

**In the National Company Law Tribunal
Single Bench, Chennai**

CP/542/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

Mr. Jagadeesh Prathap

V/s

M/s. Kutty Flush Doors & Furniture Co. Pvt. Ltd.

Order delivered on: 23.08.2017

For the Petitioner/OC: Shri P.J. Rishikesh, Advocate

For the Respondent/CD: Mr. M.V. Swaroop, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Mr. Jagadeesh Prathap (in short, '**Petitioner/Operational Creditor**') against M/s. Kutty Flush Doors & Furniture Co. Pvt. Ltd. (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. Shri P.J. Rishikesh, the learned counsel appearing on behalf of the petitioner/OC submitted that the petitioner was employed with the respondent as Chief- 'Production & supply Chain'. It is submitted that a total sum of Rs. 82,77,025/- together with the interest rate @ 12% per annum is due to the petitioner under the following head:-

Particulars	Amount Claimed
Towards salary	Rs. 17,40,750/-
Conveyance reimbursement	Rs. 1,74,076/-
Amount advanced	Rs. 63,60,000/-

4. It is further submitted that the petitioner, after making several requests for settling the dues with the respondent and having waited for a long period of time for his legitimate dues, sent a Demand Notice dated 08.06.2017 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016 calling upon the respondent to make the payment of the outstanding due of Rs. 82,77,025/- and thus claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.
5. Mr. M.V. Swaroop, the learned counsel appearing on behalf of the Respondent/CD vehemently opposed the submissions

put forth by the counsel for the petitioner and submitted that the instant petition is false, vexatious and not maintainable. He submitted that the total amount claimed by the petitioner includes within its ambit a financial debt also, therefore, the petition is not maintainable due to technical laches and should be rejected at threshold. He also submitted that the petitioner is entitled for the dues towards salary and Conveyance reimbursement only and not towards the dues advanced by the petitioner to the respondent.

6. He further submitted that the respondent has come forward to pay the alleged salary dues and the conveyance reimbursement which falls within the scope of operational debt as per section 5(21) of the IB Code 2016 without prejudicing the respondent's rights. It is also submitted that the operational debt which combines salary dues and conveyance amount totalling Rs. 19,19,826/- has been paid to the petitioner on 18.08.2017, when the matter was pending before this adjudicating Authority, therefore, there is no any outstanding amount due to the petitioner as on day under the head operational debt. The respondent has also produced the proof of the said payment by producing the Bank Statement of Indian Overseas Bank.

7. It is also submitted that since an amount of Rs. 63,60,000/- advanced by the petitioner is evidently not an operational debt but a financial debt, therefore, the same cannot be claimed in the instant petition. He further submitted that if the petitioner wants to recover the said financial debt, then he should initiate the proceedings under the relevant provisions of law.
8. Before concluding this matter, it is necessary to mention that since the respondent has already made payments of operational debt, therefore, I feel that it is not necessary to discuss and look deep into the merits of this case.
9. After hearing submissions of the counsel for the petitioner & respondent and having perused the record, I am inclined to reject the instant application for the reason, the petitioner has already paid the operational debt to respondent. Moreover, the rest of the claim of Rs. 63,60,000/- i.e. amount advanced to the petitioner by the respondent cannot be categorised as an operational debt. Further, from the bare perusal of section 5(8) of the IB Code 2016, it is clear that this part of aforementioned amount comes within the meaning of a 'financial debt'. Therefore, in my considered view, the petitioner cannot claim the said amount as an operational debt and hence he does not

come within the category of an operational creditor for the said amount.

10. Now, in view of the payments of operational debt i.e. debt salary dues and conveyance amount totalling Rs. 19,19,826/-, as claimed by the petitioner have been paid as per the memo signed and filed by the counsel for respondent dated 18.08.2017, I conclude that there is no amount due to the petitioner by the respondent in form of operational debt.

11. It is also pertinent to mention here that the petitioner has not specifically given the details of the accrued interest and the basis of claiming the same, therefore, I feel that there is no scope for me to make any specific observation in this regard.

12. In view of the above discussed facts and in the circumstances of the case, this instant petition is rejected but with an observation that this Petitioner is at liberty to approach the appropriate forum for recovery of the aforesaid advanced amount to the respondent, if so desire.

13. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.


K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS