

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO.5, MUMBAI BENCH

C.P. (IB) No. 981/NCLT/MB/2019

Under Section 9 of the I&B Code, 2016
In the matter of:

Ibrahim Electricwala & Anr.

...Operational Creditor/ Petitioner

V/s

Logix Supply Chain Solutions Private
Limited

...Corporate Debtor / Respondent

Order Dated: 17.06.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

For the Applicant: Ms.Priyanka Shah,Advocate i/b Apex Law Partners

For the Corporate Debtor: None Present

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Petitioners, Mr. Ibrahim Electricwala and Mr. Ismail Electricwala filed this Petition against the Corporate debtor, Logix Supply Chain Solutions Private Limited, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter called the "Code") read with IBBI (Application to Adjudicating Authority) Rules, 2016 (hereinafter called "Rules"), for initiating Corporate Insolvency Resolution Process (CIRP) stating that the Corporate Debtor defaulted on 15.08.2017 in paying a sum of Rs. 28,59,045/-.
2. Heard the counsel for the petitioners. Despite service of notice there is no representation from the Corporate Debtor.
3. The counsel for the Petitioners submits that the petitioners are the absolute owners of a building property situated at Indian Corporation Complex, depode, Bhiwandi, Thane District and the Petitioners entered into a leave and licence agreement with the Corporate Debtor, and leased the property for three years with the licensee fee of Rs. 84,000/- per month in terms of leave and licence agreement dated 26.04.2016.
4. It is further submitted that there is a due of Rs. 28,59,045/- as on 10.01.2019 and since the Corporate Debtor committed default in making the license fee right from the 15.08.2017, the petitioners issued a demand notice on 21.01.2019 as required under the section 8 of the Code Read with rule 6 requiring the Corporate Debtor to make the payment of the defaulted debt of Rs. 28,59,045/-.

5. However there is no reply from the Corporate Debtor. Even though the petitioners filed an affidavit dated 05.03.2019, there is no declaration to the effect that no dispute was raised by the Corporate Debtor. However the affidavit reveals that a suit filed by the petitioners in Special Suit No. 55/2018 for recovery of possession of property is pending before the Jurisdictional Civil Court.
6. The Hon'ble NCLAT, in the case of *M.Ravindranath Reddy Vs. G. Kishan and Ors.* MANU/NL/0016/2020, held as below:

"28. For an amount to be classified for an operational debt under I&B Code, 2016, it is provided:

Firstly, the amount falls within the definition of "claim" as defined under Section 3(6) of the Code;

Secondly, such a claim should claim within the confines of the definition of a 'debt' as defined under Section 3(11), meaning it should be by way of a liability or obligation due from any person;

Thirdly, such a "debt" should fall strictly within the scope of an "Operational Debt" as defined under Section 5(21) of the Code, i.e. the claim should arise in respect of

(i) provision of goods or services including employment or

(ii) A debt in respect of the repayment of dues arising under any law for the time being in force and payable either to the Central Government, any State Government or any local authority.

"29. The word "in relation to Government" or local authority and the dues owed to it, has been given a wide platform. It is important to see whether persons other than the Government or local authority can claim the benefit, that any debt owed should be construed as an 'operational debt' other than those classified as 'financial debt'.

"30. Thus, only if the claim by way of debt falls within one of the three categories as listed above, can be categorised as an operational debt. In case if the amount claimed does not fall

under any of the categories mentioned as above, the claim cannot be categorised as an operational debt, and even though there might be a liability or obligation due from one person, namely Corporate Debtor to another, namely Creditor other than the Government or local authority, such a creditor cannot categorise itself as an "Operational Creditor" as defined under Section 5(21) of the I&B Code, 2016. Therefore, we are of the considered opinion that lease of immovable property cannot be considered as a supply of goods or rendering of any services and thus, cannot fall within the definition of 'Operational Debt'.

7. The debt claimed in this petition being rent, when the ratio laid down in the judgement cited *supra*, is applied to the facts of the case on hand, the petition is liable to be dismissed.
8. Further already a Civil Suit is pending in respect of this issue and hence the petition is also hit by the provisions of section 5 (6) of the code which provides as below;
'dispute' includes a suit or arbitration proceedings relating to-
 - a. *The existence of the amount of debt;*
 - b. *The quality of goods or services; or*
 - c. *The breach of a representation or warranty;*
9. In view of the above discussion this petition is dismissed. No Cost.

-Sd-

V. Nallasenapathy
Member (Technical)

-Sd-

Suchitra Kanuparthi
Member (Judicial)