

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

C.P (IB) No.2074/KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

Mr. Sanjeev Kumar Mishra, (Adhaar Card No. 337713790505), Residing at village- Narayanpur, Post Office- Sakri, Darbhanga, Bihar- 847239.

... Operational Creditor

Versus

In the matter of:

Abhijeet Hazaribagh Toll Road Limited, CIN: U45209WB2010PLC149763 having its Registered office at FE-83, Sector-III, Salt Lake City, Ground Floor, Kolkata-700106, West Bengal.

...Corporate Debtor

Date of hearing : 23/11/2021

Order Pronounced on :07 /01/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Avishek Guha, Adv.

] For the Operational Creditor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section 9 of the IBC has been filed by **Mr. Sanjeev Kumar Mishra, (Adhaar Card No. 337713790505)**, (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process against **Abhijeet Hazaribagh Toll Road Limited, CIN: U45209WB2010PLC149763** having its Registered office at FE-83, Sector-III Salt Lake City, Ground Floor, Kolkata-700106, West Bengal, (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Operational Creditor was appointed by the Corporate Debtor vide letter of appointment dated 20th June 2010 (Annexure-B) to the post of Dy. Manager (Roads Project) in the Corporate Debtor Company at yearly salary of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand only) where the date of joining was 26th May 2010. It is further submitted that on 1st August, 2011, due to overwhelming performance of the Operational Creditor vide letter dated 1st August, 2011 (Annexure-C) issued by the Corporate Debtor, the Operational Creditor was promoted to the post of Manager.
4. It is further submitted that vide letter dated 27th April, 2012 (Annexure-D), the Operational Creditor was transferred from Abhijeet Project Limited to M/s Ahijeet Hazaribagh Toll Road Ltd., (the Corporate Debtor herein), and that based on the performance of the Operational Creditor, the Corporate Debtor vide letter dated 30th July 2012 (Annexure-E).The Corporate Debtor revised the compensation package of the Operational Creditor and his salary was revised to Rs.83,517/- per month. The Operational Creditor further submitted that he left the employment of the Corporate Debtor on 31st July 2013, with an understanding that whatever be the outstanding of the Operational Creditor, the same would be paid in due course. It is submitted that the Operational Creditor had

been regularly following up with the Corporate Debtor but all such efforts went in vain till 31st March,2018 when the Corporate Debtor vide letter dated 31st March 2018 (Annexure-M) informed the Operational Creditor as under:-

Date: 31st March, 2018

*To
Mr. Sanjeev Kumar Mishra
Village- Narayanpur, Post- Sakri,
Darbhanga, Bihar-847239*

Dear Mr. Mishra

Sub: Settlement of your dues.

Ref: Your Letter dated 30th December, 2017.

As you may be aware of the fact that the company is on the verge of closures due to financial problems and almost all the dealing staffs have left the company. Therefore, we could not able to settle the dues as the records are presently not traceable.

However, we assure you that as soon as we get the records, we will inform you to come to our Head Office at Nagpur, to verify your claim with our Accounts and Records and settle the dues.

Please bear some more time.

Thanking you,

For Abhijeet Hazaribagh Toll Road Ltd.,

Authorized Signatory

5. Thereafter, vide letter dated 30th October, 2018, the Corporate Debtor further informed the Operational Creditor as under:-

Date: 30th October, 2018

*To
Mr. Sanjeev Kumar Mishra
Village- Narayanpur,
Post- Sakri, Darbhanga,*

Bihar-847239.

Dear Mr. Mishra

Sub: Settlement of your dues.

Ref: Our letter dated 16th June 2018.

With reference to our above letter we are pleased inform you to come to our Head Office at ABHIJEET CENTRE, 79/4, Prashant Nagar, Ajni, Nagpur, Maharashtra- 44 0012 to verify your claims with our Accounts and Records and settle the dues after completing formalities.

Please come on any working day of the last week of December 2018.

Thanking you,

For Abhijeet Hazaribagh Toll Road Ltd.,

(Authorized Signatory)

6. It is further submitted that the Operational Creditor thanked and acknowledged the letter of the Corporate Debtor and allegedly admitting the dues of the Operational Creditor, submitted by him on 27th December, 2018 vide full and final settlement which is reproduced as under:-

27th December,2018

Full & Final Settlement

I Sanjeev Kumar Mishra, wish to thank the Management of Abhijeet Group for my full and final settlement. As per various communications, we mutually agreed on Rs.4.51 Lacs (Rupees Four Lac Fifty One Thousand Only) dues against salary and other benefits. The said amount shall be paid to me in equal instalments in within month. I hereby confirm that I will have no further claim on this account upon settlement/receiving of the above.

Signature:

Mr. Sanjeev Kumar Mishra

*Address: Village- Narayanpur,
Post- Sakri, Darbhanga
Bihar-847239
Bank Account Details: Axis Bank Limited,
Account No.- 910010034406822
IFSC:
For, Abhijeet Group,
Signature:*

7. The Operational Creditor submits that in spite of signing such terms of settlement, the Corporate Debtor failed to pay the settlement amount. The Operational Creditor sent a letter dated 4th January, 2019 (Annexure-Q) and another reminder dated 7th February, 2019 (Annexure-R) asking them to release the payment which was duly acknowledged by the Corporate Debtor. Similarly, letter dated 20th February, 2019 (Annexure-S) was addressed to the Corporate Debtor and in response thereto the Corporate Debtor issued letter dated 1st March, 2019 (Annexure-T) once again admitting the claim of the Operational Creditor to the tune of Rs.4,51,000/- (Rupees Four Lakh Fifty One Thousand only) against the salary, which are under:-

“Date 1st March, 2019

*To,
Mr. Sanjeev Kumar Mishra
Village- Narayanpur,
Post- Sakri, Darbhanga
Bihar- 847239*

Dear Mr. Mishra

*Sub:- Settlement of your dues.
Ref: Your Letter dated 20th February, 2019.*

Kindly take note that we have received letter mentioned and understood the content therein stated. It transpires from the perusals of the letter that a settled amount of Rs.4.51 lacs are due and payable from the company against your salary.

We on the erstwhile occasion have duly stated that due to financial stringencies that such dues could not have been made and we apprise you that such claim will be duly sorted out and settled and made pay and payment shall be made soon.

In acknowledgement of the claim put forward by you at the earliest we call upon you to kindly understand and cooperate with us in this tumultuous time which the company facing at this present juncture. As soon as the fund will be available the company concerned and shall intimate you and make over the said amount. Please bear with the delay.

Kindly acknowledge the receipt.

Thanking you

Yours Faithfully

For Abhijeet Hazaribag Toll Road Limited.

Auth Signatory”.

8. The Operational Creditor further submits that in spite of various letters and requests made to the Corporate Debtor, the payment of the Operational Creditor has not been made by the Corporate Debtor and a sum of Rs.4,51,000/- along with interest @ 18% per annum is due and payable to the Operational Creditor by the Corporate Debtor. The Operational Creditor finally sent a demand notice on 31st July, 2019 which was duly received by the Corporate Debtor on 17th August 2019 as would be evident from the postal receipt and Track Report attached with the Demand Notice. The Corporate Debtor, however, did not send any reply to the Demand Notice.
9. The Operational Creditor has filed an affidavit under section 9(3)(b) of the IBC to depose that no notice has ever been given by the Corporate Debtor relating to any dispute as regard the unpaid operational debt.
10. The Operational Creditor has also filed his Bank Statement indicating that no payment has been received from the Corporate Debtor even pursuant to the Demand Notice.
11. Notice of this application was issued to the Corporate Debtor on 5th December 2019 and the Corporate Debtor was given time to file reply to

the petition. The Corporate Debtor was represented before this Adjudicating Authority on 23rd January, 2020 through its counsel who filed Vakalatnama and sought time to file reply but even on 4th March, 2020, it was noticed that the reply affidavit had not been filed in spite of order dated 23rd January,2020. Hence, the matter was proceeded ex parte against the Corporate Debtor because there was nobody representing the Corporate Debtor on that date.

12. Thereafter, the matter has been listed on 15th April, 2021, 25th August, 2021, 29th October,2021 and 23rd November, 2021 and there has been no appearance on behalf of the Corporate Debtor nor has any application been filed seeking setting aside of ex parte order passed on 4th March, 2021.The matter has thus been heard on 23rd November, 2021 in absence of the Corporate Debtor.
13. In view of the facts and documents placed on record by the Operational Creditor, a sum of Rs.4,51,000/- is due along with interest to the Operational Creditor from the Corporate Debtor, which has been admitted and acknowledged repeatedly by the Corporate Debtor and the payment is stated to have not been made to the Operational Creditor due to some financial stringencies by the Corporate Debtor and the Corporate Debtor has stated that the company is closing down its affairs.
14. The Operational Creditor has not proposed name of any Insolvency Resolution Professional. We, therefore, appoint **Mr. Nirmal Kumar Agarwal, IRP** having Reg. No. **IBBI/IPA-001/IP-P02112/2020-2021/13380**, to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against her with the Board. .
15. In view of the aforesaid facts, since the application is complete in all respects, this is a good case for admission of petition. We have thus no hesitation to admit this petition with the following orders:

ORDERS

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 the 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.
- ix) **Mr. Nirmal Kumar Agarwal**, registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-001/IP-P02112/2020-2021/13380**, email ID- nirmalagarwal123@redifmail.com. and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a

Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 1,00,000/- (Rupees One Lakh only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

16. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

17. List the matter on **15/03/2022** for filing of **Progress Report**.

18. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 7th day of January, 2022

PJ.