

Learning Curve-769

May 26 2022

Salary during notice period does not fall within the definition of 'Operational Debt under IBC.

CASE TITLE	Sandesh Naik v. MT Educare Limited ¹
CASE CITATION	C.P.(IB)-678(MB)/2020
DATE OF ORDER	12.05.2022
COURT/ TRIBUNAL	NCLT, Mumbai Bench
SECTION/ REGULATION REFERRED	Section 9 IBC read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016
CASE LAW REFERRED	Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd

Brief of the case:

The Applicant was employed by the Respondent as its Chief Financial Officer. The Applicant resigned from his job and addressed several emails to the CD. The Applicant issued a demand notice u/s 8 IBC, in reply to which the Respondent admitted its liability to the tune of Rs. 7,26,626 and sent a cheque of the admitted amount. The Applicant demanded the balance due to him from the Respondent, for which he placed reliance on an appointment letter which provided for a notice period of 3 months or salary in lieu of the purported notice period of 3 months. The question for AA was whether the notice of termination of the employment of the Operational Creditor is three months or one month and if it would amount to a pre-existing dispute between the parties.

Decision:

Hon'ble NCLT, Mumbai dismissed the petition and held that,

"Therefore, it is very clear from the respective stands taken by the parties and the above two appointment letters of the same date that there exists a dispute with regard to the notice period between the parties that needs thorough investigation and detailed evidence. Therefore, the genuineness of the appointment letter relied by Corporate Debtor is at a stake in this case and that ipso facto is a dispute.

...In addition to the above admittedly the present Company Petition is filed for resolution of salary of two months purported notice period which amounts to specific performance of the appointment letter dated 30.11.2017 which in the considered opinion of this Bench does not fall within the definition of "Operational Debt" as it was not for the salary for the actual work done by the Operational Creditor. Therefore, this Bench is of the considered opinion that the remedy of the Operational Creditor is to initiate necessary legal proceedings for recovery before appropriate legal forum and not through the route of IBC."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹ https://www.livelaw.in/pdf_upload/filename-419306.pdf