

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 3247 OF 2022**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

**Sharad G. Kathawate**

...Applicant

**V/s**

**Satra Properties India Limited**

...Respondent

In the matter of

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited

**Financial Creditor**

**Vs.**

M/s Satra Properties India Limited

**Corporate Debtor**

*Order delivered on: 12.03.2024*

*Coram:*

**Shri Prabhat Kumar**

Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**

Hon'ble Member (Judicial)

*Appearances*

For the Applicant : Mr. Prashant, Advocate  
For the RP : Mr. Pulkit Sharma, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application IA 3247/2022 is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 by **Sharad G. Kathawate** (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Satra Properties (India) Limited (“Corporate Debtor”), seeking following reliefs:
  - a. Resolution Professional / Resolution Professional to verify the claim of Applicant and consider/admit the claim amount of Rs.18,40,029/-
  - b. This Tribunal be pleased to order and direct the Insolvency Resolution Professional /Resolution Professional to clear pending dues of Applicant amount of Rs. 18,40,029/- by arranging fund.
  - c. As per filed claim considered by Insolvency Resolution Professional /Resolution Professional to be paid to Applicant priority basis as per fact of the case.
  - d. This Tribunal be pleased to order and direct the Resolution Professional to consider the resolution plans submitted by the various other resolution applicants in a fair and unbiased manner so that the purpose and intent of the Insolvency and Bankruptcy Code, 2016 are met with;
  - e. This Tribunal be pleased to pass any other such Order or direction as this Hon'ble Tribunal may deem fit to pass in order to meet the ends of justice;

2. The Applicant is aggrieved, inter alia, by the non-redressal of his legal, valid, and bonafide claim which the Applicant had substantiated with sufficient proofs and documents. The Applicant submitted his claim within the period of time before appointed IRP. However, same has not been considered by the Insolvency Resolution Professional.

2.1. The Applicant was appointed as "Chief Financial Officer" in the Satra Property Developers Pvt. Ltd vide offer letter dated 28-02-2017 issued by said Company. The Applicant salary/remuneration was fixed at Rs. 30,00,000/- per annum as per the offer letter. The Applicant was subsequently come to be appointed as Chief Financial Officer in the Corporate Debtor w.e.f. 31st May 2017. The Corporate Debtor has been paying monthly salary irregularly to the Applicant from March 2017. Therefore, the Applicant was constrained / compelled to tender his resignation vide letter dated 6th January 2018 from the post of Chief Financial Officer and Whole time -Key Managerial Personnel of the Corporate Debtor. The Corporate Debtor has failed, neglected and ignored to pay salary to the Applicant from September, 2017 to November, 2017. The Corporate Debtor is liable to pay an amount of Rs. 8,98,387/- to the Applicant for and towards unpaid salary. The Corporate Debtor also ignored, neglected and failed to pay an amount of Rs. 1,36,858/- for and towards reimbursement to the Applicant for the expenses occurred for driver's salary and fuel in his four wheeler from time to time. The Corporate Debtor did not pay

an amount of Rs. 1,25,000/- to the Applicant for and towards encashment of leave. Hence, the Corporate Debtor is liable to pay the total principal amount of Rs. 11,60,245/- to the Applicant. Further Corporate Director is liable to pay Interest on principal amount till 20-07-2022. Therefore, the Corporate Debtor is liable to remit the amount of Rs. 11,60,245/- Rs. 6,79,784/- and 18,40,029 to the Applicant.

2.2. That the IRP emailed on 21-12-2021 to Applicant and submitted that as per list of claims dated 16-09-2021 the amount of Rs. 8,98,387 of Applicant was admitted. Thereafter on 21st January, 2022 the Applicant received email from IRP therein he revised his original approval decision and rejected Applicant claim amount.

3. Heard the learned counsel and perused the materials available on record.

3.1. The Applicant has claimed salary for the month of 01.09.2017 to 06.01.2018 and has submitted that salary for the period of June to August 2017 has already been paid. Further, a sum of Rs.1,54,000/- was paid towards salary for the month of December. Accordingly, the applicant has claimed unpaid salary of Rs.8,98,387/-. Besides this the Applicant has claimed the interest on such unpaid salary, unpaid reimbursement and unpaid leave encashment.

3.2. The Applicant has placed on record an appointment letter issued by the Corporate Debtor setting out the terms. On perusal of said appointment letter, we find that the appointment letter contemplated no payment towards leave salary and reimbursement towards driver and diesel. Further, the said

appointment does not specify payment of interest on the delayed payment of salary. Accordingly, we do not find any merit in the claim of interest on such unpaid salary, unpaid reimbursement and unpaid leave encashment. Hence, the claim to this extent is rejected.

3.3. As regards, salary is concerned, we find the total salary payable to the employee is Rs.2,49,800/- as Rs.200 is to be deposited by the employer towards professional tax. Further, the salary is subject to deduction of Tax at source. Accordingly, we direct the RP to determine the amount of salary payable from the period from September 2017 to 06.01.2018 after deducting therefrom the amount already paid in relation to such period. It is clarified that the RP shall be at liberty to deduct Tax at Source from such salary at the applicable rate. However, in case such tax is deducted, the same shall be deposited with the Central Government by the RP without fail.

4. In view of the above, I.A. 3247/2022 is partly allowed and disposed of.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)