

**In The National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P. (IB) No. 1229/KB/2019

In the matter of :

An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 9 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of :

M/S. AROON KUMAR AGGARWAL, residing at J-42, Saket, New Delhi 110017.

..... Operational Creditor

Versus

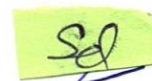
In the matter of :

M/S. ABC CONSULTANTS PRIVATE LIMITED, CIN 65110WB1973PTC028870, having its registered office at 3, Decres Lane, Kolkata, West Bengal – 700069.

.... Corporate Debtor

Date of pronouncement of the Order : 18/12/2019





Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

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|----------------------------------|---|--------------------------|
| 1. MR. SUJIT SHARMA, Advocate |] | |
| 2. MR. UDIT AGARWAL, Advocate |] | For Operational Creditor |
| 1. MR. NASEEB KHAN JOY, Advocate |] | |
| 2. MR. BIMAL SANCHETI, Advocate |] | For Corporate Debtor |

ORDER

Per Shri Harish Chander Suri, Member (T)

1. This application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **Mr. Aroon Kumar Aggarwal**, an ex-employee of the Corporate Debtor, hereinafter referred to as the "Operational Creditor" seeking initiation of Corporate Insolvency Resolution Process against **M/s. ABC Consultants Private Limited**, a Corporate entity having its Office in Kolkata, hereinafter referred to as the "Corporate Debtor".
2. It is submitted by the Operational Creditor that he was an employee of the Corporate Debtor pursuant to an employment





agreement dated 20th June, 2003 and on 1st April, 2014 the Operational Creditor was promoted to the post of Executive Director. The Operational Creditor has claimed a sum of Rs.33,42,002/- (Rupees Thirty Three Lakhs Forty Two Thousand and Two Only) which consists of his salary, performance bonus, business development bonus, gratuity and flexible pay basket under the heads of income. The date of default has been stated in the application as 16th August, 2016.

3. It is stated that the services of the Operational Creditor were terminated vide letter dated 16th August, 2016. The contents whereof are reproduced herein below:-

"Termination of Services

Aroon,

As part of an investigation which included hearing your point of view as well, you have been found to have indulged in fraudulent activities that have caused irreparable damage to the company, in terms of reputation as well as financially. Your actions amount to a breach of trust and are a direct violation of the terms and conditions of your employment with the company.

During the investigation, you have accepted various counts of misconduct and breach of trust while in service of the company and agree that it is in direct violation of your association with us.

Consequently, your services with the company are terminated and you stand relieved from your duties with immediate effect, on August 16, 2016.

We will be in touch regarding your exit formalities"

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4. It is therefore stated that the date of default is 16th August, 2016 i.e. the date of his termination from services.

5. In reply to the application the Corporate Debtor has submitted that in the course of Internal Audit carried by the Corporate Debtor during the months of June, July 2016. It was found that the Operational Creditor had indulged in various fraudulent activities, forgery, manipulation and fabrication of false records, mis-appropriation and siphoning of funds, breach of trusts etc. and in the process the Operational Creditor had caused huge losses by mis-utilising the Company resources. It is stated that on carrying out a detailed enquiry and scrutiny of the transactions entered by the Operational Creditor with various parties on behalf of the Corporate Debtor. It was found that various services were delivered using resources of the Corporate Debtor for which neither invoices of the Corporate Debtor were raised nor any payment received by the Corporate Debtor. It was found that forged e-mails had been created by the Operational Creditor.

6. It is stated that pursuant to these investigations, the services of the Operational Creditor were terminated and FIR No. 0544 dated 20th September, 2016 under Sections 420/468 IBC was registered at Police station Kalkaji South East Delhi.

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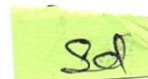
7. It is further submitted that the Corporate Debtor vide its public notice published in the Newspaper, the Corporate Debtor had dissociated itself from the Operational Creditor and had stated that the Company would not be responsible for any of the acts and deeds committed by Mr. Aroon Kumar Aggarwal (OC herein) or his Associates and it was declared that whosoever deals with him would be doing so at its own risk and costs.
6. It is further stated that the Court dealing with the said FIR had charged the Operational creditor on 19th July, 2019 under Sections 408/420/468/471120-B of IPC and had taken cognizance of the offence in the aforesaid sections.
7. Having heard the Ld. Counsel for both the parties and after going through the application, reply and various documents placed on record by both the parties, it is clear to us that even though the Operational Creditor has filed an affidavit under Section 9(3)(b) of the Code mentioning therein that "no payment and/or notice has been given by the Corporate Debtor/Respondent till date relating to the disputed of undisputed, admitted, unpaid operational debt of Rs. 33,42,002/- but, the documents enclosed with the reply affidavit filed by the Corporate Debtor are clear and unambiguous in disclosing the pre-existing dispute between the parties which ultimately led to the

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lodging of the FIR and the pendency of the Criminal proceedings against the Operational Creditor.

8. Since there was termination of Operational Creditor on the ground of his fraudulent activities, thereby allegedly causing a huge loss to the Corporate Debtor, the claim of the Operational Creditor cannot be termed "operational debt" because the activities of the Operational Creditor were stated to be completely against the terms and conditions of the employment agreement. The violation of the employment agreement by either of the parties was bound to create a dispute between them, and it actually had happened before the termination of his services by the corporate debtor.
9. We are not convinced with the pleadings of the Operational Creditor and the provisions of the I & B Code cannot be used for recovery of employment dues before this Adjudicating Authority particularly when there is termination of Operational Creditor on the ground of his fraudulent activities, forgery of the official records etc., as is prima facie quite clear from the record. The application of the Operational Creditor has no merit and is liable to be dismissed. We, therefore dismiss the application upon the following:-



ORDERS

- i) Application in **CP(IB) No. 1229/KB/2019** fails and is **dismissed**.
- ii) There is no order as to costs.
- ii) Registry is hereby directed to communicate the order to the Operational Creditor and the Corporate Debtor by Speed Post as well as through E-mail.
- iii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 18th day of December, 2019.

VC