IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

CP (IB) 973/MB/C-I/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Ravindra Hirasingh Rawat

B-44, Himachal Parvatiya CHSL, Govind Magar, N.S.S. Road, Asalpha, Ghatkopar (West), Mumbai-400084.

…Operational Creditor

Versus

D B Group India Private Limited

[CIN: U63000MH2006PTC158759]

5th Floor, Sangeet Plaza, Marol Maroshi Road, Opp. Marol Fire Station, Andheri (East), Mumbai – 400059.

…Corporate Debtor

Order delivered on: 23.09.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Subhdeep Banerjee, Advocate

For the Corporate Debtor : Mr. Kirti H. Syontri, Advocate

ORDER

Per: **Shyam Babu Gautam, Member (Technical)**

1. The present Company Petition is filed by **Mr. Ravindra Hirasingh Rawat**, (hereinafter referred to as the "Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Banckruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against **M/s. D.B. Group (India) Private Limited** (hereinafter referred to as the "Corporate Debtor").
2. The Corporate Debtor is company incorporated under the Companies Act, 1956 and has its registered office at 5th Floor Sangeet Plaza, Marol Maroshi Road, Opp. Marol Fire Station, Andheri (East) Mumbai-400059. Its Company Identification Number (CIN) is **U63000MH2006PTC158759.** Therefore, this Bench has the jurisdiction to entertain this Petition**.**
3. The total amount of debt claimed is Rs.43,00,000/- (Rupees Forty-Three Lakh Only) and the date of default is 21.04.2018.

Submissions made by the Ld. Counsel of the Operational Creditor:

4. The Operational Creditor was appointed as a Senior Manager - Finance & Administration with the Corporate Debtor w.e.f. 06.12.2006.
5. The Corporate Debtor promoted the Operational Creditor to the post of General Manager - India vide promotion and increment letter dated 01.04.2016 and revised the salary of the Operational Creditor to Rs.1,50,000/- by increment letter dated 01.02.2017.

6. The Operational Creditor submitted his resignation by e-mail dated 22.01.2018 and the Corporate Debtor relieved the Operational Creditor with immediate effect by issue of Relieving Letter dated 22.01.2018 and entered into a Non-disclosure Agreement (NDA) with the Operational Creditor on the very same day i.e. on 22.01.2018.

7. The Corporate Debtor failed and neglected to make payments of gross salary of Rs.1,50,000/- towards notice of discharge and a gross sum of Rs.1,50,000/- as consideration against the execution of the above NDA as was agreed in terms of Clause 1 (a) and Clause 2 (e) of the above NDA dated 22.01.2018.

8. Despite repeated requests of the Operational Creditor and exchange of several e-mails by and between the Operational Creditor and the Corporate Debtor, gross sum totalling to Rs.3,00,000/- remained unpaid on the unjustified contentions that they have cleared all dues. However, the Corporate Debtor neither provided details of payment as requested by the Operational Creditor in his e-mail dated 19.06.2018 nor furnished any supporting evidence for the above payments.

9. That the aforesaid wilful, intentional and dishonest act was a direct violation/default on the part of the Corporate Debtor in compliance of the agreed obligations as per the Clause 1 (a) and 2 (e) of the NDA and the Corporate Debtor, being a defaulting party was liable to pay the Operational Creditor payment of the penalty amount of Rs.40,00,000/- in terms of the Clause 2 (i) of the NDA, aggregating to Rs.43,00,000/- (Rupees Forty Three Lakhs Only).

10. The Corporate Debtor has paid to the Operational Creditor the following amounts:

a) Rs.1,23,662/- on 21.02.2018 towards January, 2018 salary
b) Rs.1,23,562/- on 15.03.2018 towards February, 2018 salary
c) Rs.3,19,219/- on 10.05.2018 salary, Leave salary and LTA; towards March, 2018
d) Rs.3,80,769/- on 15.06.2018 - towards Gratuity amount and
e) Rs.24,990/- on 27.10.2018 towards Bonus amount.

11. However, the payment of the above amounts detailed in points (c) and (d) above was not paid on time as per the agreed terms as per Clause 2 (i) of the NDA and the same was a violation of the above agreed terms of the NDA as per Clause 2 (f).

12. The Operational Creditor sent a letter dated 14.07.2018 by R.P.A.D. to the Corporate Debtor and all its Directors and CEO. The Operational Creditor raised a demand for payment of the above aggregate amount of Rs.43,00,000/- however, despite receipt of the above letter the Corporate Debtor neither paid the above amount nor replied to the above letter.

13. That the Operational Creditor issued a statutory Form 3 Demand Notice dated 31.12.2018 to the Corporate Debtor and demanded payment of the above aggregate amount of Rs.43,00,000/- (Rupees Forty-Three Lakhs Only) within 10 days of receipt of the above Demand Notice and the same was received by the Corporate Debtor on 02.01.2019.

14. The Corporate Debtor failed to reply to the above demand notice within 10 days and has given a false and frivolous reply (vide reply letter dated 29.01.2019, which was received by the Operational Creditor on 08.02.2019) stating that the penalty amount as claimed by the Operational Creditor has been consistently refuted by the Corporate Debtors and its representatives in numerous telephonic conversations, just in order to evade its said pecuniary liability towards the Operational Creditor.

Submissions made by the Ld. Counsel of the Corporate Debtor:

15. The Operational Creditor was appointed as a Senior Manager Finance & Administration with the Corporate Debtor from 06.12.2006 and worked with the Corporate Debtor till 22.01.2018.

16. As per the employment contract every employee is required to serve a notice period of one month before leaving the job, however the Corporate Debtor Company thought it appropriate to inform the Operational Creditor not to serve the notice period, therefore, the effective last working day of the Operational Creditor with the Corporate Debtor Company was 22.01.2018. Further, it is to state that, the Corporate Debtor Company also agreed to pay the entire month Salary to the Operational Creditor for the period of "Notice of Discharge" (February, 2018) although the Operational Creditor did not report to work and furthermore, as a goodwill gesture, the Corporate Debtor Company agreed to pay additional one month's salary (March, 2018) to the Operational Creditor for his long standing association with the Corporate Debtor Company.

17. To secure the aforesaid payments, the Corporate Debtor Company entered into a Non-Disclosure Agreement with the Operational Creditor and agreed to pay the said additional sum vide clauses 1(a) and 2(e).

18. In accordance to the aforesaid clauses the Corporate Debtor Company made the following payments to the Operational Creditor:

Date	Amount	Particulars
21.02.2018	Rs.1,23,662/-	Salary for the month of January 2018 (though Operational Creditor worked only for 22 days)
15.03.2018	Rs.1,23,562/-	Salary for the month of February 2018 (As notice of Discharge, though he did not attend the work)
10.05.2018	Rs.3,19,219/-	Salary for 22 days for the month of March, 2018 (additional one month salary for serving the company for a long time) and other dues.
15.06.2018	Rs.3,80,769/-	Gratuity Amount
27.10.2018	Rs.24,990/-	Bonus Amount

19. In view of the aforesaid, it can safely be concluded that the Corporate Debtor Company has cleared all the dues of the Operational Creditor. The Operational Creditor is trying to interpret the Non-Disclosure Agreement in his favor so as to suit his cause and extort money from the Corporate Debtor Company by filing the present insolvency proceedings. It is pertinent to note at this juncture that the Operational Creditor is absolutely silent about his attendance with the Corporate Debtor Company during the Notice Period.

20. The Corporate Debtor submits that so far as the claim of Rs.40,00,000/- (Rupees Forty Lakhs Only) raised by the Operational Creditor for penalty in terms of Clause 2(f) of the Non-Disclosure Agreement, the said claim is not maintainable before this Tribunal as the same is deliberately misinterpreted by the Operational Creditor and hence stands disputed by the Corporate Debtor Company. The penalty as contemplated under Clause 2(f) of the Non-Disclosure Agreement is for violating the Covenants of Confidentiality and not for delayed gratuity payments as is sought to be interpreted by the Operational Creditor.

21. Without prejudice to the aforesaid, the Operational Creditor's claim for Gratuity was forwarded by the Corporate Debtor Company along with their other employee's claim to The Life Insurance Corporation of India on 05.04.2018. A copy of the letter sent by the Corporate Debtor Company to the Life Insurance Corporation of India is annexed as Annexure-B to the reply. The gratuity amount of the Operational Creditor was received by the Corporate Debtor Company only on 11.06.2018 and the same was released to the Operational Creditor at the earliest after completing all relevant formalities on 15.06.2018 along with all the other employees. A copy of the Bank Statement of the Corporate Debtor Company showing receipt of the Gratuity amount from Life Insurance Corporation on 11.06.2018 is annexed as Annexure-C to the Petition. Thus, there was no delay on the part of the Corporate Debtor Company in processing the Gratuity amount of the Operational Creditor.

22. In view of the aforesaid it can be safely concluded that the penalty clause as sought to be interpreted by the Operational Creditor cannot come within the purview of disputes adjudicated by this Tribunal. The Corporate Debtor Company has all throughout disputed the amount as claimed by the Operational Creditor. The defence raised by the Corporate Debtor Company is not merely a moonshine defence. It is pertinent to note that the Operational Creditor has raised the present alleged dispute only after receipt of the entire dues from the Corporate Debtor Company. If the Operational Creditor's alleged claim was genuine, he would have mentioned in at least one of the several emails about the alleged amount due to him as per clause 1(a), 2(e) and 2(f) of the Non-Disclosure agreement before the receipt of his dues. The claim as raised by the Operational Creditor is not an admitted liability.

Findings

23. We have heard both the parties and perused the records, the primary defence raised by the Corporate Debtor is that the Corporate Debtor made payments to the Operational Creditor for the months of January 2018, February 2018 and March 2018 (until 21st March) and further paid other dues. Gratuity Amount and Bonus were also paid eventually and thus no liability remains outstanding on the part of the Corporate Debtor.

24. We note that on a plain reading of the Non-Disclosure Agreement, it is clear that the Corporate Debtor had agreed to make two payments as mentioned in Clause 2 (e) and Clause (i). There is nothing to suggest any connection of 2 (e) with Clause (i). Whereas we construe that clause 2 (i) is in reference to clause 1 (a) and thus the same has been discharged with. Hence, the payment made for the months of February and March,

2018 cannot be construed to be in discharge of the liabilities rising out of Clause 2 (e). Thus, the Corporate Debtor has failed to comply with the terms of Clause 2 (e) of the Agreement and has committed default.

25. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

26. The petition bearing **CP (IB) 973/MB/C-I/2019** filed by Ravindra Rawat**,** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **D B Group Indian Limited (CIN: U63000MH2006PTC158759)** the Corporate Debtor, is **admitted**.

27. There shall be a moratorium under section 14 of the IBC, in regard to the following:

    a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

    b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

28. Notwithstanding the above, during the period of moratorium: -

a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

b. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

29. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

30. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. **Mr. Pankaj Ramandas Majithia**, Registration No. IBBI/IPA-001/IP-P00452/2017-2018/10795, Email Id: pankaj@pcpl.net.in, Mob No. 9820122218, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

32. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

33. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

34. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

35. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report

in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

36. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

JUSTICE P.N. DESHMUKH
Member (Judicial)

23.09.2022
DSB