

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/560/2019

Under Section 9 r/w Rule 6 of the IBC, 2016

In the matter of M/s. Tech-Sharp Engineers Private Limited

Mr. V. Suresh

---Operational Creditor

V/s

M/s. Tech-Sharp Engineers Private Limited

---Corporate Debtor

Order delivered on: 29.07.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Operational Creditor: *Shri. Najeeb Usman Khan, Advocate*
Shri. T. Abhinaya Kalaignan, Advocate

For the Corporate Debtor : *Ms. T. Geethanjalli, Advocate*
For Aiyar & Dolia

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in the Open Court on 23.07.2019

It is an Insolvency Bankruptcy Application filed u/s 9 by Mr. V.Suresh (Petitioner/Employee) of the Insolvency and Bankruptcy Code, 2016 ("the Code") for initiation of Corporate Insolvency and Resolution Process on the ground the Corporate Debtor defaulted in paying ₹ 12,12,678 to the Operational Creditor

towards the services allegedly rendered by him as Deputy General Manager of the Corporate Debtor.

2. On perusal of this Application and submissions made by both the parties, it is evident that this Petitioner continuing for some time as an employee of the Corporate Debtor in various positions, but as to this applicant rendering services, the Corporate Debtor has arisen a plea that this Applicant having failed to discharge his duties as contemplated, this Applicant has resigned from the Corporate Debtor.

3. As a reply to the letter dated 15.12.2018 written by the Operational Creditor asking the Corporate Debtor to settle his retirement benefits, the Corporate Debtor on 05.01.2019 wrote back to the applicant stating that despite the Applicant assured the Corporate Debtor would hand over the Corporate Debtor documents, those documents have never come to the Corporate Debtor except this applicant every time promising that he would return those documents. By which the corporate debtor Management was forced to write that the Applicant has failed to

discharge his duties towards the Corporate Debtor and acting in deceitful manner causing pecuniary damage to the Corporate Debtor. The Corporate Debtor Counsel says that since he has left office without handing over service tax related documents, the details regarding payments towards re-registration of the Crane, the corporate debtor incurred monetary loss, therefore if the applicant failed to hand over the documents, the Corporate Debtor, in the letter, stated that would take appropriate action against the Applicant within 10 days thereof. To which this applicant, instead of handing over the documents to the corporate debtor, he issued section 8 notice on 09.1.2019 as if the Corporate Debtor has agreed to pay this claim, thereafter defaulted to pay the same. The Corporate Debtor counsel has further stated the Corporate Debtor has been facing problems due to lack of proper record keeping on the Petitioner side related to Service Tax, Sales Tax and Invoices, the Corporate Debtor officials sent e-mail dated 28.06.2017 to the Applicant reminding him about the Service Tax details which has not been handed over including all the Invoices, Credits availed, etc.

4. The counsel has also mentioned that the attitude of the Applicant has caused the Debtor huge loss which runs into Crores due to his actions of the Applicant while being part of the Corporate Debtor, therefore he is liable to pay damages to the Corporate Debtor. The debtor Counsel has further stated that the Petitioner has wilfully and wantonly refused to hand over the documents leading to cause hardship and monetary loss to the Debtor Company.

5. On receipt of Section 8 Notice dated 09.01.2019, this Corporate Debtor again replied on 21.01.2019 disclosing that this Petitioner has suppressed the e-mail dated 29.06.2017 signed by an employee of the Corporate Debtor stating that the Corporate Debtor has never received any documents as stated by this Petitioner.

6. On looking at the submissions made by either side in respect to handing over of documents, it appears that dispute regarding delivery of company documents lying with the Applicant arose between the Corporate Debtor and the Applicant long before section 8 notice was issued by the Applicant, to counter these allegation, this Applicant stated that he already delivered the documents to the

Corporate Debtor, but no material is placed in support of this contention against the material placed by the debtor reflecting the debtor disputing the services rendered by the Applicant.

7. The result of the correspondence between the parties as on the date this Applicant issued Section 8 notice, there is pre-existing dispute between the parties questioning the performance of this employee stating that he has caused huge loss to the company by not delivering the documents belonging to the Corporate Debtor, therefore this Bench is constrained to construe that dispute is in existence between the parties in respect to the performance of this employee even before this Applicant issued Section 8 notice on 09.01.2019.

8. Looking at a document with a caption of **“full and final settlement”** dated 30.06.2017 signed by the Applicant himself with a reflection that the Corporate Debtor is liable to pay ₹12,17,528 to himself cannot become a document/evidence against the Corporate Debtor to say that the corporate Debtor settled the claim of the Applicant as ₹12,17,528. May be, since he continued as an employee

of the Corporate Debtor, he must have access to the seal of the company. But by seeing such a seal along with the signature of the applicant deciding settlement toward himself will not make his case any better. He cannot take advantage of having access with the seal to make a document as full and final settlement signing it to himself. Such action from the Applicant is unbecoming. Since the Corporate Debtor has shown existence of dispute existing between the parties even before issual of section 8 notice, we hereby hold that this case is hit by existence of dispute as on the date section 8 notice sent to the Corporate Debtor.

9. However, if at all this Applicant wants to proceed against the Corporate Debtor before appropriate forum, he is at liberty and this order will not have bearing against or in favour of the Applicant.

10. Accordingly, this Company Petition is hereby **dismissed**.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)