

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.395/MB-IV/2023

Under Section 9 of the IBC, 2016

In the matter of

SRIKRISHNA SHARMA & Anr.

...Operational Creditor

v/s.

**M/s SAHARA PURE EATABLES
CORPORATION LTD.**

[CIN: U15122MH2012PLC230786]

...Corporate Debtor

Order Delivered on: 29.02.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Yash Jain, Ld. Counsel.

For the Corporate Debtor:

Mr. Ambrin Khan a/w Aditya
Chopra, Aryan Garg i/b Victoriam
Legalis, Ld. Counsel.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by SRIKRISHNA SHARMA (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. SAHARA PURE EATABLES CORPORATION LTD., the Corporate Debtor.

1.1. The Company Petition is filed on 07.07.2022 claiming that an amount of Rs. 1,07,38,220/- is due and payable by the Corporate Debtor as on 31.03.2022. The date of default as specified in Part IV of the petition is 31.03.2022.

Submissions of the Operational Creditor:

2. The Operational Creditor submits that the Corporate debtor approached him through recruitment consultant for a vacancy with regards to a post of Manager at Dairy, Animal husbandry & Allied Agriculture Department in Corporate debtor’s Mumbai office. The Corporate debtor after verifying the credentials of Operational Creditor and appointed for the post of Manager-worker vide offer letter dated 31.08.2012. Further, Corporate debtor issued appointment letter dated 15.10.2012 and Corporate debtor confirmed his job vide confirmation letter dated 13.04.2013.

3. The Operational Creditor submitted that Corporate debtor from the date of joining i.e. from October 2012 to August 2014 were regularly paying the salary but from September 2014 to May 2015 Corporate debtor have not been paying regularly to the Operational Creditor and thereafter from the month of May 2015 the corporate debtor stopped paying the salary to the Operational Creditor.

4. The Corporate debtor in the month of April 2015 asked the Operational creditor to work from home because there were internal issues related to the management of the Corporate debtor's Company. Thereafter the Corporate Debtor stopped communicating with the Operational Creditor. There is no termination letter served by the Corporate debtor upon the Operational creditor neither the Corporate debtor has asked for any resignation letter.
5. The Operational Creditor further submits that on several occasions tried to contact Corporate debtor and it's management for the unpaid salaries as well as for the instructions of the resumption of Normal duties of the Operational Creditor. Further, the Corporate debtor replied vide email dated 27.10.2016 to one of the emails of the Operational Creditor in which the Operational creditor was marked as absconding by the Corporate debtor.
6. The Operational Creditor submits that a Legal Notice dated 10.02.2022 was addressed to the Corporate debtor and to their respective directors sent through RPAD and the same was returned with the remark as "Refused". Consequently, the Operational creditor addressed a Demand Notice dated 11.04.2022 to the Corporate debtor and to their respective directors sent through RPAD and the same was also returned with the remark as "Refused". Therefore, the service of Notice if returned as Refused is deemed to be a good and valid service as per the findings of Hon'ble Apex court and Hon'ble High court.

Submissions of the Corporate Debtor:

7. The Corporate debtor submits that the present petition filed by the Operational Creditor is barred by Limitation as the right to sue accrues when a default occurs, and the last salary received by the Operational creditor was in May 2015. Since the alleged default occurred in May 2015 as per Operational

Creditor's own contentions, the present petition u/s.9 of the code ought to have filed within 3 years. However, the present petition is filed by the Operational creditor on 07.07.2022, therefore it is not maintainable.

8. The Corporate debtor further submits that the amount claimed by the Operational Creditor is below the threshold limit as the same has been calculated by including the compensations and interest to the alleged outstanding salary i.e. Rs. 64, 02, 876/-. Further the alleged interest levied on the outstanding salary and leave encashment for 11 years demanded by the Operational creditor does not fall under the ambit of the section 5(21) of the code, thus cannot form part of the debt. The corporate debtor relies on the Hon'ble NCLAT's order in *Kishore K Lonkar vs. Hindustan Antibiotics Ltd.* wherein it has taken a view that, "*seeking to initiate CIRP on the ground that 'LTC' and EL Encashment' has not been paid, which fall within the ambit of the service benefits/welfare benefits cannot be said to be the intent and objective of the Code*".
9. The Corporate Debtor further relies on *CBRE South Asia Pvt. Ltd vs United Concepts And Solutions Pvt. Ltd* in *Company Petition (IB) 797/(ND)/2021* wherein this Hon'ble Tribunal has taken a view that the interest amount cannot be clubbed with Principal amount to reach the minimum threshold limit as provided u/s. 4 of the Code.

Findings

10. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

10.1. This bench observes that, the Operational Creditor in Part IV of the application has specified the date of default as 31.03.2022. Whereas on

perusal of the statement of account placed on record, it shows that the last salary received by the Operational Creditor is on 10.03.2015. Considering the fact that the Corporate debtor stopped paying salary of the Operational creditor after the month of May 2015, therefore the cause of action arises in the year 2015 wherein the limitation period of three ends in the year 2018. The present petition is filed in on 07.07.2022 thus the present petition is barred by Limitation.

10.2. As per the material on record this Bench finds that as per the statement of Claim the total salary dues is of Rs. 64,02,876/- and total Interest dues is of Rs. 35,48,261/- and the Leave encashment for 11 years is of Rs. 7,87,083/-. The Hon'ble NCLAT in the matter of *Kishore K Lonkar vs. Hindustan Antibiotics Ltd in Company Appeal (AT) (Insolvency) No. 934 of 2021* has held that the leave encashment does not falls within the ambit of section 5(21) of the Code and cannot be said to be a Operational debt. The relevant extract of the judgement is reproduced herein:

*“.....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.**”*

10.3. In view of the aforesaid decision of the Hon'ble NCLAT, the amount claimed by the Operational Creditor of Rs. 7,87,083/- towards the leave

encashment for 11 years cannot be included in the total outstanding amount claimed by the Operational creditor.

10.4. This Bench takes note that the appointment letter dated 15.10.2012 does not provide for any interest. Therefore, the amount of Rs. 35,48,261/- towards interest dues cannot be rightfully claimed by the Operational Creditor. As the total salary due is of Rs. 64,02,876/-, thus the total debt outstanding of Operational Creditor is not above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 and does not meet the criteria of Rs. 1 crore as per Section 4 of IBC. Therefore, present application is not maintainable in present case.

11. Considering the documents placed on record, this Bench is of the view that, the Corporate Insolvency Resolution Process cannot be initiated against M/s. Sahara Pure Eatable Corporation Limited., the Corporate debtor. In view of the above, we find that the present case deserves to be dismissed under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

12. The petition bearing CP(IB) 395/MB-IV/2023 filed by MR. SRIKRISHNA SHARMA ("Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s SAHARA PURE EATABLES CORPORATION LTD., the Corporate Debtor is **Rejected**.

13. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The rights of the petitioner before

any other judicial forums shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
29.02.2024

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
