

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1755 (ND) 2019

In the matter of

MR. VISHAL SETHI
S/O LATE SHRI SUDESH KUMAR SETHI,
R/O- RZ-33, First Floor,
Gali No. 2, Subhash Park Extn-2,
Uttam Nagar,
New Delhi-110059Operational Creditor/Petitioner

VERSUS

M/S S AND N LIFESTYLE HOSPITALITY PRIVATE LIMITED
Represented By Its Director
NAZIA YUSUF IZUDDIN
Having Its Registered Office At:
1-89, 8TH Floor Himalaya House,
Kasturba Gandhi Marg,
New Delhi-110001

Also At:
111/2, Rajpur Road,
Dehradun-248001Corporate Debtor/Respondent

SECTION: 9 of IBC, 2016

Order delivered on: 09.12.2019

CORAM:

JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Adv. Shashwat Parihar & Adv. Shashwat Anand for the Petitioner

None present on behalf of Respondent

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ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The operational Creditor was appointed for the post of Sales Head by the company of Corporate Debtor on 05.09.2017 as per the offer letter issued by the Corporate Debtor dated 23.08.2017. The Operational creditor continued to hold the same till 05.10.2018, when the operational creditor tendered advance notice of 30 days for his resignation.
3. As per the offer letter, the Annual Salary of the Operational Creditor was agreed to be Rs. 18,50,000/-. The Offer Letter confirmed that the minimum employment tenure for will be of one year.
4. The Corporate Debtor asked the Operational Creditor to start working with the Corporate Debtor from 05.09.2017. However, the Operational Creditor joined office from 09.09.2017 till 11.11.2018. The Operational Creditor continued to work with the office of corporate debtor. As per the averment made by the Operational Creditor in the Application, the salary was regularly paid to the Operational Debtor but was paid once in two months. The Salary was delayed.
5. After completion of one year, the Operational Creditor served notice to the office of Corporate Debtor that he will be quitting his job. The notice was served vide the Operational Creditor email id - vishal@wicindia.org on 05.10.2018 at 05:11 P.M. After the aforementioned notice being served the office of the Corporate Debtor called the Operational Creditor and asked for the reason behind

Operational Creditor leaving the job. Thereafter, the Operational Creditor requested to the Corporate Debtor office to pay the salary and incentives. The Office of Corporate Debtor requested the Operational Creditor to send a notice regarding the same from the Operational Creditor personal email-id to the Corporate Debtor, the Operational Debtor sent the mail to the Corporate Debtor.

6. On 06.10.2018 at 3:26 P.M., the Operational Creditor received a mail from the Director of the Company of Corporate Debtor with allegations that Operational Creditor is not coming to office and is absconding from the office. The Operational Creditor clarified the same vide email dated 08.10.2018. As per the averment in the Application, the Operational Creditor kept on requesting the Corporate Debtor to release his salary through his whatsapp account and on offices whatsapp group but of no avail.
7. The Corporate Debtor asked the Operational Creditor to handover all the belongings of the Corporate Debtor to the Office of Corporate Debtor. The Operational Creditor handedover the same to the office of Corporate Debtor and a Declaration cum Undertaking was signed between Operational Creditor and the Corporate Debtor regarding the same. As per the averments made in the Application, even after the salary of Operational Creditor for the month of September,2018 and October,2018 and other incentives were not paid by the Corporate Debtor. Also, the Corporate Debtor, in the name of Tax Deduction at Source (TDS), deducted amounts from the salary of the Operational Creditor and did not submit it to the Income Tax Department.



8. The Operational Creditor sent Demand Notice dated 13.03.2019 under Form 3 of the Insolvency and Bankruptcy Code, 2016. The Operational Creditor received a reply wherein the Corporate Debtor denied all the claims.
9. The total amount due in default is Rs. 5,08,000/- being Rs. 3,08,000/- as the salary of the employee plus Rs. 2,00,000/- towards the amount deducted in the name of Tax Deduction at Source (TDS).
10. The Petitioner, therefore, filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 5,08,000/- being Rs. 3,08,000/- as the salary of the employee plus Rs. 2,00,000/- towards the amount deducted in the name of Tax Deduction at Source (TDS).
11. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor.
12. As per the averments of the Petitioner, the Corporate Debtors did not make the payment against the default amount. None appeared on behalf of the Corporate Debtor to oppose the prayer made by the petitioner, hence they were proceeded ex-parte. The present petition being filed in July, 2019 is within the limitation, being within three years from the date of the cause of action. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any



judgement, 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 or 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 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.

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

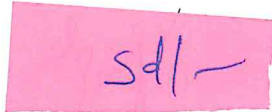
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

13. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Tiruvidaimarudur Rajagopalan Ramamurthy, an Insolvency Professional, registration no. IBBI/IPA-002/IP-N00193/2017-18/10559 email-

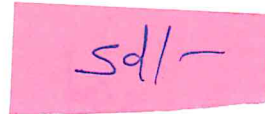


trramamurthy@hotmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

14. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
15. Petition is therefore admitted.



SUMITA PURKAYASTHA
Member (T)



JUSTICE RAJESH DAYAL KHARE
Member (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(J), Justice (Retd.) Rajesh Dayal Khare is not holding court today.

sd/-

(PRABHAT KUMAR SHARMA)

COURT OFFICER