

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL:
ALLAHABAD BENCH, ALLAHABAD

(In Company Petition (IB) No. 02/Ald/2017)

Dated Wednesday , the 31st Day of May, 2017

CORAM: Mr. H. P. Chaturvedi, Member-Judicial

APPLICATION BY OPERATIONAL CREDITOR UNDER SECTION 9 OF
THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH
RULE 6 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO
ADJUCATING AUTHORITY) RULES, 2016

AND

IN THE MATTER OF:

M/S Kanpur Plastipack Limited

D-19-20 Panki Industrial Area,

Kanpur – 208022

.....Applicant Company/ Operational Creditor

AND

M/S H.L Tech Fabrics Limited

C- 116, Farmers Aptts ,

Plot No. -8 , Sector -13 ,


Rohini ; New Delhi- 11008

.....Respondent/ Corporate Debtor

PRESENT: Shri Ankur Srivastava PCS, along with Advocate Shri
Ashutosh Agarwal for Operational Creditor

ORDER

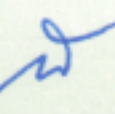
The Present Case is fixed for order on jurisdiction of this Tribunal
and on maintainability of the present Application.



The Legal issue involved in the instant Petition is that whether the 'Corporate Person' would include situs of 'Corporate Debtor' or does it include situs of 'Corporate Creditor' under Section 60 of Insolvency and Bankruptcy Code, 2016. Whether a Petition can be filed under Section 9 read with Section 60 of the Insolvency and Bankruptcy Code, 2016 before this bench against a Corporate Debtor Company (M/S H.L Tech Fabrics Limited) which is having its registered office (in C- 116, Farmers Apts , Plot No. -8 , Sector -13 , Rohini) at New Delhi ,falling outside of its territorial jurisdiction is maintainable before this Bench.

When the attention of the Counsel for Operational Creditor was invited to the relevant provision of the Insolvency & Bankruptcy Code, 2016 , specifically to the Section 60 (1), the learned Counsel for Applicant Contends that present Petition can be filed and is well maintainable before the Allahabad Bench of NCLT. As per the Section 60(1) of Insolvency & Bankruptcy Code, the Adjudicating Authority in relation to Insolvency for Corporate Person including Corporate Debtor and Personal Guarantor shall be NCLT having Territorial Jurisdiction over the place where the registered office of corporate person is located. The Petitioner counsel however made effort to impress us by making interpretation of Section 60 contended such the Operational Creditor comes within the definition of a Corporate Person. Since the Registered Office of the Operational Creditor / Applicant is situated in the Kanpur which falls within territorial Jurisdiction of this tribunal. Hence the Insolvency Resolution Process can be initiated against the Corporate Debtor by this Bench irrespective of the fact its office is situated (in Delhi) outside the Territorial Jurisdiction of this Bench's territorial jurisdiction.

As in the present Company Application a debatable ground for interpretation of Section 60 of Insolvency & Bankruptcy Code,2016




has been raised, the division Bench of NCLT, Allahabad thought it fit to issue notice to Debtor as well as to Central Government through the Ministry of Corporate Affairs.

In Pursuance there to a notice was issued by this Bench through the Registry on 3 February, 2017 to Secretary, MCA, Sashtri Bhavan New Delhi along with Regional Director (Northern Region), as well as to the Respondent/ Corporate Debtor.

The office of the Regional Director, MCA, New Delhi in response to our notice has forwarded its views/ comments making some interpretation of Provisions of Insolvency & Bankruptcy Code, 2016 on the Territorial Jurisdiction of adjudicating Authority to initiate Insolvency Resolution Process. The office of Regional Director (N/R) expressed its views vide its OM No. 35/03.2017 insolvency section dated 06.03.2017 has opined as such, which reads as under:

“The territorial Jurisdiction of Adjudicating Authority in relation to insolvency resolution and liquidation for ‘Corporate Person’ will be decided on the basis of the place where the Registered office of the ‘Corporate Debtor’ is located irrespective of the fact that application for Insolvency Resolution Professional is filed under Section 7 or 9 of the Code.”

The Counsel for Petitioner/ Operational Creditor have made rival submission interpreting the provision section 60 (1) of the Insolvency & Bankruptcy Code, 2016 contended that the definition given for a Corporate person does not make any difference between Corporate Debtor and Corporate Creditor. In a plain language expression of the definition of a Corporate Person includes a Company defined under Section 2(20) of the Companies Act, 2013 and the Operational Creditors, being incorporated under the provisions of Companies Act also falls within definition of the Corporate Person, hence the present



Petition is maintainable before this Bench. We carefully considered the rival submission made by the counsel/ PCS for the Company Petitioner and the relevant provision of the Insolvency and Bankruptcy Code, 2016. The definition clause reads as under:

Section 3 (7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

Section 3 (8) "corporate debtor" means a corporate person who owes a debt to any person;

Further, the Definition of Corporate Debtor as provided in Section 3(8) read with Clause 20 of section 2 of Companies Act, 2013 reads as under:

Section 2(20) "company" means a company incorporated under this Act or under any previous company law.

A plain reading of these section gives such impression that the term Corporate Applicant is exclusively meant for Corporate Debtor who commits default in making payments of Debts and by its own motion a Corporate Applicant can file Insolvency Resolution Process Application u/s 10 of the Code before the NCLT.

Hence, by giving an understanding to Scheme of the Insolvency & Bankruptcy Code the word Corporate Person may not necessarily deemed as Operational Creditor because the word Corporate Debtor is elsewhere being defined as a Corporate Applicant as per the Definition given in Section 5(5) of the Act.

That apart, the Legal interpretation in respect of the provisions of the Section 60 (1) have been made by the Co-ordinate Benches of the NCLT. Hence, it would be appropriate for us to consider the view taken by other co-ordinate bench read with the comments/views received from the Central Government/ Ministry Corporate Affairs.

It is matter of record that Principal Bench of this tribunal in **Isolux Corsan India Engineering**¹ vide its order dated 23 feb , 2017 has taken such view that in case an office of the Corporate Debtor company situates in Gurgaon, Haryana then it would fall with jurisdiction of NCLT , Chandigarh accordingly the matter was transferred to Chandigarh Bench. Hon'ble Chandigarh Bench of NCLT registered the said as *CP (IB)No.12/Chd/Hry/2017* and found it maintainable before it under section 9, rules 6 disposed of by 8 May, 2017.

Further, NCLT, Bengaluru Bench also in the matter of **M/s Fortune Plastech Vs Avni Energy Solutions Private Limited**² and the NCLT, Mumbai Bench in the matter of **Sun - Line Suppliers Private Limited Vs M/S Infinity Fab Engineering Company**³ have taken Consistent view that Petition under Section 9 of the Insolvency and Bankruptcy code could be filed and is maintainable only such Bench of NCLT in whose Jurisdiction the registered office of the Corporate Debtor is situated. In other place such application is not maintainable. Thus, our view is forfeited by the above mentioned Division Bench decision of NCLT and this Single Bench is expected to follow the same. Therefore, we feel the present Petition falls outside the Territorial Jurisdiction of this Bench because the Registered Office of the Corporate Debtor situates in New Delhi.

In the light of above given facts we don't find any cogent reason to take different view from the comments of Ministry of Corporate Affairs, Central government, on the interpretation the above stated provisions of the Insolvency & Bankruptcy Code.

Accordingly, the present Petition is not maintainable before this Bench, hence is rejected but without expressing any view on the

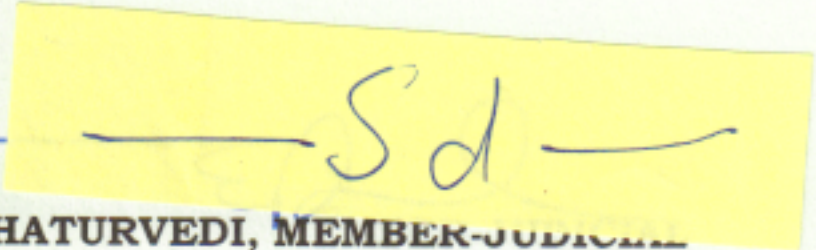
¹ CP No (IB)-11 (PB)/ 2017

² CP(IB)No.17/2017

³ CP No. 14/(MAH)/2017

merits of the present Petition. The Petitioner is at liberty, to withdraw this and to file fresh Petition under the Insolvency and Bankruptcy Code, 2016 on the same cause of action, before the appropriate Bench.

Dictated to the Law (Clerk) Research Assistant, typed by her, corrected and pronounced by me in the open Court this Friday, the 31st day of May, 2017.


H.P. CHATURVEDI, MEMBER-JUDICIAL

Dated: 31st May, 2017
Aparna Trivedi