

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. NO. 1168/I&BC/NCLT/MB/MAH/2017

Under Section 9 of the I&B Code, 2016

In the matter of
Dhandhanias & Sons Petitioner

v/s.

Pittie Polymers Pvt. Ltd..
.... Respondent

Order delivered on: 31.7.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Madan Dhandhanias, Proprietor

For the Respondent: None present.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

It is a Company Petition filed u/s.9 of the I&B Code 2016 against this Corporate Debtor namely Pittie Polymers Pvt. Ltd. by the Operational Creditor namely Mr. Madhan Dhandhanias on the ground he was not paid Consultancy Charges, hence made a claim of ₹3,07,446/- including interest of ₹96,068 on 31.3.2012 and ₹45,506 on 16.4.2012, have been defaulted in making the total payment of ₹1,41,566 payable to the Petitioner having not paid above said amount,

the Petitioner by this case initiated Corporate Insolvency Resolution Process against the Corporate Debtor, hence this Petition.

Brief facts of the case:-

The Petitioner submits that he was interviewed for the post of Factory Manager by the Corporate Debtor, to which, the Petitioner agreed to work on Consultancy basis as has been insisted by the Corporate Debtor. Since he worked on the said basis from 19.2.2012 to 16.4.2012, this Petitioner raised two bills against the Corporate Debtor Company i.e. Bill No. ORC 026 dated 31.3.2012 for an amount of ₹96,068 for the month of March, 2012 and Bill No. ORC 01 dated 16.4.2012 for an amount of ₹45,506/- for the period from 1.4.2012 to 16.4.2012. For the Corporate Debtor having not paid the Bills raised by the petitioner, he issued notice u/s.8 of the I&B code demanding for payment of this ₹1,41,566 plus interest of ₹60,877 from the date of invoices.

On the notice issued by the Petitioner on 21.2.2017, the reply notice has come from the Corporate Debtor stating that this Petitioner already filed Criminal complaint bearing No.2237 of 2003 against the Corporate Debtor, when it was dismissed, over which, a revision petition was filed before Session Court, that was also dismissed. With this, the Petitioner not being satiated, he filed a Summary Suit bearing No.203/2015 against the Corporate Debtor before the Hon'ble Civil Judge Junior Division, Shivaji Nagar, that being pending before the Civil Court, the Corporate Debtor says, this Petitioner has no right to send notice under Rule 5

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of the I&B (Application and Adjudicating Authority) Rule, 2016 demanding payment of ₹3,07,446 from the Corporate Debtor.

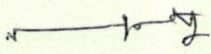
It is apparent from the record that this notice has been given after a lapse of 10 days from the date of receipt of the notice on 23.2.2017. The Petitioner says that the Corporate Debtor having failed to repay the dues payable to the Petitioner, this Petitioner has filed this case for initiation of I&B Code against the Corporate Debtor.

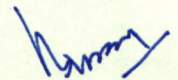
None appeared on behalf of the Corporate Debtor. But whereas, by seeing the record placed before this Bench, we have noticed two basic defects which are explicitly not permissible under law. One, this Petitioner had initiated criminal complaint, when he could not succeed in it, he filed a civil suit bearing no 203 of 2015 making the same claim before the Civil Judge Junior Division, Shivaji Nagar, which falls within the ambit of dispute; two, the Petitioner himself said that he has raised the invoices in the year 2012, therefore, it is a time barred debt.

By seeing the background litigation running for the last four five years and by seeing this Petitioner arguing in person, it is evident that this Petitioner knows the implications of filing frivolous case, he filed this case on a time barred debt despite suit has been pending before the Civil Court.

For the reasons stated above, this Petition is dismissed without any costs.

Order Pronounced on 28.7.2017 and delivered on 31.7.2017.


V. NALLASENAPATHY
Member (T)


B. S.V. PRAKASHKUMAR
Member (J)