



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

CP (IB) No.526/Chd/Hry/2019

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

In the matter of:

Raju Sarin

R/o 13/2, East Patel nagar,

New Delhi.

E-mail: rsarin77@gmail.com

PAN No.AIGPS2699D

...Petitioner-Operational Creditor

Vs.

M/s CEO Lounge Private Ltd.

Registered office at

13/9, Old Railway Road Colony,

Gurugram, Haryana.

...Respondent-Corporate Debtor

Judgement delivered on: 30.05.2023

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

For the Petitioner- 1). Mr. Abhinav Prakash
Operational Creditor : 2). Mr. Varun Sharma, Advocates

For the Respondent-
Corporate Debtor : Mr. Shivam Goyal, Advocate

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 **Raju Sarin** (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate



Corporate Insolvency Resolution Process (**CIRP**) in case of M/s CEO Lounge Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, M/s CEO Lounge Private Limited, is a Company incorporated on 08.03.2017 under the provisions of the Companies Act, 1956 with CIN No. U74999HR2017PTC068059 with its registered office at Gurgaon, Haryana. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-2.

3. The facts of the case, briefly, as stated in the petition are that Operational Creditor was an employee of the Corporate Debtor since 23.11.2017. The calculations include salary plus expenses payable by the Corporate Debtor to Operational Creditor. The Operational creditor met with an accident and informed the Director of the Corporate Debtor regarding the same. The Director unilaterally changed the terms of employment in the third week of September and refuse to pay the salary 01.09.2018.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.10,25,420/- (Rupees Ten Lakhs Twenty Five Thousand Four Hundred and Twenty Only). Although no date of default is mentioned in the petition yet it can be taken as 16.10.2018 when the respondent informed the petitioner about the claims he had claimed as salary for the month of September 2018. Copy of e-mail dated 23.11.2017 (Annexure A-3), e-mails exchanged between the parties (Annexure A-4), Form 16 (Annexure A-5), expenditure bills submitted by the operational creditor (Annexure A-8), Bank Statement (Annexure A-9) are attached with the main petition.



5. A demand notice is stated to be issued by the operational creditor on 15.04.2019 and the same has been delivered to the corporate debtor as the corporate debtor gave a reply dated 25.04.2019 to demand notice till date wherein it is stated that the petitioner is not entitled to receive the payment of monies. In the month of September 2018, the respondent vide e-mail dated 24.09.2018 expressed his concern about poor performance and instead of terminating/finishing relation with the Organisation, the respondent offered revised terms of engagement as a consultant with 30% incentive for every net business that petitioner would get to the organisation. Vide email dated 01.10.2018, the petitioner rejected the offer. There are no outstanding payments which are payable to the petitioner and the claim of September 2018, is not justifiable as the petitioner have not worked on anything. The bonus as well as the shortfall was based upon the performance and can never be claimed as a right. The demand notice was not fall under the IBC and no claim or debt has accrued.

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 vide diary No.6335 dated 14.11.2019. The corporate debtor has filed a reply vide diary No.6581 dated 25.11.2019, wherein it is stated that the claim of unpaid dues on account of a disputed amount within Section 8(2) of Insolvency and Bankruptcy Code, 2016, and such does not fall within the ambit of Section 9. The application has been filed with a *mala fide* intention and with certain oblique motives *inter alia* of extortion of money from a Corporate Debtor. The dispute in question is a running and pending dispute prior to the date. There is no amount due or in default. The facts and



circumstances indicate a prior existing dispute between the parties. The Operational Creditor has failed to meet sales targets as committed by him. The Operational Creditor is liable to return all company data without retaining a copy and to not distribute the Corporate Debtors' data further to any third party.

7. The rejoinder was filed vide Diary No.716 dated 27.01.2020, wherein it is stated that the claim of the petitioner is within the jurisdiction. The claims of the petitioner are genuine and justified. The Operational Creditor never approached Corporate Debtor for any job or an opportunity to work with them. No commitment to the tune of Rs.10 lakhs was made to the corporate debtor and no sort of any remuneration or bonuses was offered on these terms. In fact, the bonus was part of the service agreement and business growth was not the job of the Operational Creditor. The Corporate Debtor offering Operational Creditor 30% incentives on business generated demolishes the lies that Operational Creditor was not performing. There was no discussion ever or any mail regarding performance-linked incentives, the shortfall of Rs.50,000/- per month had to be paid as per allotment mail and salary as Rs.2,50,000/- per month.

8. The short written submissions have been filed by the petitioner vide Diary No.00128/2 dated 29.04.2022 and by the respondent corporate debtor vide Diary Nos.00128/1 dated 27.04.2022 and 00128/3 dated 19.10.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.



10. The first issue for consideration is whether the demand notice was duly served upon the corporate debtor. The demand notice dated 15.04.2019 has been delivered to the corporate debtor as the corporate debtor gave reply dated 25.04.2019 to the demand notice.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted by learned counsel for the corporate debtor that vide email dated 23.11.2017, the appointment of petitioner was confirmed as 'Publishing Director' and the salary was mentioned as Rs. 2 Lakhs for the month of December, 2017; January 2017; February 2017; March 2017; starting from 18.12.12 and Rs. 2.5 Lakhs starting from the month of April 2017. Further, mentioning the bonus of Rs. 1.5 Lakhs in April 2017 (Annexure A-3) and fuel reimbursements on actuals. Further, it is seen from the records that vide email dated 16.10.2018 the respondent informed the petitioner about the unjustified claims as he had claimed the salary for the month of September, 2018, however, he had not worked in September 2018. Therefore, there were no outstanding dues. The April bonus of Rs. 1,50,000 as well as the shortfall of Rs. 50,000 for the period from May, 2018 to September, 2018 was an added incentive based on the performance. Further, the reimbursement claim of Rs. 45,000/- for the consumption of fuel in the last nine months was not justified as the fuel bills for reimbursement were never submitted. Further, the claims of the Chattisgarh trip in April and August 2018 and the Mumbai Trip in July 2018 were not justified as no formal invoices are submitted.

The Operational Creditor vide its last reminder email dated 31.10.2018 claimed the amount of Rs. 7,15,223/- due from the Corporate Debtor



towards his disputed and alleged family dues without any addition of interest, but the present petition has been filed for Rs. 10,25,420/-. Thus, there is no clarity on the actual claim. The claim of the Operational Creditor is both disputed and uncrystallized.

Further, the Insolvency Bankruptcy Code,2016 is not meant for recovery of dues. The reliance can be placed upon the decision of Hon'ble Supreme Court in the case of **M/s S.S. Engineers & Ors. V. Hindustan Petroleum Corporation Ltd Civil Appeal No. 4583/2022** wherein it is stated that “the National Company Law Tribunal exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The Insolvency and Bankruptcy Code,2016 tackles and/or deals with insolvency and bankruptcy. It is not the object of the Insolvency and Bankruptcy Code that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an Operational Creditor”.

Although, the petitioner has filed Section 9(3)(b) affidavit about the pre-existing dispute between the parties, however, it only specifies that there is no notice given by the corporate debtor relating to a dispute of unpaid operational debt. There is a pre-existing dispute between the parties owing to the amount claimed, misconduct and poor performance of the Operational Creditor during the tenure of his employment. This fact has been brought to the notice of the petitioner by the respondent by email dated 16.10.2018 which was prior to the service of Demand Notice dated 15.04.2019. The reliance can be placed upon the decision of the Hon'ble National Company Law Appellate Tribunal in the case of **Gourav Kishore Shinde V. Uday Yashwant Nayak & Anr. Company Appeal (AT) (Ins.) No. 1107/2019**



wherein it was held that “the record shows that there were pre-existing disputes between the parties when the notice was sent and an application under Section 9 of IBC was filed. In this view of the matter, the application under Section 9 should not have been admitted as disputes are service disputes which do not appear to be mere bluster”.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 15.04.2019 attached as (Annexure A-6) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default. Although no date of default is mentioned in the petition yet it can be taken as 16.10.2018 when the respondent had informed the petitioner about the claims he had claimed as salary for the month of September 2018. This application was filed vide Diary No. 5085 on 24.09.2019. 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 that there is a pre-existing dispute between the parties regarding the services rendered and 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)

May 30, 2023
PRF/TB