



**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 141/Chd/Hry/2019**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016**

**In the matter of:**

**Mr. R.L. Dhingra (Roshan Lal Dhingra)**

R/o, House No. 103/A-5,  
Gulmohar City, Haibatpur Road,  
Dera Bassi-140507,  
District Mohali.

...Petitioner-Operational Creditor

Vs.

**Crop Care Pesticides (I) Pvt. Ltd.**

having its registered office at  
Haibatpur Road, Dera Bassi,  
District S.A.S. Nagar, Mohali,  
Punjab-140201

...Respondent-Corporate Debtor

**Judgment delivered on: 16.06.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. Jashan Chopra, Advocate  
Operational Creditor

For the Respondent- : Mr. G.S. Sarin, PCS  
Corporate Debtor



**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **R.L Dhingra** (Roshan Lal Dhingra) (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **Crop Care Pesticides Pvt. Ltd.** (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, **Crop Care Pesticides Pvt. Ltd.**, is a Company incorporated on 08.02.1989 under the provisions of the Companies Act, 1956 with CIN No. U24219PB1989PTC022394 with its registered office at Derabassi, District SAS Nagar, Mohali, Punjab-140201. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached at Page 1 of the main petition.

3. The facts of the case, briefly, as stated in the petition are that the corporate debtor is a limited liability company who manufacture and market crop protection products. The Operational Creditor was appointed as Plant Manager by Corporate Debtor vide appointment letter dated 30.07.1992 and Operational Creditor joined the office on 01.10.1992. Corporate Debtor issued a letter dated 04.09.1997 for acceptance of terms and conditions. In relation to the queries of the Operational Creditor through email dated 15.11.2017, the Corporate Debtor vide email dated 17.11.2017 recognized with appreciation the dedication/loyalty/sincerity and approved the continuation of the Operational Creditor paying him salary up to 31.12.2017.



Corporate Debtor issued a letter dated 23.01.2018 mentioning that his services were no longer required and alleged him of professional misconduct. Operational Creditor vide email dated 23.01.2018 replied. The Corporate Debtor had not paid salary, gratuity, PF, other allowances and benefits.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 58,13,927/-(Rupees Fifty Eight Lakh Thirteen Thousand Nine Hundreded Twenty Seven Only). The default occurred on 30.11.2018 i.e. when the last salary was due on Corporate Debtor. Copy of Appointment Letter (Annexure A2), Letter dated 04.09.1997 (Annexure A3), Email dated 15.11.2017 and its reply (Annexure A4 & A5) , Email dated 23.01.2018 and its reply (Annexure A6 & 7) are attached with the main petition.

5. A demand notice in Forms 3 & 4 is stated to be issued by the operational creditor on 01.12.2018 (Pages 19-27 of the petition) and the same has been delivered to the corporate debtor as the postal receipt is attached as Annexure A9 & 12 of the petition. The corporate debtor gave a reply dated 10.12.2018 to the demand notice wherein it is stated that due to professional misconduct, he was ousted from the company requesting to hand over the company assets. There is an existence of dispute between the parties. The entire salary had already been paid till the month of December 2017 and only the amount up to the period 23.01.2018 remains payable. A counter-reply dated 27.12.2018 to reply of the Demand Notice was given by Operational Creditor stating that there was no professional misconduct and the amount is due from the operational creditor which is an operational debt.



6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed by Diary Nos. 4046 dated 13.07.2019. The corporate debtor has filed a reply vide diary No.4899 dated 18.09.2019, wherein it is stated that the corporate debtor is not liable to pay any amount. The claim raised by the petitioner is uncalled for as due to some critical issues arose due to professional misconduct the petitioner was directed to hand over the charge along with facilities. The petitioner replied on 04.02.2018 that the company car is with him. The corporate debtor vide letter dated 16.04.2018 stated that *"Your dues shall only be settled only after you have complied with the company's regulation"*. The petitioner has not handed over possession of company assets and have raised issues vide letters/emails dated 01.02.2018, 16.04.2018, 03.10.2018, 05.02.2018, 20.04.2018, 26.06.2018, 04.02.2018, 15.11.2017, 23.01.2018, 21.02.2017. Disputes between employer and employee can be addressed by Civil Court. No application has been made for payment of gratuity and for Contributory Provident Fund and the petitioner is required to get the same from Regional Provident Fund Commissioner. The petitioner superannuated after attaining the age of 55 years as per Appointment Letter dated 30.07.1992 and the corporate debtor issued a letter dated 04.09.1997 which had an overriding effect on all offers made to the petitioner. In the revised letter there was no stipulation as to the notice and notice pay in lieu thereof. This authority is not the proper forum for the redressal of service matter disputes. A complaint was filed by corporate debtor on 16.05.2018 to SHO, Police Station Dera Bassi for unauthorized use of company assets. Therefore, there existed pre-existing



dispute between the parties. As per Clause 11 of the Appointment Letter dated 04.09.1997, it was clearly mentioned that “ *You shall retire from services of the company on reaching the age of 55 Years.*” The amount is neither due nor disputed. Besides repeated reminders and requests company assets were not handed over.

7. The operational creditor has filed a counter-reply by Diary No. 5939 dated 29.10.2019 wherein it is stated that the corporate debtor was demanding articles without adverting to the replies issued by the operational creditor just with the intention to keep the petitioner under mental tension. No company's resolution has been placed on record nor provided to the petitioner. The corporate debtor vide letter dated 02.10.2018 has admitted that the petitioner had offered a return of car No. CH 01-AU-9432 vide letter dated 24.09.2018, the petitioner never declined to return the car and is also entitled to operational debt. The dues including gratuity and Provident Fund or salary due to the petitioner is a debt. The corporate debtor is trying to explore the mandatory requirement of issuing of 90 days' notice by either side mentioned in the letter dated 16.11.2017. The corporate debtor voluntarily allowed the petitioner to continue in services even after completion at 55 Years of his age. There are no pre-existing disputes. The corporate debtor tried to create false evidence by seeking false writing from his employees. Letters annexed were never brought to the notice of the petitioner and have been created by the corporate debtor by anti-dating the writing.



8. The short written submissions have been filed by the petitioner vide Diary No.00604/2 dated 18.04.2022 and by the respondent corporate debtor vide Diary No. 00604/01 dated 07.04.2022.

9. We have heard the learned counsels for the petitioner as well as the corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Forms 3 & 4 was duly served. It is stated to be issued by the operational creditor on 01.12.2018 (Pages 19-27 of the petition) and the same has been delivered to the corporate debtor as the postal receipt is attached as Annexure A9 & 12 of the petition. The corporate debtor gave a reply dated 10.12.2018 to the demand notice and a counter-reply dated 27.12.2018 to the reply of the Demand Notice was given by Operational Creditor. Therefore, the demand notice was duly served upon the corporate debtor.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The corporate debtor has submitted that Petitioner was terminated due to professional misconduct and vide letter dated 23.01.2018 was directed to hand over the charge along with facilities. The petitioner replied on 04.02.2018 that the company car is with him. The corporate debtor vide letter dated 16.04.2018 stated that:-

*“Your dues shall only be settled only after you have complied with the company’s regulation”.*

Further, the complaint was made by the corporate debtor on 16.05.2018 to SHO, Police Station Dera Bassi for unauthorized use of company assets by the petitioner. As per Clause 11 of the Appointment Letter dated 04.09.1997, it was clearly mentioned that:-



*“You shall retire from services of the company on reaching the age of 55 Years.”*

The petitioner was still continuing to work with the company even after the age of 55 years.

However, it is seen from the records that there was a pre-existing dispute between the parties in regard to the professional misconduct of the petitioner. Further, the dispute existed between the parties much before the issuance of the demand notice dated 01.12.2018 as the letters were exchanged beforehand. The reliance can be placed upon the judgment of

Hon’ble Supreme Court **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353** wherein it was held that:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

*43. ....We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).*

*45. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an*



*assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.*

(Emphasis Supplied)

The present petition is filed for non-payment of salary, gratuity, PF, other allowances and benefits. Further, the petitioner vide letter dated 23.01.2018 stated that:-

*“.....pay me three month salary in lieu three month notice as per appointment terms with my other dues gratuity 26 years leaves ninety days as my appointment terms, bonus, medical leaves, travelling allowance and many other dues which is going to more than 20 Lakh rupees”.*

However, on perusal of the records, it is found that no three months' notice has been served on the part of the petitioner to the corporate debtor.

Although, it is pleaded by the operational creditor that there is a default on the part of the corporate debtor with respect to the payment outstanding, however, there is pre-existing disputes between the parties. Thus, default is not established.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated Form 3 & 4 is stated to be issued by the operational creditor on 01.12.2018 (Pages 19-27 of the petition) and the same has been delivered to the corporate debtor as the postal receipt is attached as Annexure A9 & 12 of the petition. The corporate debtor gave a reply dated 10.12.2018 and a counter-reply dated 27.12.2018 to reply of the Demand Notice was given by Operational Creditor. However, the period of limitation would begin from the date of default 30.11.2018 i.e. when the last salary was due on Corporate Debtor. This application was filed



vide Diary No. 873 on 20.02.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. As a sequel to the above discussion and the facts as well as circumstances since there is a pre-existing dispute between the parties regarding the amount claimed by the petitioner, the petition is liable to be rejected, in terms of Section 9 of IBC, 2016. The petition consequently stands dismissed, however, with no order as to costs.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

June 16, 2023  
VN/TB