IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303
CP(IB)/323(AHM)2022

Order under Section 9 of IBC,2016

IN THE MATTER OF:

Subhasis Kumar Roy ....**Applicant**
V/s
Parksons Packaging Limited ....**Respondent**

Order delivered on: 23/02/2024

Coram:

Mr. Shammi Khan, Hon’ble Member(J)
Mr. Sameer Kakar, Hon’ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD- **-SD-**

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)

CP (IB) No.323/AHM/2022

(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Mr. Subhasis Kumar Roy
Registered address at:
P-1/602, Oxford Premiums,
Wanori, Pune-411040

Applicant/ Operational Creditor

VERSUS

M/S Parksons Packaging Limited
Registered office at:
Survey No. 11 & 13, Ringanwada,
Nani Daman, Daman- 396210, U.T.Dd.
CIN: U21029DD1996PLC003450

Respondent/ Corporate Debtor

Order pronounced on: 23.02.2024

CORAM:
MR. SHAMMI KHAN (MEMBER JUDICIAL)
MR. SAMEER KAKAR (MEMBER TECHNICAL)

APPEARANCE:

For the Operational Creditor: Mr. Apurva Vakil, Adv. a/w. Mr. Dhruvin Dossani, Adv.; Ms. Mahima Mongia, Adv.

For the Corporate Debtor: Mr. Navin Pahwa, Sr. Adv. a/w. Mr. Aalay Shah, Adv.; Mr. Raheel Patel, Adv.

O R D E R

1. The Present Application was filed on 06.12.2022 by **Subhasis Kumar Roy** (hereinafter referred to as **"the Applicant/Operational Creditor"**) against **M/s Parksons Packaging Limited** (hereinafter referred to as **"the Respondent/Corporate Debtor"**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (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 (in short **"CIRP")** against the Respondent for having defaulted in payment of its outstanding dues of **Rs.1,64,57,719/-.**

2. On perusal of Part-I of the Form-V reveals that the Applicant is one Mr. Subhasis Kumar Roy. The registered Address of the

Applicant is situated at P-1/602, Oxford Premiums, Wanori, Pune-411040.

3. On perusal of Part-II of the Form-V reveals that the Respondent is one M/s Parksons packaging Limited having CIN No. U21029DD1996PLC003450. The registered office of the Respondent/ Respondent is situated at Survey No. 11& 13, Ringanwada, Nani Daman, Daman- 396210, U.T.

4. An affidavit dated 22.11.2022 for filing this application is signed by Applicant Mr. Subhasis Kumar Roy, Ex-Employee of the M/s Parksons Packaging Limited which is annexed to the Petition.

5. On perusal of Part-III of the Form-V reveals that the Applicant has not proposed the name of any person to be appointed as Interim Resolution Professional.

6. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant is Rs.1,64,57,719/- consisting of Rs.1,45,76,527/- being principle and amount of Rs.18,81,182/- as an interest.

7. The averments made by the Applicant in its application are summarized hereunder: -

a) It is submitted by the Applicant that the Applicant was a Chemical Engineer from the National Institute of Technology (Durgapur). The Applicant worked with BOBST SA of Switzerland and served for 16.5 years and the last position held was Zone Business Director BU-SF Sea BOBST.

b) It is stated that the Managing Director and Chairman having heard about the Applicant and his expertise, approached the Applicant in April 2019 to work with the Respondent for which the Applicant accepted the offer given by the Managing Director of the Respondent.

c) On 26.07.2019 one Ms. Shaina Makhija, Head of the Human Resources Function of the Respondent mailed the Applicant with the draft letter of offer along with salary and CTC break up. In response to the above said email the Applicant asked for the HR Policy and more particularly the tenure of the fixed period contract as it was not mentioned therein. Thereafter, Ms. Makhija sent a draft appointment letter which stated a two-year contract period but there was also a clause that the two- year contract is binding on both except for the reasons wherein if there is a change in the management of the company or is a substantial change in the shareholding of the company. However, the Applicant did not agree to accept the clause hence it was removed, and the final draft of the appointment letter was sent.

d) The Applicant joined the Respondent on 02.12.2019. Thereafter, the Applicant for his formidable performance received appreciation from the Chairman and the Managing Director of the Respondent. The Applicant has hereto annexed and marked the copies of the chats between the Respondent and Applicant wherein they have appreciated the Applicant for his outstanding performance, and Applicant had placed the same at Exhibit - "P/2 colly" of the Petition.

e) Pursuant to the above in April 2020, due to the Covid 19 Pandemic, the Chairman of the Respondent reduced the salaries of the employees due to the lockdown situation across the country. In the said email the Chairman had reduced the salary of the Applicant up to the tune of Rs. 4.10 Lacs/month and had stated to fully pay the said amount as the Company stabilizes. The Applicant states that a total amount of Rs. 12,30,381/- was deducted in the months of April and May and June 2020, which has not been paid by the Respondent until date. The Respondent has made huge business profits in the year 2021. Despite the above the Respondent has not fulfilled their promise of paying back the deducted amounts to the Applicant. The Applicant has hereto annexed and marked the copy of the said email dated 28.04.2020 and placed at Exhibit - "P/3" of the Petition.

f) The Applicant having performed so well was not paid the Performance Linked Incentive, despite performing prodigiously for the Respondent which is an admitted fact by the Chairman and the Managing Director and can be seen in the messages as annexed hereto the Petition as Exhibit "P/2 COLLY", sent by the Chairman and the Managing Director of the Respondent to the Applicant.

g) The Applicant was taken a back on receiving the termination letter on 30.09.2021, wherein the Respondent has raised preposterous and evasive allegations against the Applicant, the Respondent having stated a concocted story finally terminated the Applicant effective from 14.09.2021 with retrospective effect. The Applicant has hereto annexed the said termination letter dated 30.09.2021 and is placed at Exhibit - "P/4" of the Petition.

h) It is stated that the Applicant through his advocate has strongly objected to the termination letter and the grounds raised by the Respondent in the said termination letter dated 30.09.2021. The said reply dated 02.10.2021 sent through the Advocate of the Applicant clearly states that the management had preplanned the termination of the Applicant which was initiated since July 2021 wherein the management of the Respondent started pressurizing the Applicant to resign from his position. It was very clear from their behavior that the management does not intend to clear the outstanding dues of the Applicant for the period they had reduced the salary during the COVID first phase and had promised to pay the said amounts later when the Respondent stabilizes, which exactly was the scenario and to evade such payment of dues of the Applicant the Respondent issued the termination letter making all false and frivolous allegations upon the Applicant. The Respondent further states that the management was getting reckless in their behavior with the Applicant and were falsely alleging the Applicant, forcing him to resign from his position since July 2021.

i) It is further stated that the Chartered Accountant of the Applicant during the advance tax filing discovered that the Respondent has deducted the TDS for the months of September October and November 2021 and has also shown the salary as paid to the Applicant.

j) It is stated that Chartered Accountant of the Applicant also confirmed the same from the 26AS and the same can be seen in the copy of the extract attached herewith this Petition. The Applicant states that the Respondent has not paid the salary for the months of September, October and November 2021 and has deducted the TDS and filed the returns. But in reality, there is no salary credited to the Applicants Account for the above mentioned months and the Respondent is in default for the same.

k) It is stated that the Applicant hereby states that such termination is violating the rights of the Applicant and that there is no sufficient material on record for the management to prove the allegations against the Applicant for terminating his services. The Applicant states that such termination is illegal and that the Respondent is responsible, and duty bound to pay the outstanding dues of the Applicant amounting to a total of Rs. 1,64,57,719/- (One Crore Sixty-Four Lakh Fifty-Seven Thousand Seven Hundred and Nineteen Only) which is due on various dates and is calculated as on 17.04.2020 with interest @ 18 percent per annum.

l) It is stated that the Applicant therefore has through his advocates issued a demand notice dated 20.04.2022 demanding the said outstanding due amounts as payable by the Respondent.

m) It is stated that the Respondent through their Advocates has sent a reply to the demand notice baselessly denying the contentions of the Applicant. The said reply dated 6.05.2022 is annexed and marked as Exhibit "P/10". In the said reply to the Applicant has taken a convenient stand that qualifies as moonshine and a frivolous dispute was only raised with an intention to mislead the Hon'ble Adjudicating Authority. It is pertinent to note that the Respondent in the said reply has categorically acknowledged the operational debt as due and payable. The Chairman and the Managing Director have preposterously raised allegations against the performance of the Applicant as all through his employment he was always praised by them.

n) It is stated that the Applicant relies upon below mentioned documents to prove its case:

6.	Copy of the emails dated 26.07.2019 to 02.08.2019.	**P/1 COLLY**	20-38
7.	Copy of the messages sent by the Corporate Debtor to the Operational Creditor.	**P/2 COLLY**	39-45
8.	Copy of the email for reduction in salary sent by the management dated 28.04.2020.	**P/3**	46-48
9.	Copy of the termination letter dated 30.09.2021.	**P/4**	49-51
10.	Copy of the Reply dated 02.10.2021 sent by the Operational Creditor to the Corporate Debtor.	**P/5**	52-57
11.	Copy of the Annual Information Statement.	**P/6**	58-63
12.	Copy of the Tax Information Summary.	**P/7**	64-68
13.	Copy of the Computation of the said amount.	**P/8**	69-72
14.	Copy of the Demand Notice dated 20.04.2022.	**P/9**	73-141
15.	Copy of the Reply dated 28.04.2022 sent by the Advocates for the Corporate Debtor.	**P/10**	142-203
16.	Copy of the bank statements of the Operational Creditor	**P/11**	204-212
17.	MCA extract of the Corporate Debtor	**P/12**	213-215

8. The Respondent has filed its reply on **06.03.2023** the averments of the Respondent in the reply are stated below: -

a) It is stated that the LTA and leave encashment are not Operational Debt u/s 9 of the code.

b) It is stated that the interest is not part of operational Debt unless contemplated under the agreement

c) It is submitted that the Applicant had stated that claims towards PLI (Performance Linked Incentive) were in default when PLI was admittedly paid by the Respondent Company to the Applicant.

d) It is stated that the Operational Debt alleged to be in default is below the threshold of Rs. 1 crore as prescribed under the code.

e) It is stated that there is no Operational Debt due and payable to the Applicant.

f) It is stated that the Applicant is missing the mechanism provided for the Corporate Insolvency Resolution Process under the code.

g) It is stated that the Applicant had approached this Tribunal with unclean hands and ulterior motive of extorting monies from the Respondent,

h) It is stated that the Petition was filed as an extortionary tactic.

9. The Applicant filed a rejoinder to the reply of the Respondent on **11.07.2023** and made the following submissions:

a) The Applicant states that the Applicant had claimed the amounts that are unpaid and were promised to him at the start of his service, therefore the Applicant had not inflated the amounts to meet the threshold to invoke jurisdiction.

b) The Applicant states that the Applicant had been time and again appreciated by the Chairman and the Managing Director for his work which can be seen through various communications addressing the diligence of the Applicant and are placed at Exhibit P/2 of the Petition.

c) It is stated that the Applicant is ready to surrender the Company Assets which includes the laptop that has all the communications between the management of the Respondent and the Applicant, if the Respondent gives an undertaking that till the claims are settled the CD will not tamper with or destroy the Company assets.

d) It is stated that the Respondent has repetitively accepted the fact that the debt is due, the same was obvious from the fact that the last line of the Termination letter dated 30.09.2021 which stated that given our long-standing working relationship, we would like to meet you in person and handover your salary and wish you all the best for your future endeavors. It is further stated that the Respondent through their advocates tried to approach the Applicants for settlement, however, the Applicant denied it as they had offered Rs. 70 lakhs and that was much below the due amount.

e) It is stated that the Respondent had not even submitted a single proof that the Respondent was a solvent Company.

10. It is stated that Applicant filed an Affidavit in compliance of the order dated 08.11.2023 of this Tribunal directing the Applicant to bear cost of Rs. 25,000/- to be deposited in Prime Minister National Relief Fund(**"PMNRF"**).

11. It is submitted by the Applicant that the Applicant had filed pursis dated 01.01.2024 to place on record FORM-D in compliance with the order dated 06.12.2023. It was stated in an affidavit the record of default before National E-Governance Services Ltd. and the certificate qua same had been issued by Information Utility on record. The authentication status is deemed to be authenticated by the Information Utility.

12. It is stated that the Applicant filed an Additional Affidavit on 06.01.2024 under diary no. D972 to put forth the applicant's response to the e-mail dated 16.01.2024 from the counsel of the respondent to the Counsel of the Applicant.

13. It is stated that the Respondent filed an affidavit on 13.02.2024 under Inward Diary No. D1180 to submit written Submissions on behalf of Respondent and to place on record case law compilation. The Respondent has relied on following Judgments:

- *SS. polymers V. Kanodia Technoplast 2022 SCC online NCLAT 1310.*
- *Kishore K. Lonkar V. Hindustan Antibiotics Ltd. (2022) SCC Online NCLAT 287.*
- *Udhav Singh V. Madhav Rao Scindia (1977) 1 SCC 511.*
- *Equipment Planet V.* Udit Infraworld Pvt. Ltd. (2022) SCC Online NCLAT 31.

14. We have heard the Ld. Counsel for both parties and perused the material available on record.

15. It is noted that the Applicant who is a Chemical Engineer from the National institute of Technology (Durgapur) joined the Respondent on 02.12.2019 and on 30.09.2021 Applicant received an email from the Respondent terminating the Applicant's services with effect from 14.09.2021. The amount of outstanding

debt claimed is Rs. 1,64,57,719/- comprises of a) Principal Amount of Rs. 1,45,76,527/-; and b) interest amount of Rs. 18,81,182. The Respondent defaulted in paying said amount. Therefore, the Applicant issued demand notice dated 20.04.2022 claiming an amount of Rs.1,64,57,709/-. The said Operational Debt had continued to remain unpaid after the expiry of more than 2 months of service of Demand Notice u/s 8 of Insolvency & Bankruptcy Code, 2016. As the reply to demand notice was received on 6.05.2022 deny all the allegations made by the Applicant, the Applicant proceeded to file an application under section 9 of IBC, 2016 bearing C.P. No. 323 of 2022.

16. It is observed that on perused of the Form-D the date of default is 30.09.2021 and the amount in default is to be 1,64,57,719. the Claims of the Applicant which is 1,64,57,719/- comprises of

1) Principal Amount of Rs. 1,45,76,537/- which comprises of: -

a) Salary for September 2021: Rs. 13,67,090/-

b) Salary for October 2021: Rs. 13,67,090/-

c) Salary for November 2021: Rs.13,67,090/-

d) LTA for 8 months: Rs. 3,91,110/-

e) Bonus for 20 months: Rs.9,77,775/-

f) Performance Linked Incentive (PLI): Rs. 77,00,002/-

g) Reimbursement of illegal deduction @ 30% for April 2020 to June 2020.: Rs. 12,30,381/-

h) Leave encashment: Rs. 1,75999/-

2) Interest of Rs. 18,81,182/-

17. The Respondent allegations that Interest cannot form part of Section 9 Application, in this regard the Respondent relied upon the judgment of NCLAT in ***S.S. Polymers Versus Kanodia Technoplast Limited*** which stated as under:

> *"3. The Adjudicating Authority has noticed that a sum of Rs. 25,00,000/- out of Rs. 32,71,800/- was paid to the Appellant by 31 December, 2018 through RTGS(s). The remaining amount of Rs. 7,71,800/- was also paid by 'Respondent' to the Applicant by 17 January, 2019 through NEFT(s). he said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs. 2,16,155/- towards interest. In*

these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Respondent' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Respondent' and which is barred in view of Section 65 of the I&B Code."

It can be seen from the order that the interest cannot stands its ground in the absence of any agreement, no such amount can be claimed. Therefore, the interest in the present application cannot be claimed.

18. The respondent submits that the LTC and EL encashment are service/welfare benefits and cannot be used as a basis to initiate insolvency under the Code relying on the judgment of NCLAT in ***Kishore K. Lonkar Vs. Hindustan Antibiotics Ltd., 2022*** which states as under:

"9. The aforenoted Section includes any 'Claim' in respect of the provision of Goods and Services including 'employment'. It is not the case of the Appellant that the amounts claimed are due towards any emoluments/salary for the services rendered by him to the 'Respondent', while he was in service. Though 'service benefits' like 'LTC' accrue, on account of the service rendered during the period of employment, the scope and objective of the Code is simply not just for recovery of 'dues' but Resolution of the Companies meant for 'maximisation of the value of assets', to promote entrepreneurship, availability of credit and balance all interest of the stakeholders. Employees and workmen do constitute a major part of the stakeholders. The term 'employee' in general parlance refers to a person, who is hired by the employer to perform a particular job and is entitled to a specific wage or salary. Section 3(36) of the Code states that the term 'workmen' shall have the same meaning as provided under Section 2(s) of the Industrial Disputes Act, 1947. For the purpose of the Code, the term 'workmen dues' has to be interpreted in terms of explanation to Section 326 of the Companies Act, 2013. As per the definition incorporated therein, the dues would cover wages and salary, accrued holiday remuneration, workmen compensation, and all sums due from Provident Fund, Pension, Gratuity Fund or any other fund for the welfare of the workmen, maintained by the employer. Generally speaking, the 'Claims' of the

workmen/employees may be classified as 'service claims' which arise during the terms of employment, in lieu of service rendered by the employee, salary, wages, bonus, dues etc., and 'welfare claims' which arise after cessation of employment, like 'Gratuity', 'Leave Encashment', Superannuation Dues, Workmen Compensation for closure of the entity which all depend on the tenure of the employment. Subsequent to the Company going into the Insolvency, all such claims may be submitted in Form D under Regulation 9 of the (Insolvency and Bankruptcy) CIRP Regulations, 2016. But seeking to initiate CIRP on the ground that 'LTC' and 'EL Encashment' has not been paid, which fall within the ambit of service benefits/welfare benefits cannot be said to be the intent and objective of the Code."

Based upon the above-mentioned judgment LTA & EL cannot be included in the claim for initiation of CIRP.

19. The Respondent submits that PLI (Performance Linked Incentive) is a discretionary component that is linked to the performance of the employee and cannot be claimed as a matter of right. As it is seen from the application that as on 02.12.2021 the amount 11 lakh had been paid to the applicant as PLI which was accepted by the Applicant. For the remaining amount

of PLI there is no proper determination placed before us by the either of the parties. Determination of PLI is beyond the jurisdiction of this Tribunal and hence the amount of PLI is out of the scope of amount the claim in present application.

20. It is also submitted by the Respondent in the Written Submission that certain amounts such as Bonuses, Reimbursement for illegal deduction for the months of (April, May and June) 2021 falls under the Section 10A period. Though the above mentioned Claims falls under the Section 10A period it cannot be admitted as the said plea was not taken in the Reply submitted by the Respondent, it was argued across the Bar and no opportunity was given to the Applicant to rebut.

21. Considering the amounts mentioned by the Respondent which cannot be claimed, the Balance amounts are as under:

Sr. No.	*Particulars*		*Amount*
1.	*Claim*		*1,64,57,719*
2.	*Inadmissible Amount* *a) Interest* *b)PLI (Performance Linked Incentive)* *c) LTA and Leave Encashment* ***Total***	 *18,81,182* *77,00,000* *5,67,109* ***1,01,48,293***	 ***1,01,48,293***
3.	*Revised Amount*	*63,09,426*	*63,09,426*

The amount in default after excluding the above-mentioned amount is Rs. 63,09,426/- which is below Rs. One Crore i.e. the Threshold limit as per section 4 of the code.

22. It can be seen that the amount in default mentioned in the Application is below the threshold limit of Rs. 1.00 Crore as per section 4 of the code. That the Applicant has approached the wrong forum for his redressal and should approach an Appropriate Forum.

23. In view of the above observations, the present application filed under section 9 of the Insolvency & Bankruptcy Code, 2016 is not maintainable. Hence, this Application stands **rejected** accordingly.

24. Urgent Certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Shubhanshu-LRA