O, Thiruvananthapuram – 695 508.
5. Dhanapalan G, Employee No. 402, Autokast Ltd., S/o. Gangadharan, Nivarthil, Kadakkarapally P.O, Cherthala – 688 529.
6. Shaji T.P, Employee No. 914, Autokast Ltd., S/o. Pavithran, Panathara, Thirumalabhagom P.O, Thuravoor, Cherthala – 688 540.
7. Mohanakrishnan, Employee No. 218, Autokast Ltd., S/o. Karunakara Menon N, Akshaya, Kadakkarappally P.O, Cherthala, Alappuzha – 688 529.
8. Ganesh K K, Employee No. 397, Autokast Ltd., S/o. K S Krishnan, M I G 130, G C D A, Surabhi Nagar, Kakkanad, Kochi – 682 030.
9. Rajan M N, Employee No. 725, Autokast Ltd., S/o. K N Madhavan, Santhibhavananm, S N Puram P.O, Cherthala – 688 582.



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10. Prasanna Kumary A B, Employee No. 252, Autokast Ltd., S/o. Reghunathan K K, Mahesh Bhavan, Pallipuram P.O, Cherthala – 688 541.
 11. Sebastian T K, Employee No. 358, Autokast Ltd., S/o. T I Karlose, Theckeveetil, Kadekuzhi Gopalan Menon Road, Kundanoormaradu P.O, Ernakulam – 682 304.
 12. Jose T.O, Employee No. 388, Autokast Ltd., S/o. Ouseph T V, Thottapilly H, Thottakam, Yordhanapuram P.O, Kalady, Ernakulam – 683 574.
 13. Umayamma B, Employee No. 251, Autokast Ltd. S/o. Sadan K K, Bhargavi Sadanam, S L Puram P.O, Cherthala – 688 523.
 14. Mathew P V, Employee No. 242, Autokast Ltd., S/o. Varghese P M, Parappurathu Maria Villai, Bsnl Road, Thalayolaparambu P.O, Kottayam – 686 605.
 15. Lalimon K, Employee No. 398, Autokast Ltd., S/o. P K Krishnan, Kunnealparambil, Sachivothamapuram P.O, Kurichy, Kottayam – 686 532.
 16. Mani P P, Employee No. 400, Autokast Ltd., S/o. P Parameswaran, Ponneth H, Nadakkavu P.O, Udayamperoor, Ernakulam – 682 307.
 17. Mathew V Thomas, Employee No. 917, Autokast Ltd. S/o. K J Thomas, Valiaveedu, Thaneermukkom P.O, Cherthala, Alleppey – 688 527.
 18. Thomas A J, Employee No. 916, Autokast Ltd., S/o. A R Joseph, Arumullythara (H), Chandiroor P.O, Alapuzha – 688 547.
 19. Phalgunan P, Employee No. 641, Autokast Ltd. S/o. Padmanabhan, Padmalayam, Muhamma P.O, Perumthuruth, Kanjikuzhi, Cherthala, Alappuzha – 688 525.
 20. Venugopalapanicker C, Employee No. 317, Autokast Ltd., S/o. Chandrasekaran Pillai, Srikripa, Karuvatta North P.O, Allapuzha – 690 517.



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21. Ramachandran Chettiyar R, Employee No. 649, Autokast L5td., s/o. Rajappan Chettiyar, Mattathil, S N Puram P.O, Kanjikuzhi, Cherthala, Alappuzha – 688 582.
22. Muraleedharan Pillai G, Employee No. 836, Autokast Ltd., S/o. Gangadharan Pillai, Thenguvilayil, Puthen Veedu, Choorakkode P.O, Chathannupuzha, Adoor – 691 551.

... Operational Creditors

-Versus-

M/s. Autokast Limited, Represented by its Managing Director, S N Puram Post, Nh 66, Cherthala, Alappuzha – 688 582.

... Corporate Debtor

Coram:

Shri. P Mohan Raj	:	Member (Judicial)
Shri. Satya Ranjan Prasad	:	Member (Technical)

Appearance through Video Conferencing

For Operational Creditor	:	Mr. Manoj V. George, Adv.
For Corporate Debtor	:	Mr. Vishnu S., Advocate

Order reserved on: 23.09.2022
Order pronounced on :21.10.2022

ORDER

1. The petitioner has filed this application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for



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initiation of Corporate Insolvency process against the Corporate Debtor, Autokast Limited.

Brief facts of the petition are as follows:

2. The petitioners/operational creditors herein are an association of retired employees who were workmen/employees of the corporate debtor. The retired Employees welfare unit (AREWU) having Registration NO.ALP/TC/360/2011 filed this petition. The petitioners stated that AREWU is a registered entity of workmen. The corporate debtor is majorly involved into manufacturing of Metals, chemicals and other products. The operational creditors were employed with corporate debtor and corporate debtor allegedly defaulted in paying their retirement dues. The total amount due is Rs.1,88,44,013/- In spite of repeated requests the respondent did not clear the dues. The petitioners collectively sent demand notice demanding payment but the respondent sent reply notice with false allegations hence the petitioners filed this petition.

Brief facts of the reply are as follows:

3. The present petition filed under section 9 of IBC 2016 is not maintainable. The petition is signed and verified by Mr. P. Umesh who claims to be the Secretary of a Body called as ' Autokast Employees Welfare Union'. At the outset it is submitted that the body named AREWU is not a corporate entity and it is not a registered society. It is not authorized to represent the interest of the other persons shown in the present application. Autokast Limited does not owe any debt



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to AREWU nor is any debt assigned or transferred to them. Under Section 9 of IBC 2016 petition has to be filed by the Operational Creditor individually. Therefore, even on that count, the present petition is not maintainable. The amounts claimed by the Operational Creditors individually is far less than Rs.1.00 crore. Therefore, the present petition is not maintainable as it falls in short of the minimum threshold of default fixed by the Central Government vide S.O. 1205 E dated 24.3.2020. The demand notice issued in the present case is not in the proper form and does not contain the relevant particulars. The application under Section 9 is also not in a proper form. Therefore, the application under Section 9 is not complete and it is liable to be rejected. The claim made for payment of gratuity is not maintainable. There is a specific provision in the Payment of Gratuity Act for determination and realization of amounts due under the Act. The computation of interest is also, not in accordance with the provisions of law. The present claim is also time barred and the same cannot be classified as Operational Debt. It is also submitted that the amounts claimed to be due would not fall within the definition of Operational Debt. The claimants, in the present case, tend to make use of the provisions of Section 9 of the IBC as a money recovery mechanism and as such the present petition is not maintainable.

Points for determination are as follows:

1. Whether the 1st petitioner AREWU is a juristic “person” as defined under IBC 2016?



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2. Whether the petition is filed in a representative capacity?
3. Whether the alleged default amount is an operational debt?
4. Whether the petition filed as such is maintainable?

Point No.1

4. The petition is filed by Autokast Retired Employees Welfare Unit (AREWU) by its secretary P. Umesan, ranked as 1st petitioner and 21 others ranked as petitioners 2 to 22. Even though 21 petitioners are arrayed as petitioners 2 to 22 they have not signed the petition and verified the petition. The 1st petitioner alone signed the petition and verified the petition; hence it is construed that this petition is filed by the 1st petitioner alone.

5. On the petitioner side the legal status of the petitioner AREWU is not explained anywhere in the petition, only in part II of the application Registration Number is furnished as ALP/TC/360/2021. On the respondent side in para 4 of reply it is stated that the petitioner is an unregistered society. This statement is not refuted by the petitioner, further on the petitioner side no document such as registration certificate is produced to prove that the 1st petitioner is a juristic person.

6. In section 3(23)(g) of IBC 2016 the “Person” is defined as “any other entity established under statute and includes a person resident outside India”. In this case on the petitioner side not produced a registration certificate to establish that 1st petitioner is a creation of any statute. On the petitioner side relies upon the



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Apex court Judgment JK Jute Mill Morcha vs Juggilal Kamlapat Jute Mills, no doubt there the Apex court held that Trade union registered under the Trade union Act 1926 is a person as defined under Section 3(23) of IBC 2016 and held that the trade union represents its members who are workers, for them the Trade union can file the petition as an operational creditor in respect of dues owed by the employer to the workers for the services rendered. There is no pale of controversy that any juristic person created under the statue can file the petition under section 9 of IBC 2016 on behalf of its members. In this case on the petitioner side failed to establish that the 1st petitioner is a person established under the statue as such the 1st petitioner is not a person as defined under code. Thus, this point is answered.

Point No.2

7. The petitioners 2 to 22 are simply arrayed as petitioners but they have not signed and verified the petition. They also not authorised any one of the persons to sue on their behalf. Rule 6 read with form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 Note, runs as follows:

“Where workmen/employees are operational creditors, the application may be made either in an individual capacity to in a joint capacity by one of them who is duly authorised for the purpose”.

8. From the above Rule it is made clear that one workman can file the petition for himself and also on behalf of other workmen after obtaining



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authorisation from other workmen. In this case as stated earlier workmen/employees' names are only arrayed as petitioner 2 to 22 but they have not signed the petition and there is no authorisation in favour of any of the petitioner to represent others, in these circumstances it is answered that this petition is not filed in a representative capacity.

Point No.3

9. This petition is filed in respect of retirement benefits due of the petitioners payable by the respondent. In the petition it is captioned as retirement benefit/outstanding arrears of pay etc. The claims of workmen are classified as "service claim" and "welfare claims". The service is considered as operational debt but the welfare claim does not consider as operational debt. This position is explained by Hon 'ble NCLAT in **Kishore K Lonkar Hindustan Antibiotics Ltd. company Appeal (AT)(Insolvency)No.934 of 2021 on 10.05.2022** as follows:

As per the definition incorporated therein, the dues would cover wages and salary, accrued holiday remuneration, workmen compensation, and all sums due from provident fund, Pension, Gratuity Fund or any other fund for the welfare of the workmen, maintained by the employer. Generally speaking the 'Claims' of the workmen, maintained by the employer, Generally speaking, the 'Claims' of the workmen/employees may be classified as 'service claims' which arise during the terms of employment, in lieu of



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service rendered by the employee, salary, wages, bonus, dues etc., and 'welfare claims' which arise after cessation of employment, like 'Gratuity', 'Leave Encashment', Superannuation Dues, Workmen Compensation for closure of the entity which all depend on the tenure of the employment. Subsequent to the company going into which all depend on the tenure of the employment. Subsequent to the Company go into the insolvency, all such claims may be submitted in Form D under Regulation 9 of the (Insolvency and Bankruptcy) CIRP Regulations, 2016. But seeking to initiate CIRP on the ground that 'LTC' and 'EL Encashment' has not been paid, which fall within the ambit of service benefit / welfare benefits cannot be said to be the intent and objective of the Code."

In this petition it is not separately mentioned what is the quantum of "service claim" and "welfare claim" in the absence of any material in this regard the due amount of petitioner cannot be considered as an operational debt. Thus, this point is answered.

Point No.4

10. Further the date of retirement of petitioners are described as default date in this regard in respect of petitioners 3 to 5 8, 9, 16 and 17 their retirement dates/default dates are furnished as follows:



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Sl. No.	Name of the Employee	Claim Amount	Default date
3.	Radhakrishna M A	Rs. 12,39,160/-	28.02.2021
4.	Chandrashekaran S	Rs. 5,93,569/-	31.05.2020
5.	Dhanapalan G	Rs. 6.11.689/-	30.04.2020
8.	Ganesh K K	Rs. 8,19,744/-	28.02.2021
9.	Rajan M N	Rs. 10,17,098/-	31.07.2020
16.	Mani P P	Rs. 6,80,690/-	31.07.2020
17.	Mathew V Thomas	Rs.5,84,844/-	31.07.2020

11. The default period for these petitioners falls between 25.03.2020 and 24.03.2021 hence in view of specific bar provided in first proviso to section 10A of IBC 2016 no petition under section 7,9 & 10 IBC are maintainable. In this petition section 8 statutory notices were sent individually by the petitioners in their individual capacity. As discussed supra the petition is not filed by the juristic person on behalf of its constituent members and also not filed in a representative capacity as workmen, in such a situation the individual's due amount cannot be joint together to reach the threshold amount for filing petition as such the petition is not maintainable.

12. In these circumstances and in view of answers arrived to the points it is concluded that the petition is liable to be dismissed.

In the result petition is **DISMISSED**. No cost.



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13. 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.

14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.10.21 14:19:34 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN
RAJ
Date: 2022.10.21 15:28:58 +05'30'

P. Mohan Raj.
Member (Judicial)

Signed on this 21st day of October, 2022.

Supriya p.s