

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-461(ND)2019

IN THE MATTER OF:

Mohit Kalkhande

S/o Late. Shri Vijay Pal Singh
F-4/299, Shakti Apartment
Sector-4, Vaishali
Ghaziabad 201010

...Applicant/Operational Creditor

VERSUS

**Set Sanayi Elektrik-Tesisat Taahut Ve
Ticaret India Private Limited**

F-91, 2nd Floor, Dilshad Colony
New Delhi-110095

...Respondent/Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 30.11.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For Applicant : Adv. Amit Srivastava

For Respondent : Adv. Arzoo Raj

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present application is filed by Mr. Mohit Kalkhande (for brevity **'Operational Creditor/ Applicant'**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Set Sanayi Elektrik-Tesisat Taahut Ve Ticaret India Private Limited (for brevity **'Corporate Debtor/ Respondent'**).

2. That the Corporate Debtor namely, M/s. Set Sanayi Elektrik-Tesisat Taahut Ve Ticaret India Private Limited is a Company incorporated on 08.10.2013 with CIN U45200DL2013PTC258898 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at F-91/F, 2nd Floor, Dilshad Colony, New Delhi-110095, which comes within the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.1,00,000/- and Paid-up Share Capital is Rs.1,00,000/- as per the Master Data of the Corporate Debtor. The Corporate Debtor is a company engaged in the business of providing electrical, mechanical & plumbing contracting services to companies and offering operations & maintenance services to industries.

4. That the applicant herein Mr. Mohit Kalkhande was initially appointed as General Manager-LV Systems at the office of corporate debtor w.e.f. 09.06.2014 at an initial salary package of Rs.23,00,000/- per annum. It has been submitted that subsequently, he was promoted to the post of "Corporate Head - Operations & Projects" at a salary package of Rs.26,45,000/- per annum.

5. It is added by the Applicant that he had worked diligently and with full integrity and his work was appreciated on numerous occasions. He was entrusted with additional responsibilities also. However, the corporate debtor failed to pay him the salary on time. Therefore, the applicant sent several emails dated 30.12.2014, 03.03.2015, 21.05.2016 and 24.06.2016 requesting for release of the unpaid salary and other dues. Constrained due to non-payment of salary, the applicant submitted his resignation vide email dated 06.10.2016. The resignation was not accepted and verbal assurances were given by the corporate debtor that the partial unpaid dues shall be released to him within a week and the balance shall be released in a period of maximum 02 months.

6. However, the dues remained unpaid and the applicant again sent a reminder email dated 15.10.2016 to seek his salary dues. It is submitted that the Corporate Debtor failed to clear the dues and in the meantime, the Corporate Debtor on 11.11.2016, promoted him to the post of Corporate Head – Operations and Projects at a revised package of Rs.26,45,000/-per annum with effect from December

2016. The Corporate Debtor also gave an assurance to clear the pending salary and dues before March, 2017, which was not fulfilled.

7. In these circumstances, the Applicant had a meeting at the residence of one of the Directors of Corporate Debtor, Sh. Prakash Sinha on 19.03.2017, wherein the Applicant requested him to accept his resignation and relieve him to enable him to move on to a new job. The Director Mr. Prakash Sinha again assured to release some dues immediately and the balance by 20.04.2017. It was also agreed that in case of non fulfilment of the commitment by the Corporate Debtor, the resignation of the Applicant shall be accepted and he will be relieved on 20.04.2017.

8. The Applicant stated that he had been attending office of the Corporate Debtor till 10.04.2017 but due to lack of funds & unpaid dues of the Corporate Debtor, he was constrained to work from home. It is further stated that the Corporate Debtor failed to fulfill its promises and make payments of salary and other dues by 20.04.2017. Therefore, the Applicant vide email dated 24.04.2017 again wrote to Corporate Debtor requesting for clearance of dues as agreed and relieving him from the job. The Applicant admits that pursuant to these efforts, the Corporate Debtor released the salary of four months i.e., May 2016, September 2016, October 2016 and January 2017 from its Sister unit namely, M/s Codex Infrastructure Private Limited.

9. That in spite of repeated requests and emails, the dues of the applicant were not cleared. Hence, the Applicant issued a Legal Notice dated 18.01.2018 seeking arrears of salary and other dues from the Corporate Debtor. That the said notice was served upon the Corporate Debtor but the Corporate Debtor failed to reply to the said notice. Subsequently, the Applicant sent the Demand Notice dated 30.01.2018 under Section 8 of the Code for a total outstanding amount of Rs.24,46,867/- excluding the PF dues (though deducted from the Applicant's salary but were not deposited with the EPFO). The said notice was served upon the registered office of the Corporate Debtor as per Master data. Despite service, the Corporate Debtor did not reply to the said notice.

10. It is further submitted by the Applicant that again on 04.01.2019, the Applicant sent another Demand Notice under Section 8 of the Code demanding a total outstanding amount of Rs.25,06,838/- (including Rs.59,972/- on account of Provident Fund amount deducted as employee's contribution from the applicant's but not deposited with the EPFO). The said Demand Notice was also served upon the registered address office of the Corporate Debtor. The tracking report of the same has been filed and is on record (Pg. 88). However, despite service, the Corporate Debtor again failed to reply.

11. It is submitted by the Applicant in the Part-IV of its Application that the amount of his total debt is of Rs.25,06,838/- (Pg. 19). Further, the Applicant has also annexed the Affidavit under Section 9(3)(b)

stating that no notice of dispute has been raised by the Corporate Debtor.

12. That vide order dated 13.04.2019, the present petition was dismissed in default and non-prosecution. Thereafter, an Application bearing no.CA/516/C-II/ND/2019 was filed by the Applicant seeking restoration of the Application under Section 9 bearing No. IB/461/2019. The application was allowed vide order dated 25.04.2019 and the petition was restored to its original number.

13. On 06.08.2019, the Corporate Debtor was proceeded ex-parte, as the service was duly affected vide registered post and none was present on behalf of the Corporate Debtor. An Application bearing no. CA/1179/2019 was filed praying for setting aside of the Ex-parte Order dated 06.08.2019. The Application was allowed vide Order dated 13.09.2019 and the Corporate Debtor was directed to file the reply.

14. That the Corporate Debtor has filed reply and raised the following objections:

- a) That the Applicant's professional conduct was not good as he used to come late to the office and several notices towards the same were issued to him via email. A copy of one such notice sent vide email dated 06.11.2016 has been placed on record. That the applicant also failed to fulfill his obligations towards his job, was even unsuccessful in getting client's satisfaction and ensuring progress of various projects. Moreover, to blackmail the corporate debtor, the Applicant demanded an

increase in his salary and threatened to leave the project in the middle. Therefore, to avoid further loss, the Corporate Debtor promoted the Applicant and increased his salary. In spite of promotion, the applicant left the job causing damage to the Corporate Debtor, as huge payments on several bills and invoices could not be released.

- b) The Applicant always acted on his own accord without seeking prior permission from the Corporate Debtor and depicted an unprofessional attitude towards the project assigned. Due to his conduct at the multipurpose convertible stadium project at Ahmedabad, an amount of Rs.14 crore of the corporate debtor is still stuck with the client. Further, due to conduct of the Applicant, a loss of Rs.30 Lakhs has been incurred by the Corporate Debtor in another project located at Orissa. That the Ledger Accounts of the clients, which were under supervision of the applicant, reflecting recoverable dues and losses has been annexed.
- c) That the claim of Applicant is false and arbitrary and a sum of Rs.15 Lakh has been paid in cash to the Applicant, which has been mis-appropriated by him to the accounts of his family and in purchase of property in Rajnagar, Ghaziabad. Hence, nothing is due and payable to the Applicant.

15. From the case record, it is observed that the Applicant vide CA/761/C-II/19 has placed the statement of monthly salary paid to

him from June 2014 to April 2017 during the period of employment, the summary of which is given as follows:

Salary Payable	Salary Actually Paid	Balance Unpaid
Rs.61,81,586.67/-	Rs.40,65,646/-	Rs.21,15,940.67/-
Accumulated earned leaves (@15 per year in Delhi & UP) for 3 working years computed on last drawn salary as		Rs. 3,30,625.50/-
PF Dues to be paid to Operational Creditor		Rs.59,972/-
Total amount dues to be paid to Operational Creditor		Rs.25,06,838/-

16. Further, the Applicant vide CA/1381/C-II/ND/2019 has also placed on record, the additional document being the email dated 10.01.2017 sent by the Accounts Department of Corodex Infrastructure Pvt. Ltd, the Sister Concern of the Corporate Debtor regarding the statement of pending payment towards arrear salary. The scanned copy of the email dated 10.01.2017 along with the Statement of Balance salary payable are reproduced below :

From: Mohit Kalkhande (mohit_kal@yahoo.co.in)
To: advamitsrivastava3406@gmail.com
Date: Thursday, 12 September, 2019, 08:10 pm IST

Sent from Yahoo Mail on Android

----- Forwarded message -----
From: "Mohit Kalkhande" <mohit@setsanayi.com>
To: "mohit_kal@yahoo.co.in" <mohit_kal@yahoo.co.in>
Cc:
Sent: Tue, 10 Jan 2017 at 17:10
Subject: FW: PENDING PAYMENT

Regards,

Mohit Kalkhande
+91 9810405747
General Manager – LV systems
SET SANAYI ELEKTRIK-TESISAT TAAHHUT VE TICARET INDIA PRIVATE LIMITED
A-42/6,4TH Floor, Pinnacle Tower,Sector-62, Noida-201301.

From: Ritesh Sinha [mailto:account@corodex.co.in]
Sent: 10 January 2017 16:42
To: mohit@setsanayi.com
Cc: 'GAURAV'
Subject: PENDING PAYMENT

Dear Sir,

Please find attached your pending payment.

Ritesh

 MOHIT SIR.xls
30.5kB

Mohit Kalkhande

SALARY SHEET FOR THE FINANCIAL YEAR 2014-2017								
MOHIT KALKHANDE (PROJECT DIRECTOR)								
Month	CTC	Deductions	Salary paid after deductions	TDS	Loan/Advance	Salary Payable	Salary Paid	Pending Salary
Jun-14	1,40,556.00	9,556.00	1,31,000.00	25,000.00		1,06,000.00	1,06,000.00	
Jul-14	1,91,667.00	13,030.00	1,78,637.00	35,000.00		1,43,637.00	1,43,637.00	
Aug-14	1,91,667.00	12,750.00	1,79,417.00	30,000.00		1,49,417.00	1,49,417.00	
Sep-14	1,91,667.00	16,050.00	1,75,617.00	30,000.00		1,45,617.00	1,45,617.00	
Oct-14	1,91,667.00	16,050.00	1,75,617.00	30,000.00		1,45,617.00	1,44,416.00	1,201.00
Nov-14	1,91,667.00	16,050.00	1,75,617.00	30,000.00		1,45,617.00	1,45,617.00	
Dec-14	1,91,667.00	16,050.00	1,75,617.00	6,900.00		1,68,717.00	1,68,717.00	
Jan-15	1,91,667.00	16,050.00	1,75,617.00	6,900.00		1,68,717.00	1,68,717.00	
Feb-15	1,91,667.00	16,050.00	1,75,617.00	1,900.00		1,73,717.00	1,73,717.00	
Mar-15	1,91,667.00	16,050.00	1,75,617.00			1,75,617.00	1,75,617.00	
Apr-15	1,91,667.00	16,050.00	1,75,617.00	66,000.00	1,00,000.00	9,617.00		9,617.00
May-15	1,91,667.00	16,050.00	1,75,617.00	66,000.00		1,09,617.00		1,09,617.00
Jun-15	1,91,667.00	16,050.00	1,75,617.00			1,75,617.00	1,75,617.00	
Jul-15	1,91,667.00	16,050.00	1,75,617.00	10,000.00		1,65,617.00	75,000.00	90,617.00
Aug-15	1,91,667.00	16,050.00	1,75,617.00			1,75,617.00	1,75,000.00	617.00
Sep-15	1,91,667.00	16,050.00	1,75,617.00		25,000.00	1,50,617.00	1,50,617.00	
Oct-15	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Nov-15	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Dec-15	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Jan-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Feb-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Mar-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Apr-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
May-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Jun-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00		1,50,617.00
Jul-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Aug-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Sep-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00	1,50,617.00	
Oct-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00		1,50,617.00
Nov-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00		1,50,617.00
Dec-16	1,91,667.00	16,050.00	1,75,617.00	25,000.00		1,50,617.00		1,50,617.00
Total	40,25,007.00	3,37,050.00	36,87,957.00	5,17,000.00	1,25,000.00	30,45,957.00	22,33,021.00	8,12,936.00

DEDUCTIONS DETAILS	
June 2014 to December 2016	
	payable
LTA	2,76,600.00
TELEPHONE REIMBURSEMENT	1,21,467.00
MEDICAL REIMBURSEMENT	38,417.00
GROSS TOTAL	4,36,484.00

Mohit Kalkhande

		cash	Balance
salary payable	8,12,936.00	3,00,000.00	5,12,936.00
lta	2,76,600.00	0	2,76,600.00
telephone	1,21,467.00	0	1,21,467.00
medical	38,417.00	0	38,417.00
total		0	9,49,420.00

17. That as per direction of this Bench vide order dated 10.01.2020 to explain the basis of the claim, the Applicant had filed the following documents vide CA/1342/2020 :

- Salary slips for the month of October 2016 (prior to increment) & December 2016 (post-salary hike),
- Form 26 AS for the assessment years 2017-18, 2018-19, 2019-20;
- Summary of amounts payable, paid and unpaid salary of the Applicant;
- The month wise breakup of salary; and
- Bank accounts statement of the Applicant.

18. During the course of hearing on 27.01.2020, the Corporate Debtor admitted that he was ready to tender the admitted amount of Rs.9 Lacs by way of Demand Draft brought with him on that day. The Order sheet dated 27.01.2020 reflects the proceedings as below :

“Ld. Counsel for the corporate debtor is ready to tender the admitted amount of Rs. 9 Lakhs by way of demand draft brought with him today. The same is not acceptable to the ld. Counsel for the petitioner, who prays for an adjournment to ascertain his dues.”

19. The matter was finally heard on 20.10.2021, wherein, the Bench noticed that the Corporate Debtor vide order dated 27.01.2020 has already admitted the liability to the extent of Rs. 9 Lacs.

20. We have heard the Ld. Counsels for both the parties and perused the averments made in the application, reply and other documents filed on record. We observe that the Corporate Debtor has taken objection regarding some pre-existing dispute between the parties regarding services provided by the Applicant. Further, it is stated by the Corporate Debtor that it had suffered losses due to conduct of the Applicant during his tenure. It is further submitted by the Corporate Debtor that no amount is due towards the Corporate Debtor since a sum of Rs.15 Lakhs in cash has already been paid to the Applicant.

21. In our considered view, there is no necessity of going into the issues alleged by the Corporate Debtor as there is a specific admission made by the Corporate Debtor as regards to the undisputed debt of Rs.9 Lakhs which is due and payable by it to the Applicant and which is

more than the threshold limit Rs.1,00,000/-. The same is clearly recorded in the order of this Adjudicating Authority dated 27.01.2021.

22. Since the admission of debt made on part of the Corporate Debtor is for an amount, which is more than Rs.1,00,000/-, therefore we are of the considered view that the same is sufficient to trigger CIR Process against the Corporate Debtor.

23. In this context, we are further strengthened by the law laid down by the Hon'ble Supreme Court in the matter of "**Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**", whereby it is held that:

*"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. **For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority "***

(Emphasis supplied)

24. In sequel to the above, we conclude that a default has occurred on part of the Corporate Debtor and the same has also been admitted by the Corporate Debtor. Hence, we are inclined to admit the present Application.

25. Accordingly, the Operational Creditor has succeeded in establishing the default on the part of the Corporate Debtor in making payment of the Operational Debt. The Application filed under Section 9 fulfills all the requirements of law. **Therefore, the present Application is admitted in terms of Section 9(5) of the IBC, 2016. Accordingly, the CIRP is initiated and 'moratorium' is declared in terms of provisions of Section 14 of the Code.** As a necessary consequence of declaration of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

26. The Applicant has not proposed the name of an IRP hence this Bench appoints Mr. Rajesh Mittal as an IRP, having registration no. IBBI/IPA-001/IP-P01114/2018-19/11816 (Email: md@alamakcapital.com) as IRP of the Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. **This Bench, therefore, directs Mr. Rajesh Mittal to take charge of the CIRP of the Corporate Debtor with immediate effect.** The specific consent of the IP in Form-2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be filed within 07 days of this order.

27. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP, namely Mr. Rajesh Mittal to meet out the expenses and perform the functions as assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this Order by the Applicant. This amount, however, will be subject to adjustment by the Committee of Creditors, as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

28. A copy of this Order shall be communicated by the Registry/ Court Officer immediately by all modes to the Operational Creditor, the Corporate Debtor and the IRP named above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to IBBI and ROC concerned for their records.

- Sd -

(L. N. Gupta)
Member (T)

- Sd -

(Abni Ranjan Kumar Sinha)
Member (J)