

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH – II**

**Company Petition (IB) No. 294/ND/2021**

**In the matter of:**

**Sections 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016**

**AND**

**In the matter of:**

**Mr. P.L. Thomas**

**Accounts Manager**

**Amakan Overseas (P) Ltd.**

R/o 27B, Pocket A, Dilshad Garden,  
Delhi-110095

***...Applicant***

**VERSUS**

**M/s Amakan Overseas (P) Ltd.**

**Through General Manager, kavi Goel,**

Having Registered Office at:

Surya Plaza, 2<sup>nd</sup> Floor,

K-185/1, Sarai Julena,

New Friends Colony,

New Delhi-110025

***...Respondent***

**ORDER DELIVERED ON: 06.06.2022**

**CORAM:**

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. L. N. Gupta, Hon'ble Member (Technical)

**PRESENT:**

**For Operational Creditor:** Adv. Yashish Chandra

**For Corporate Debtor:** Adv. Abhishek Anand, Adv. Anandh Venkataramani

**ORDER****AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. "**Mr. P.L. Thomas**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**M/s Amakan Overseas Pvt. Ltd.**".
2. In order to consider the claim of the applicant, we would like to refer to Part-IV of the application and the scanned copy of which is reproduced below:-

<b>PART IV PARTICULARS OF OPERATIONAL DEBT</b>	
TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH	1. That the Applicant is approaching this Hon'ble Tribunal to demand payment in respect of unpaid operational debt due from M/s

DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	Amakan Overseas (P) Ltd. (Corporate debtor) to the tune of Rs.1,93,73,695/- (One Crore Ninety Three Lakhs, Seventy Three Thousand, Six Hundred and Ninety Five Only), with 18% interest towards arrears of salary, emoluments and other service benefits by the Applicant who is a permanent employee of the Company for the last 15 years, but arbitrarily refused to continue, since November, 2020, during the present pandemic. A copy of the relevant extract of the Company Master Data is enclosed herewith as Annexure A to this Petition.
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2. That the Applicant was appointed as Asst. Manager (Accounts) in the year 2005 and promoted to the post of Accounts Manager. Thereafter the Applicant was due for promotion as General Manager from January 2020. The Applicant went on requesting for promotion as well as annual increments due from January 2020, but the Respondent/its senior officials promised it will be done by next month and again the following month; and thereafter the Respondent/its senior officials never granted the Applicant either the promotion or the increments due as the pandemic set in but forced to physically be present in the office even

*Thomas P.*

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sometimes during lockdown. The Applicant had also been asking for leave for some urgent personal works, but the Respondent/its senior officials have been adamant not to grant them even though there was about 90 days' leave encashment due in the leave account.

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3. That a 14-hour curfew was imposed covering the entire Delhi, on 23.03.2020 and the same was followed by the declaration of the 1<sup>st</sup> Lockdown. It was continued through 31.05.2020.

4. That on 23.03.2020 itself the Respondent/its senior officials compelled the Applicant to attend to office. Thereafter permitted to work from home, but not the entire period of lockdown.

5. Even when the lockdown was still on, the Respondent/its senior officials were compelling the Applicant to attend the office physically 28.05.2020 after discontinuing the work-from-home. All request to work-from home was not acceded to. This continued for the following 4 months. Thus, during the pandemic, except for a month or so when the Respondent/ its senior officials had permitted the Applicant to work from home, the Respondent/its senior officials

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had forced the Applicant to come to work the following day when the 'lock-down' was declared; thereafter the Respondent never allowed the Applicant to work from home and insisted his physical presence through-out in the office. It was with difficulty that the Applicant was attending to the office.

6. That the Applicant had been requesting during this pandemic, to work from home and allow him to take leave against the leave available in the leave account in order to attend to duties at home and manage financial problems. The Applicant had to pay the fees for my children's college fees, as fresh financial year was to begin. His wife being a health worker, could not take any leave, and the children were at home. The entire family was at a high-risk category. Her salary is often delayed during the pandemic. Yet the Respondent/its senior officials were compelling me to attend office physically every day. The Metro services were suspended during these days, and there after it was opened only for Government employees. He was under severe financial stress. The Applicant continued to request for promotion and increments, and the reply was that

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the Respondent/its senior officials are not in a position to grant them then; if the Applicant wants them, he can leave the services with the Company.

7. That since no leave was granted, nor permitted to work from home, the Applicant had stated that he is unwilling to work, unless all the arrears, like unpaid D.A. for 15 years, annual increments, and payment in lieu of the due promotion, etc. are paid to tide up his financial difficulties, as his financial condition was deteriorating day by day. On 30.09.2020 the Applicant called Mr. Kavi Goel the General Manager, and repeated the requests. Again, when the same request was made on 03.10.2020, he was asked to give the details of the dues. The dues were in the tune of Rs. 35 lakhs.

8. That on 08.10.2020 there was a discussion on Phone about payment of dues as per the details given. It was a joint call for further discussion; thereafter it was decided to have further discussion on 12<sup>th</sup>. On that day when the Applicant reached the office premises were found locked. It was clarified later by Mr. Goel that it was a temporary closure due to some issue

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with the Respondent/ its senior officials themselves.

9. That when the request for payment of 35 lakhs was made on 15.10.2020, the Respondent/its senior officials were stating, *'The demand is extremely high; you must first resign, then all the dues will be given.'*

10. That the Applicant was in acute financial crisis, due to regular family expenses and the salary was not forth coming. The Applicant was left with no option but to send a mail to resign on 30.10.2020, as the Applicant was continuing with financial difficulties. The Respondent/its senior officials knew very well that withholding salary during pandemic and lockdown was illegal. Still, the Respondent/its senior officials did it because they wanted to get rid of a permanent employee because his promotion was imminent; the Respondent/its senior officials had therefore, tricked the Applicant into resignation, promising to pay all the dues, and putting pressure by withholding salary during pandemic.

11. To his shock, the Applicant found that not only the promised dues were paid, but also the salary for the month of October was withheld.

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All further requests on phone made on 6<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> of November for payment as promised, went unheard.

12. That the Applicant then made a complaint on 22.11.2020 to SHO in order to get some payment, at least a part of what is promised. The SHO on 25.11.2020 called the Respondent/its senior officials and appraised the financial constraints the Applicant was undergoing; and suggested to them, since the Applicant is handling sensitive matters, it is better to have some amicable settlement. A copy of the Complaint to SHO dated 22.11.2020 is enclosed herewith as Annexure B to this Petition.

13. That in response to the same the Respondent sent an email on 25.11.2020, stating *inter alia*, (1) that the Applicant may collect the salary for the month of October, and that 'should take care of your pressing financial stress'; and (2) that '*the Company is ready and willing to pay all dues that are due and payable as per law.*' A copy of the email dated 25.11.2020 of the Mr. Kavi Goel is enclosed herewith as Annexure C to this Petition. A meeting of Respondent/its senior officials with SHO and the Applicant was

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to take place on the following day, but it could not take place. Thereupon, the Respondent/its senior officials requested SHO to mediate, for an amicable settlement.

14. That on 26.11.2020, the SHO called the Applicant and informed that the Respondent/its senior officials have some financial difficulties to pay the entire amount as requested and suggested that the Applicant should settle the matter with them and re-join the office, so that with regular salary the Applicant should be able to manage his present financial problems. Accordingly, on 27.11.2020 the Applicant called Mr. Goel, to enquire about when to join.

15. That the Applicant went to the office on 30.11.2020 and his salary cheque for the month of October was given, though it was short payment, as that did not include the D.A. and the annual increments; but the Applicant was not allowed to resume the work; neither Mr. Goel nor Ms Oberoi was there. The Applicant was informed that they will call him after they consulted their lawyer. It was indicated that the previous resignation was creating a problem, for the headquarters.

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16. Unfortunately, the Applicant fell ill with severe symptoms of Covid 19 and was tested positive on 03.12.2020. The Applicant had told the Respondent/its senior officials that he is willing to join for work, after getting cured from Covid 19.

17. Since none of the promises were materialised and since they were not taking a firm decision to let the Applicant resume the office work, the resignation submitted was withdrawn formally on 07.12.2020 by an email for the reason that the same was made under financial duress, promise of payment of dues, and the same has not yet become effective, since no payment as promised was forth coming. A copy of the said email dated 07.12.2020 is enclosed herewith as Annexure D to this Petition. It is pertinent to mention that withdrawal of resignation was made before the resignation became operative between the parties. And, as such, the resignation has not become effective, and the employer-employee relations has not been ceased between the Applicant and the Company. This was not responded to by the Respondent/its senior

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officials.

18. Since what was promised in the email dated 25.11.2020 that *'the Company is ready and willing to pay all dues that are due and payable as per law'* was not forthcoming, the Applicant requested a lawyer to send a legal Notice to the Respondent/its senior officials, seeking to treat him to be continuing in the service and pay the salary amounting to Rs. 1,32,236/- for the month of November, or in the alternative pay Rs. 46,63,752/- with interest which was the dues accruing till then. A copy of the legal notice dated 10.12.2020 is enclosed herewith as **Annexure E** to this Petition. The proof of service thereof is enclosed herewith as **Annexure F** to this Petition.

19. The Respondent/its senior officials had sent a back-dated reply, in which the Respondent/its senior officials had threatened the Applicant with criminal action. A copy of the reply to the said legal notice, dated 10.12.2020 but received on 15.12.2020 is enclosed herewith as **Annexure G** to this Petition. A copy of the back-dated legal notice dated 05.12.2020 along with the document at P-7 received on 15.12.2020

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*[Signature]*

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is enclosed herewith as **Annexure H** to this Petition. Subsequently after going through the reply the Applicant had sent another legal notice on 17.12.2020, reiterating that the resignation letter had been withdrawn, and that the Applicant is in continuity of service, and that the employer employee relationship is subsisting till the Applicant is superannuated according to the Company rules. A copy of the said legal notice dated 17.12.2020 is enclosed herewith as **Annexure I** to this Petition. The proof of service thereof is enclosed herewith as **Annexure J** to this Petition. The Applicant had stated that he is willing to accept all the dues and arrears by way of an amicable settlement and leave the office for good.

20. That the Respondent/its senior officials had chosen not to deny these facts, and as a result, the Applicant is permitted to continue in service till superannuation. The Applicant is also entitled to promotion and increment according to the rules of the Company. Continued non-payment of salary is a continuing liability upon the company; and such liability will remain with the Company as a debt, which the company legally owes to the employee, till the date of

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superannuation, unless the matter is settled in between, for which both the Applicant as well as the Respondent/its senior officials are willing.

21. That cause of action against the Corporate Debtor is a continuing one; it first arose on 30.02.2005, when the Corporate Debtor began making default in payment to the Corporate Creditor. Thereafter it continued when the Corporate Debtor made default in making payment of the salary for the month of November 2020. It further continued when the Corporate Debtor did not make the payment after the legal notice dated 09.1.2021, and the Demand Notice dated 10.02.2021. Hence this petition.

22. The Demand Notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was sent on 10.02.2021, demanding the total defaulted amount claimed from the Corporate Debtor, Rs.1,93,73,695/- (One Crore Ninety-Three Lakhs, Seventy-Three Thousand, Six Hundred and Ninety-Five Only). A copy of the said demand notice dated 10.02.2021 is enclosed herewith as Annexure K to this Application.

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The proof of service thereof is enclosed herewith as **Annexure L** to this Application. In fact, the total calculated was wrong, and the same comes about Rs. 3,04,92,996/-; and that too without adding the financial benefit that may accrue from the promotion of the Applicant to the next post which was due since January 2020. A copy of the Excel Sheet for the same is enclosed as **Annexure M** to this Petition. Since the Applicant is committed to what was stated in the Demand notice, i.e., dues to the tune of Rs. Rs.1,93,73,695/-, the Applicant does not wish to press the entire dues now correctly calculated.

23. That the Respondent/its senior officials filed a reply dated 18.02 2021. A copy of the reply dated 18.02.2021 to the said demand notice is enclosed herewith as **Annexure N** to this Petition. It is pertinent to mention here that the Respondent/its senior officials have reiterated that they are willing, as had been stated before, to pay all the legal dues; the difference is only with respect to the quantum of payment.

Rs.1,93,73,695/- (One Crore Ninety-Three Lakhs, Seventy-Three Thousand, Six Hundred and Ninety-Five Only).

  
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	<p><u>Details of Debt:</u></p> <ol style="list-style-type: none"> <li>1. The Applicant is filing the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 and seeking to initiate corporate insolvency resolution process of the Respondent namely M/S AMAKAN OVERSEAS (P) LTD.</li> <li>2. That as on today, a sum of Rs.1,93,73,695/- (One Crore Ninety-Three Lakhs, Seventy-Three Thousand, Six Hundred and Ninety-Five Only), including 18% interest annually from the date when the debt became due from the Operational Debtor.</li> <li>3. That despite requests, the Operational Debtor had failed to pay the legitimate dues of the Operational Creditor and in these circumstances, is filing the instant case.</li> </ol>
<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED</p>	<p>Rs.1,93,73,695/- (One Crore Ninety-Three Lakhs, Seventy-Three Thousand, Six Hundred and Ninety-Five Only), including 18% interest annually from the date when the debt became due.</p> <p>Salary arrears :Rs. 10,797,888/-  Gratuity: Rs. 1,238,151/-  DA Arrears: Rs. 6,098,999/-  Bonus: Rs. 925,680/-  Leave encashment: Rs. 312,977/-</p> <hr/> <p>Total Rs.19,373,695/-</p> <p>This is out of total of Rs. 3,04,92,996/- vide, the Excel Sheet enclosed as Annexure M</p> <p>Date of on which the default occurred:  From 15.01.2005 to 01.11.2020 and onwards.</p>



3. The Respondent in its reply dated 13.08.2021 has submitted that:
- i. The applicant has claimed different amount at different stages. In this regard, the scanned copy of the paragraphs no. 6, 7 and 8 are reproduced below:
6. At the outset it is important to note that the Applicant has been claiming differing amounts at various times. As per Applicant-Operational Creditor's own relied-upon-documents, on record –
- a. On 03.10.2020 the disputed sum was “*in the tune of Rs. 35 lakhs*”  
[*@ para 7, page 21 of the said Application*]
  - b. On 22.11.2020, in a complaint filed with the SHO, New Friends Colony Police Station, New Delhi, the Applicant claimed that the amount owed to him was Rs. 11,05,240/-
  - c. On 09.12.2020, vide a Legal Notice the Applicant demanded a sum of Rs. 46,63,752/-. [*@ pg. 47, para 10 of the said Application*]
  - d. On 10.02.2020, vide the Demand Notice under Section 8, IBC the Applicant demanded a sum of Rs. 1,93,73,695/- . [*@ pg. 71*]



*of the said Application;*

- e. In the said Application, the Applicant has stated that “*in fact the total calculated was wrong and the same comes to about Rs. 3,04,92,996/-*” [*@para 22, page 29 of the said Application*] and the same is again stated at page 30 of the said Application.
7. Thus, as clearly shown, between 22.11.2020 and 10.02.2021, a mere period of 2.5 months, the amount claimed, according to the Applicant himself, has increased nearly 1900%, from 11 lakhs to 1.93 crores! This amply and unambiguously demonstrates that all the Applicant’s claims are absolutely whimsical and arbitrary, and the present Application may be dismissed at the outset.
8. As such, it is submitted that even in the said Application the Applicant has made equivocal averments regarding the disputed amount.
- ii. That the application does not satisfy the minimum pecuniary threshold of Rs. 1 Crore.
- iii. That the equivocal averments at page 29 and 30 of the said Application also show that in the present case, the Applicant-Operational Creditor has not been able to even prima facie show the existence of a “claim” or “default’ as defined in the IBC, especially since the Applicant has not filed any supporting documents along with the said Application.
- iv. That the Applicant has not filed any Employment Contract, Pay-Slip, Salary Statement, Appointment Letter or any record whatsoever to even prima facie suggest the dues payable to him by the Respondent.

- v. That all the claims prior to three years from the date of filing of the said Application are clearly barred by the limitation and the remaining alleged dues, even assuming but not admitting the contents of Annexure M, do not amount to more than Rs. 1 crore. In fact, it is around Rs. 15 lakhs only.
  - vi. That there is a pre-existing dispute between the parties and the Applicant was served with a "Notice of Dispute".
  - vii. That the Demand Notice dated 10.02.2021 issued by the Applicant is not in conformity with Rule 5 of the Adjudicating Authority Rules, and therefore, the requirements of Section 8, IBC have not been complied with.
  - viii. That the Applicant has not filed the Statement of Bank account where deposits are made or credits received normally by the operational creditor in respect of the debt of the corporate debtor' as required by Form 3 of the Rules.
  - ix. That the Applicant has deliberately not filed his email/correspondence dated 30.10.2020 vide which he had resigned from the Respondent, or the email of 02.11.2020 whereby his resignation was accepted.
  - x. That the Respondent is willing, as it always has been, to bonafide pay all the sums legally due to the Applicant based on the salary drawn by him prior to his resignation and under any statute, as applicable, which in any case will not cross the threshold of initiation of proceedings under the Code.
4. That the Applicant in its rejoinder dated 23.10.2021 has submitted :
- i. That all the salary slips for the salary that had been paid to the Applicant every month from time to time, the Form 16 submitted by the Respondents on behalf of the Petitioner, TDS deduction, payment



of income tax, Form 1 of the Gratuity Rules and EPF all indicate salary deductions from the monthly salary of the Applicant, which were done on the basis of Contract of employment between the parties. Since all these deductions/ payments process were done online, the concerned documents are available to the Respondent on their record.

- ii. That the resignation was a conditional resignation only.
  - iii. That the 'operational debt' to be calculated should be according to the nuances of this special class of contract namely the 'contract of employment'.
  - iv. That the present 'contract of employment' with the Respondent was not a limited time contract; rather it was a permanent employment. Such an employment could be terminated only if there was any proved misconduct, which was not the case in the present proceeding.
  - v. That the Respondents have rightly deducted Rs. 22,532/- from the salaries (which remained unpaid) of the Petitioner for the months of November 20 to March 2021 and was deposited with the Department concerned, vide the challan serial number No. 01295. No further tax liability till the month of October 2020 was pending against Applicant.
5. The scanned copy of the written synopsis filed by the applicant is reproduced below:-



WRITTEN ARGUMENTS ON BEHALF OF THE APPLICANT

FOR 16.03.2022

1. After 15 years of service, begun as Assistant Accounts Manager, the differences started during the pandemic.

- The Applicant requested for work-from-home; not allowed.

- Even during lock-down he was asked physically to be present in office.

- His wife a health worker tested positive.

- The family was in high-risk category; still leave requested was not granted.

- The financial burden increased, due to the school and college fees for children.

*[Paras 2 to 6 of the Application; List of Dates & Events]*

2. This Application was filed on 11.02.2021.



After hearing, the following Order was passed.

**Order dated 06.08.2021:**

"In the course of hearing, Mr. Anandh Venkataramani, Advocate appeared for the Respondent and accepted the notice on their behalf. Therefore, there is no need to issue notice upon Respondent. In the Course of the hearing, we notice that the Applicant has annexed the calculation sheet of the outstanding dues, from page 89 to 97, which shows that the Petitioner has claimed the outstanding dues from 05.07.2005 till the year 2029. Therefore, the Petitioner is *well advised to convince the Bench that the amounts shown in the calculation sheet is deemed to be the defaulted amount, due and payable under IBC.*

"The Petitioner is also *directed to file the documents* basis on which, he has claimed salary from 2005 to 2029. The Respondent is directed to file the reply within a week along with written synopsis. The Petitioner is also directed to a file short synopsis along with the supporting document. List the matter on 07.09.2021."

3. That thereafter the Applicant, by way of explaining that the amounts shown in the calculation sheet is deemed to be the defaulted amount, due and payable under IBC, filed a synopsis, and a Rejoinder with the Documents as directed in the above stated order, both on 23.10.2021.

4. That the arguments on behalf of the Applicant are as follows:



A. **Operational Debt:** 'Operational Debt' has been defined as follows: Sec. 5. (21) 'Operational debt means a *claim in respect of ...services including employment...*' [Emphasis added]

- In this case the 'Claim' is supported by Documents and admitted facts.

B. **Employment in the present case:**

"1. You were employed by Amakan, which dealt in trading of chemicals and other related products as an **assistant accounts manager** in the year 2005 with total emoluments fixed at Rs. 14,267 p.m. plus gratuity, comprising of **basic salary of Rs.8000.00**HRA of Rs. 2300/-, Conveyance allowance Rs. 1,500/-, medical allowance of Rs. 667/-, special allowance of Rs. 800/-, and applicable bonus (Rs. 1,000.00) per mensem.

The said emoluments were increased to a **basic of Rs. 61,712.00** HRA of Rs. 19,131.00, conveyance allowance of Rs. 4,727.00, medical benefit of Rs. 1,542.00, special allowance of Rs. 17,414.00, and applicable bonus @ 12.5 % of the basic salary w.e.f. 01.01.2019. Since then, your said emoluments have remained the same....."

"2. You were **solely in charge of all accounts relating to the business** of Amakan, and all books of accounts were maintained by you, and the same were under your sole control." [Emphasis Added]

[Quoted from para 1 and 2 of the Notice of the Respondents dated 05.12.2020, at pg. 52, vide, Annexure H annexed with the Application.]



C. The submissions in this regard are the following:

1. That the initial basic salary of Rs. 8,000.00 from the year 2005 was duly increased as and when increments/promotions became due, till January 2019, to Rs. 61,712.00.
2. [The pandemic started since April 2019; there was delay in payment of salary, and the dues such as gratuity, bonus, encashment of leave started to pile up.]
3. The appointment of the Applicant as Assistant Accounts Manager was under and in accordance with the Company Rules applicable to the employees/officers.

Note: Respondents have invoked these Rules, in their e-mail dated 02.11.2020 at Pg 34 at Annexure I of their reply.

4. That the services of the Applicant were on a 'regular'/permanent basis, in the sense that it was not temporary, nor ad hoc, nor on a contract for a limited period.
5. From 2005 to 2019 there were several promotions; it was a simple 'increase' in emoluments. Now the Applicant is due for promotion to General Manager Accounts, *vide, pg. 46 of Annexure 'E' to the Application.*
6. Such regular service could not have been terminated, unless the employee/officer **resigned**, or **removed** because of a proved misconduct, or the



employee/officer took **voluntary retirement** under the Rules or retired on superannuation.

7. The **resignation in this case was only 'an offer to resign'** and as such it was **involuntary and with condition** of payment of all dues, and an offer to resign.

**D. Re resignation:**

There was no "resignation" in the sense that the 15-year long service can come to an end. The Applicant had only communicated his "intention to resign," in writing of course, so that he may get some financial support. It was only an 'offer for resignation. That being so, the so-called letter dated 30.10.2020 was not a "voluntary and unconditional resignation". It was made out of frustration. The same was withdrawn before the same was implemented. Because even after the communication of the 'intention to resign,' the same did not take effect as the 'condition' of payment of all the dues were still to come even to date. In short, the Applicant was not formally relieved from service formally, after paying all the dues, as held by the courts.

- (a) The so-called resignation dated 30.10.2020 reads as follows:

"I would like to *inform you of my intention to resign* from your company with

*"Request you to clear my dues including salary, leave encashment, gratuity and bonus for the year 2019-20 & 20-21....."* [Emphasis added]

[Pg. 32/33 of Annexure I (Colly) to the Reply dated 13.08.21.]

- (b) The said intention to resign was submitted on 30.10.2020 was neither voluntary nor un-conditional; it was made on the basis of a promise that the Respondents would pay all the dues, once

resigned. The Applicant was asked to resign in order to get all the dues to meet his financial difficulties. Yet, as soon as letter of resignation was received, the Respondents withheld that month's salary as well at once, [Pg.8] and paid only at the end of the next month; that was after the Applicant complained to SHO:

- (c) *The dues including salary, leave encashment, gratuity and bonus for the year 2019-20 & 20-21.....22.11.2020 etc were not forth coming. The Petitioner then on 22.11.2020, approached SHO with a complaint for gratuity arrears, a statutory remedy. SHO called the Respondents and requested to arrive at a compromise, [Pg. 64 of Annexure 'H'] as the Company was not in a good shape financially, and the Applicant was asked to re-join, for the time being. Respondent then paid only the balance salary for the month of October salary on 30.11.2020, "to ward off any immediate financial distress you may have." [Pg. 65 of Annexure 'H'/ 42 of Annexure C.]*
- (d) *Even on 25.11.2020, the Respondents have acknowledged the financial stress the Applicant was going through, and expressed only willingness to pay all the dues, but the actual payment never came by. [vide, email dated 02.12.2020 at Annexure 'C', Pg. 42 of the Application.]*
- (e) *Even after submission of the intention to resign, with the condition that the Respondents must release all the dues, the Respondent on 05.12.2020 demanded inter alia the following, by adding three more conditions on their own for the payment of dues: (1) that the Petitioner shall sent an apology*

*individually to all the Directors of the Company; (2) that the Petitioner shall "execute a settlement agreement .... that all dues are paid...and you have no further claim against my client."* (3) that "*withdraw any and all complaints made by you as the matter is settled to mutual satisfaction ....*", vide, para 8 of the notice dated 05.12.2020, at Pg. 66 of Annexure 'H'.

- (f) It is to be noted that these conditions were imposed after acknowledging in the same letter dated 05.12.2020, Respondent admitted: "You were only willing to sign a no dues certificate, once all your dues are paid to you." [vide, para 5 'q' of the notice dated 05.12.2020, at Pg. 59 of Annexure 'H']
- (g) It was after these when the Applicant was not getting *all the terminal benefits such as gratuity, provident fund, etc.*, that he withdrew the so-called resignation on 07.12.2020, [Pg. 33 of Annexure I (Colly) to the Reply dated 13.08.21.] [44 of Annexure D to the Application.]
- (h) A Division Bench of the Delhi High Court, consisting of Hon'ble the Chief Justice and Hon'ble Mr. Justice Sanjiv Khanna, in *Indian Tourism Development vs Sri Kant Sharma*, had held that acceptance of a non-voluntary and conditional resignation can be withdrawn in certain circumstances. These were held so after relying on two Supreme Court judgements. At Para 22, it was pointed out from *Power Finance Corporation Ltd. v. Pramod Kumar Bhatia*, (1997) 4 SCC 280, as follows:
- ".....It is now settled legal position that **unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural**

relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective."

- (j) Again at para 25, it was pointed out from Srikant S.M. v. Bharath Earth Movers Ltd., (2005) 8 SCC 314, that Even though he had resigned on 04.01.1993, 'the appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that up to 15-1-1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 7-1-1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside.'
- (k) In short, *unless the employee is relieved of the duty, by paying all the terminal benefits such as gratuity, provident fund, etc, after acceptance of the offer of resignation, jural relationship of the employee and the employer does not come to an end.*



(l) The Portioner sent a legal notice on 17.12.2020, requesting to consider him to be in continuous service, and demanded that the Company pays him all the dues, such as arrears of salaries, all pending D.A payments, Gratuity, Bonus, and leave encashment etc. which now comes to Rs. 46,63,752/-. [vide Annexure 'I' Pg. 69 of the Application] This notice was not replied to. Therefore the 'acceptance' of a non-voluntary and conditional resignation in such circumstances cannot be held to be legal acceptance of resignation.

(m) The submission of the Applicant is that *they have accepted continuity in service by not denying the demand for the same by a legal notice*: The legal notice dated 17.12.2020, [Pleaded, vide para 19 and 20 of Part IV] stated that 'now he tested positive and not able to attend office...'; also stated "you must treat my client with continuity in service..." [Vide. Pg 69 of Annexure 'I' of the Application. This legal notice was not replied to.

(n) By their subsequent action, it was found, vide the Return filed on 20.07.2021, that *they accept that the Applicant continued in service*; and the Respondents have rightly deducted, by way of TDS of Rs. 22,532/- from the salaries (which remained unpaid) of the Petitioner for the months of November, December 2020, and for January, February, March 2021, and was deposited with the Department concerned, vide, the challan serial number No. 01295. [Vide, the Document annexed as Annexure 'P' to the Rejoinder, filed on 23.10.2021, at pg. 38.]



**E. Effect of Withdrawal of Intention to Resign, before the Applicant is relieved of the duty, by paying all the terminal benefits and other dues, etc:**

(i) The intention to resign given on 30.10.2020 was withdrawn, before the Applicant was relieved of the duty, by paying all the terminal benefits and other dues, etc. Therefore, the Applicant is entitled to continue in the service, till superannuation in the year 2029, in accordance with Rules of the Respondent Company, until removed because of proved misconduct under the Rules. The Applicant is also entitled to promotion and increments according to the Rules of the Company. Continued non-payment of salary is a continuing liability upon the company; and such liability will remain with the company as a debt, which the company owes to the employee, till the date of superannuation....[Pleaded at Pg. 27, para 20 of Part IV of the Application.] Respondents have invoked these Rules, in their e-mail dated 02.11.2020 at Pg. 34, at Annexure I of their reply.

(ii) The further submissions of the Applicant are as follows:

a) That he was not allowed to re-join, nor salary was paid to him since November 2020, even after informing that he was tested positive, and even though part of his salary by way of TDS was deposited with the concerned Department.

b) He was thus virtually removed from service, without any notice, and without informing him about why he was removed/discontinued. This amounts to 'wrongful removal/dismissal' from regular/permanent service.

c) Since his removal was wrongful, he is entitled to compensation for the remaining period of his service; and that is what he is claiming in this Application.

d) He has not committed any misconduct, rather his services for the past 15 years were satisfactory to the Respondents and was acknowledged and highly appreciated. vide, *para 5'k'* of the notice dated 05.12.2020, at Pg. 57 of Annexure 'H'

e) That his entitlement to compensation for the remaining period of service, i.e., till superannuation, is recognised by the Superior Courts.

f) This entitlement to compensation till superannuation is also named as 'future' payments, in those judgments.

g) Therefore, such future payments shall also be treated to include in the definition of 'Operational Debt' as they are also 'claims' with respect to 'services including employment'.

**6. Some of the judgements by way of illustration:**

A. In *Air Lanka Limited represented by its Manager, Madras vs. John William Nathan and Another*, the High Court at Madras, vide, Writ Petition No. 8687 Of 1985, in the judgement given on 29-08-1990, [(1991) 2 MLJ 304 ; [1991] 62 FLR 953] it was held in the last para of the judgement that the amount of compensation awarded and payable by the petitioner to the 1st respondent is spread over for the period from 1981 to 2007, the normal year of retirement of the 1st respondent on superannuation.

The fact of the case as stated in para 2 of the judgement was that the first respondent was employed as an Office Helper in the Madras Office with effect from 15.10.1979. On 16.10.1984, the first respondent was found removing an Air Travel Bag from the Manager's Office without any permission. When this was noticed, the first respondent attempted to hide the Air Travel Bag and when questioned about the same, the first respondent admitted his guilt and submitted that he would not commit such offence again and hence he wanted to be excused.

The finding in the case was that dismissal cannot be awarded for such trivial act of misconduct [vide, para 5] and the same was disproportionate and consequently it was ordered for reinstatement with back wages.[vide para 13]. The Hon'ble High Court, following the judgement of the Supreme Court given in *Chanduala v. The Management of M/s. Pan American World Airways Ltd.*, [(1985)2 L.L.J. 181.] directed that he need not be reinstated in service and on the other hand he should be adequately compensated.[vide, para 18]. It was also held that while awarding compensation, the Court took into account that in case of reinstatement the first respondent is entitled to back wages from the date of termination and is also entitled to future wages. [ vide, Para 35]

B. In another judgement from the High Court of Delhi, given on 12-07-1994, in *S.P. Bhatnagar vs. Indian Oil Corporation*, [1994 3 AD (Delhi) 898 ; 1994 (30) DRJ 374] it was held that

the plaintiff is entitled to Rs. 6,05,142. 27p. as full back wages, perks and pensionary benefits till the date of his superannuation on 28 July 1984. [ vide, Para 19]

The facts of the case were that the plaintiff holding a Civil Engineering Degree from the Stanford university in the USA got employed as Installation Engineer with the respondent Indian Oil Corporation Ltd. in April 1960 and became the Head of the Engineering Department. On some charges he was put under suspension on 29 September 1967 and in consequence of a departmental enquiry held against him by the defendant he was dismissed from service on 24 December 1973 with immediate effect. Later he was reinstated with back-wages.

C. In a case from Supreme Court, vide Order dated 07-08-1984, in *Sundaram Motors Pvt. Ltd. Vs. Ameerjan and Anr.*, a three judge Bench consisting of Hon'ble Justice D. A. Desai , Hon'ble Justice V. B. Eradi , and Hon'ble Justice V. Khalid[(2) SCALE 370 ; AIR 1985 SC 144 ; 1985 (17) UJ 15 ; 1985 LABIC 394 ; (1985) 1 SCC 118 ; (1984) 42 CTR (SC) 355 ; [1985] 152 ITR 64], it was held as follows:

"We have made it abundantly clear in our judgment and order dated August 7, 1984, that the compensation awarded is in lieu of back-wages, and future wages in lieu of reinstatement which were and would be payable from year to year. Therefore, we made it very clear that the entire amount awarded by our judgment shall be spread over from 1970 to 1989, 1970 being

the year of dismissal from service and 1989 being the year of retirement on superannuation as per the relevant service rules."

6. That the scanned copy of the two written submissions filed by the respondent is reproduced below:

**WRITTEN SYNOPSIS ON BEHALF OF THE RESPONDENT  
PURSUANT TO ORDER DATED 16.03.2022**

1. The Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*IBC*) filed by the Applicant deserves to be dismissed at the outset for the following reasons (i) applicant's own documents demonstrate that the claim is admittedly below the threshold of Rs. 1 crore, and the present application has been filed based on a self-serving arbitrary calculation sheet for a period from 2005 till 2029 solely to cross the threshold of Section 4; (ii) there are no documents whatsoever on record to support the claims made in the Application despite specific opportunity being provided vide order dated 06.08.2021; (iii) there is a dispute as to the amounts owed to the Applicant, prior to the issuance of the notice under Section 8 of the IBC, (iv) the Application is an abuse of process of law, as there is a gross misrepresentation and the Applicant has lied on affidavit that no notice of dispute had been served upon the Applicant; and (v) the Application is not compliant with the IBC and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (*Rules*). In addition, the Applicant has concealed key correspondence with the Respondent. A brief background is provided below.

Date	Particulars / Event
2005	Applicant hired as an accountant – there was and has never been any appointment letter or contract of employment. He was paid salary on a monthly basis, with increments and bonuses that were given to him from time to time, on



	the discretion of the Company, as was the case other employees similarly placed.
30.11.2020	The Applicant resigned from the position of 'Manager, Accounts' then drawing a salary of Rs. 1,04,526/- (which included the allowances). <i>(Pg. 31-33 of Respondent's Reply)</i>
02.11.2020	Respondent accepted the resignation <i>(Pg. 34 of Respondent's Reply)</i>
22.11.2020	After email exchanges on arbitrary sums claimed by the Applicant, and denied by the Respondent, Applicant filed a complaint at the SHO, New Friends Colony Police Station, New Delhi <i>(Annex. B @ Pgs. 39-41 of the Application)</i> , claiming that <u>Rs. 11,05,240/-</u> was due to him as per his calculations.
23.11.2020	The Applicant purportedly made "complaint to the controlling Authority about the non-payment Gratuity in Form I of the Payment of Gratuity Act" <i>(see para 7 of the Annex. E of the Application @ Pg. 46)</i> .
25.11.2020	Email of the Respondent warning him against any pressure tactics such as police complaints, and stating that whilst legal dues would be paid to him, arbitrary sums claimed shall not be tolerated. The Applicant also demanded passwords to financial documents which were being withheld by the Applicant <i>(Annex. C of the Application @ Pgs. 41-43)</i> On the same date, the Applicant responded stating that he will hand over the passwords only when his dues are cleared (this email of 25.11.2020 is <i>@Pg. 103 of the Application</i> )
05.12.2020	Legal Notice sent on behalf of the Respondent to the Applicant, denying the arbitrary claims <i>(Annex. H of the Application @ Pgs. 52-67)</i> .



07.12.2020	Applicant attempted to rescind his resignation ( <i>Annex D of the Application @ Pg. 44</i> ).
09.12.2020	Legal Notice sent on behalf of the Applicant to the Respondent, <u>claiming Rs. 46,63,752/-</u> as due to him ( <i>Annex E of the Application @ Pgs. 45-47</i> ).
10.12.2020	Legal Notice sent to the Applicant, once again denying the claims made in the above notice as fanciful ( <i>Annex G of the Application @ Pgs. 49-51</i> ).
17.12.2020	Legal Notice sent on behalf of the Applicant to the Respondent, reiterating the claim of <u>Rs. 46,63,752/-</u> as due to him ( <i>Annex I of the Application @ Pgs. 68-69</i> ).
10.02.2021	Notice under Section 8 of the IBC sent by the Applicant, without enclosing the basis (as statutorily required) of claiming the arbitrary sum of <u>Rs. 1,93,73,695/-</u> .
18.02.2020	The Respondent replied with a Notice of Dispute, highlighting the aforesaid correspondence and legal notices, and specifically at paras 8 and 9 therein, claimed that the said reply must be treated as Notice of Dispute under Section 8(2) of the IBC. <u>The Respondent stated that as per its calculations, a sum of Rs. 8,53,015/- was owed to him.</u> ( <i>Pg. 100-101 of the Application</i> )
09.03.2020	The Applicant filed the present application under Section 9 of the IBC without any documents in support of his claims, concealing some key correspondence, stating falsity in an affidavit that no notice of dispute has been served upon the Applicant, and now claiming a fanciful sum of <u>Rs. 3,04,92,996/-</u> .

2. From the above narrative the following aspects become apparent: –

- a. that the Applicant has been claiming arbitrary sums throughout the period, ranging from Rs. 11 lakhs on 22.11.2020 to Rs. 1.93 Crores on 10.02.2021, a whopping 1900% increase! ;

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- b. The Applicant has no legal basis for his claims from 2005 to 2029 (no contract, pay slip, or any document or provision of law he can rely on) – as is evident from his response to Para 6 in Part V of the S. 9 Application at Pg. 31;
- c. These arbitrary and inflated sums are being claimed solely to cross the threshold of Section 4 of the IBC;
- d. The Applicant has concealed the email of 30.10.2020, and his resignation letter, and has concealed the fact that the resignation was accepted on 02.11.2020.
- e. The applicant has made a knowingly false statement affidavit (see para 5 at Pg. 37 of the Application), whereas at para 9 of the Reply dated 18.02.2021 (@ Pg. 100-101), the Respondent had specifically pointed out the pre-existing dispute and that the said reply must be treated as a notice of dispute under Section 8(2) of the IBC.

**3. In addition to the above, and in response to the Application and the Oral Arguments on 16.03.2022, the Respondent makes the following submissions:**

- a. The counsel for the Applicant attempted to argue that the email of 30.10.2020 (*Pg. 31-33 of Respondent's Reply*) was only an intention to resign, and not a resignation itself, and therefore the Applicant is still an employee of the Respondent and can claim sums up to his alleged superannuation. This is blatantly false. Aside from the fact that the Applicant is not a government servant and that such service law concepts find no applicability here (especially when he places no document on record to demonstrate terms of his service), the Applicant himself contemporaneously called it his resignation letter (*Pg. 31 of the Respondent's Reply*) and the contents of the letter also make the finality of the resignation amply clear;
- b. The Hon'ble Tribunal specifically asked the Applicant whether there was anything in support for the claim of a continuing cause of action. To this, the Applicant had no response, other than to state that he never resigned and therefore, has the right to claim all dues till superannuation. There is absolutely no continuing cause of action - there is no legal obligation based on statute, case law, or even any contract that the Applicant has placed any

reliance on for such a claim. His claims are based on a self-serving fabricated document where is has arbitrarily claimed sums owed to him under all kinds of heads without any basis in fact or law whatsoever, simply to cross the threshold of Section 4.

- c. There is a dispute regarding the sums owed to the Applicant (which in any case are below the threshold) well before the Applicant issued the notice dated 10.02.2020 under Section 8 of the IBC. This was specifically pointed out in the Respondent reply / Notice of Dispute dated 18.02.2020 (*Pg. 100-101 of the Application*). If there is a notice of dispute, and if the dispute is genuine and not illusory or moonshine, the Hon'ble Adjudicating Authority is bound by Section 9 of the IBC to reject the Application. It has been held by the Hon'ble National Company Law Appellate Tribunal (*NCLAT*) in *Anuj Khanna v. Vishwa Naveen Traders*, Company Appeal (AT) (Insolvency) No. 555 of 2020 (order dated 25.11.2020), and *Mycra Systems v. Masters India*, Company Appeal (AT) (Ins.) No. 823 of 2020 (order dated 12.04.21), that exchange of emails and legal notices prior to the S. 8 Notice, where the sums claimed are disputed, would amount to a pre-existing dispute, thereby disentitling the admission of any application under Section 9 of the IBC.
- d. the Applicant has deliberately issued an incomplete Demand Notice, particularly, the Applicant has deliberately omitted to provide information at para 3, 6 and 7 of the Demand Notice dated 10.02.2021. Such information is at the heart of the present dispute. The Applicant has not even enclosed copies of his bank statement (though the in the form he states that he has), to prove the amounts received by him.
- e. That the Applicant has concealed key correspondence, and has made a false statement on affidavit, makes it evident that the Application is an abuse of process of the Hon'ble Tribunal. Further, given the nature of this Application, and the blatant falsehoods contrary to the record, including on affidavits, it becomes evident that the Application has been filed with a mala fide intent to arm twist the Corporate Debtor, whose management consists of a Director about the age of 80 years. The Application is being used as a recovery mechanism, and it is clear that there is no intent to resolve any insolvency of the Corporate Debtor. Therefore, it is proved that this Hon'ble Tribunal

**WRITTEN SYNOPSIS ON BEHALF OF THE RESPONDENT  
PURSUANT TO ORDER DATED 06.08.2021**

1. The Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*IBC*) filed by the Applicant deserves to be dismissed at the outset for the following reasons
- (i) the amount claimed does not cross the threshold of Rs. 1 crore;
  - (ii) there is a dispute as to the amounts owed to the Applicant, prior to the issuance of the notice under Section 8 of the IBC
  - (iii) the Application is an abuse of process of law, as there is a gross misrepresentation and the Applicant has falsely averred on affidavit that no notice of dispute had been served upon the Applicant; and
  - (iv) the Application is not compliant with the IBC and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (*Rules*). In addition, the Applicant has concealed key correspondence with the Respondent. A brief background is provided below.

Date	Particulars / Event
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2005	Applicant hired as an accountant – there is no appointment letter or contract of employment. He was paid salary on a monthly basis, with increments and bonuses that were given to him from time to time, on the discretion of the Company, at par with other employees similarly placed.
30.11.2020	The Applicant resigned from the position of 'Manager, Accounts' then drawing a salary of Rs. 1,04,526/- (which included the allowances). <i>(Resignation email enclosed with the Reply)</i>
02.11.2020	Respondent accepted the resignation <i>(acceptance email enclosed with the Reply)</i>
22.11.2020	After email exchanges on arbitrary sums claimed by the Applicant, and denied by the Respondent, Applicant filed a complaint at the SHO, New Friends Colony Police Station, New Delhi ( <i>Annex. B @ Pgs. 39-41 of the Application</i> ), claiming that Rs. 11,05,240/- was due to him as per his calculations.
23.11.2020	The Applicant purportedly made "complaint to the controlling Authority about the non-payment Gratuity in Form I of the Payment of Gratuity Act" (see para 7 of the Annex. E of the Application @ Pg. 46).



25.11.2020	Email of the Respondent warning him against any pressure tactics such as police complaints, and stating that whilst legal dues would be paid to him, arbitrary sums claimed shall not be tolerated. The Applicant also requested passwords to financial documents which were being withheld by the Applicant ( <i>Annex. C of the Application @ Pgs. 41-43</i> ) On the same date, the Applicant responded stating that he will hand over the passwords only when his dues are cleared (this email of 25.11.2020 is <i>@ Pg. 103 of the Application</i> )
05.12.2020	Legal Notice sent on behalf of the Respondent to the Applicant, denying the arbitrary claims made by the Respondent ( <i>Annex. H of the Application @ Pgs. 52-67</i> ).
07.12.2020	Applicant attempted to rescind his resignation ( <i>Annex. D of the Application @ Pg. 44</i> ).
09.12.2020	Legal Notice sent on behalf of the Applicant to the Respondent, <u>claiming Rs. 46,63,752/-</u> as due to him ( <i>Annex E of the Application @ Pgs. 45-47</i> ).
10.12.2020	Legal Notice sent to the Applicant, once again denying the claims made in the above notice as fanciful ( <i>Annex. G of the Application @ Pgs. 49-51</i> ).



17.12.2020	Legal Notice sent on behalf of the Applicant to the Respondent, reiterating the claim of <b>Rs. 46,63,752/-</b> as due to him ( <i>Annex 1 of the Application @ Pgs. 68-69</i> ).
10.02.2021	Notice under Section 8 of the IBC sent by the Applicant, without enclosing the basis (as statutorily required) of claiming the arbitrary sum of <b>Rs. 1,93,73,695/-</b> .
18.02.2020	The Respondent replied with a Notice of Dispute, highlighting the aforesaid correspondence and legal notices, and specifically at paras 8 and 9 therein, claimed that the said reply must be treated as Notice of Dispute under Section 8(2) of the IBC. The Respondent stated that as per its calculations, a sum of <b>Rs. 8,53,015/-</b> was owed to him.
09.03.2020	The Applicant filed the present application under Section 9 of the IBC, concealing some key correspondence, falsely averring on affidavit that no notice of dispute has been served upon the Applicant, and now claiming a fanciful sum of <b>Rs. 3,04,92,996/-</b> .

2. From the above narrative the following aspects become apparent: –
- that the Applicant has been claiming arbitrary sums throughout the period, ranging from Rs. 11 lakhs on 22.11.2020 to Rs. 1.93 Crores on 10.02.2021, a whopping 1900% increase :



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- b. The Applicant has no legal basis for his claims (no contract, pay slip, or any document or provision of law he can rely on) – as is evident from his response to Para 6 in Part V of the S. 9 Application at Pg. 31;
  - c. These arbitrary and inflated sums are being claimed solely to cross the threshold of Section 4 of the IBC;
  - d. The Applicant has concealed the email of 30.10.2020, and his resignation letter, and has concealed the fact that the resignation was accepted on 02.11.2020;
  - e. The applicant has made false averments on affidavit (see para 5 at Pg. 37 of the Application), whereas at para 9 of the Reply dated 18.02.2021 (@ Pg. 100-101), the Respondent had specifically pointed out the pre-existing dispute and that the said reply must be treated as a notice of dispute under Section 8(2) of the IBC.
3. In addition to the above, and in response to the Application, the Respondent makes the following submissions:
  4. There is no continuing cause of action. In the present case, there is no legal obligation based on statute or even any contract that the Applicant has placed any reliance on for such a claim. His claims are based on a self-serving fabricated document where is has arbitrarily claimed sums owed to him under all kinds of heads without any basis in fact or law whatsoever. His claims prior 3 years from the date of the Application are barred by limitation, and such alleged claims, even if assumed to be correct (but at no point admitted to be so), will not cross the threshold of Section 4.
  5. There is a dispute regarding the sums owed to the Applicant (which in any case are below the threshold) well before the Applicant issued



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the notice dated 10.02.2020 under Section 8 of the IBC. This was specifically pointed out in the Respondent reply / Notice of Dispute dated 18.02.2020. If there is a notice of dispute, and if the dispute is genuine and not illusory or moonshine, the Hon'ble Adjudicating Authority is bound by Section 9 of the IBC to reject the Application. It has been held by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Anuj Khanna v. Vishwa Naveen Traders*, Company Appeal (AT) (Insolvency) No. 555 of 2020 (order dated 25.11.2020), and *Mycra Systems v. Masters India*, Company Appeal (AT) (Ins.) No. 823 of 2020 (order dated 12.04.21), that exchange of emails and legal notices prior to the S. 8 Notice, where the sums claimed are disputed, would amount to a pre-existing dispute, thereby disentitling the admission of any application under Section 9 of the IBC.

6. The Applicant has deliberately issued an incomplete Demand Notice, particularly, the Applicant has deliberately omitted to provide information at para 3, 6 and 7 of the Demand Notice dated 10.02.2021. Such information is at the heart of the present dispute. The Applicant has not even enclosed copies of his bank statement (though the in the form he states that he has), to prove the amounts received by him.
7. That the Applicant has concealed key correspondence, and has lied on affidavit, makes it evident that the Application is an abuse of process of the Hon'ble Tribunal. Further, given the nature of this Application, and the blatant falsehoods contrary to the record, including on affidavits, it becomes evident that the Application has been filed with a *mala fide* intent to arm twist and coerce the



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Corporate Debtor, whose management consists of a Director about the age of 80 years. The Application is being used as a recovery mechanism, and it is clear that there is no intent to resolve any insolvency of the Corporate Debtor. Therefore, it is prayed that this Hon'ble Tribunal impose a penalty on the Applicant in terms of Section 65 of the Code, and dismiss the present Application with costs, in the interest of justice. Such actions of the Applicant also render him liable under Section 340 r/w 195 of the Criminal Procedure Code, 1973.

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**impose a penalty on the Applicant in terms of Section 65 of the IBC, and dismiss the present Application with costs, in the interest of justice. Such actions of the Applicant also render him liable under Section 340 r/w 195 of the Criminal Procedure Code, 1973.**

7. We have heard the Ld. Counsel appearing for the Applicant as well as the Respondent and perused the averments made in the application, reply, rejoinder and written synopsis filed by the respective parties. Ld. Counsel for the Applicant has raised all the facts and law referred to in the written synopsis filed on behalf of the Applicant. Similarly, the Respondent has also raised all the facts mentioned in the reply and the written synopsis.



8. That on perusal of the averments made in the application, reply, rejoinder as well as the written synopsis, we notice that the claim of the Applicant is that he is an employee of the Respondent/Corporate Debtor and earlier he had proposed to tender his resignation but subsequently the said resignation was withdrawn. Whereas the claim of the Respondent/Corporate Debtor is that the resignation submitted by the Applicant vide mail dated 30.10.2020 was accepted by the Respondent/Corporate Debtor, which was communicated to the applicant vide mail dated 02.11.2020.
9. That the further claim of the Applicant is that he has not received the salary from July 2005 till May 2029, as per Annexure-M, placed at page 89. The Applicant has further claimed that the total amount of Rs. 1,93,73,695/- is due and payable as per the calculation chart (Annexure-M). Whereas the contention of the Respondent/Corporate Debtor is that the amount mentioned in Part-IV of the application is imaginary. The Applicant has not enclosed any document in support of its contention except the Annexure-M i.e. the calculation chart prepared by the Applicant himself.
10. On perusal of Part-IV of the application, we observe that the contention of the Applicant is that he has sent a legal notice informing that the resignation letter earlier submitted by the Applicant has already been withdrawn and the employer and employee relationship is still subsisting.
11. It is also averred in Part-IV of the application that the Applicant had tendered his resignation under the threat given by the Respondent/Corporate Debtor. We further observe that the Applicant has also claimed that his promotion was due but not given.



12. At this juncture, we would also like to consider the Annexure-M placed at page 89 onwards. The scanned copy of the same is reproduced below:-

Annexure-M 89

Employee	Basic	45%				Medical	Others	Total	Received	Balance due
		DA	HRA	Conveyance						
Jul-05 P. L. Thomas	10500	4725	2500	1800			1050	20575	15850	4725
Aug-05 P. L. Thomas	10500	4725	2500	1800			1050	20575	15850	4725
Sep-05	10500	4725	2500	1800			1050	20575	15850	4725
Oct-05	10500	4725	2500	1800			1050	20575	15850	4725
Nov-05	10500	4725	2500	1800			1050	20575	15850	4725
Dec-05	10500	4725	2500	1800			1050	20575	15850	4725
Jan-06	10500	4725	2500	1800			1050	20575	15850	4725
Feb-06	10500	4725	2500	1800			1050	20575	15850	4725
Mar-06	10500	4725	2500	1800			1050	20575	15850	4725
Apr-06	10500	4725	2500	1800			1050	20575	15850	4725
May-06	10500	4725	2500	1800			1050	20575	15850	4725
Jun-06	10500	4725	2500	1800			1050	20575	15850	4725
Jul-06	10500	4725	2500	1800			1050	20575	15850	4725
Aug-06	10500	4725	2500	1800			1050	20575	15850	4725
Sep-06	10500	4725	2500	1800			1050	20575	15850	4725
Oct-06	10500	4725	2500	1800			1050	20575	15850	4725
Nov-06	10500	4725	2500	1800			1050	20575	15850	4725
Dec-06	10500	4725	2500	1800			1050	20575	15850	4725
Jan-07	10500	4725	2500	1800			1050	20575	15850	4725
Feb-07	10500	4725	2500	1800			1050	20575	15850	4725
Mar-07	13100	5895	2500	1800	1092		1310	25697	19802	5895
Apr-07	20000	9000	3800	800			2000	35600	26600	9000
May-07	20000	9000	3800	800			2000	35600	26600	9000
Jun-07	20000	9000	3800	800			2000	35600	26600	9000
Jul-07 P. L. Thomas	20000	9000	3800	800			2000	35600	26600	9000
Aug-07	20000	9000	3800	800			2000	35600	26600	9000
Sep-07	20000	9000	3800	800			2000	35600	26600	9000
Oct-07	20000	9000	3800	800			2000	35600	26600	9000
Nov-07	20000	9000	3800	800			2000	35600	26600	9000
Dec-07	20000	9000	3800	800			2000	35600	26600	9000
Jan-08	20000	9000	3800	800			2000	35600	26600	9000

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Feb-08	20000	9000	3800	800			2000	35600	26600	9000
Mar-08	20000	9000	3800	800			2000	35600	26600	9000
Apr-08	22000	9900	3800	800			2200	35500	26600	9900
May-08	22000	9900	3800	800			2200	36500	26600	9900
Jun-08	22000	9900	3800	800			2200	36500	26600	9900
Jul-08	22000	9900	3800	800			2200	36500	26600	9900
Aug-08	22000	9900	3800	800			2200	36500	26600	9900
Sep-08	25300	11385	4370	830			2530	41885	30500	11385
Oct-08	25300	11385	4370	830			2530	41885	30500	11385
Nov-08	25300	11385	4370	830			2530	41885	30500	11385
Dec-08	25300	11385	4370	830			2530	41885	30500	11385
Jan-09	25300	11385	4370	830			2530	41885	30500	11385
Feb-09	25300	11385	4370	830			2530	41885	30500	11385
Mar-09	25300	11385	4370	830			2530	41885	30500	11385
Apr-09	25300	11385	4370	830			2530	41885	30500	11385
May-09	25300	11385	4370	830			2530	41885	30500	11385
Jun-09	25300	11385	4370	830			2530	41885	30500	11385
Jul-09	25300	11385	4370	830			2530	41885	30500	11385
Aug-09	25300	11385	4370	830			2530	41885	30500	11385
Sep-09	28700	12915	5740	830			2870	48185	35270	12915
Oct-09	28700	12915	5740	830			2870	48185	35270	12915
Nov-09	28700	12915	5740	830			2870	48185	35270	12915
Dec-09	28700	12915	5740	830			2870	48185	35270	12915
Jan-10	28700	12915	5740	830			2870	48185	35270	12915
Feb-10	28700	12915	5740	830			2870	48185	35270	12915
Mar-10	28700	12915	5740	830			2870	48185	35270	12915
Apr-10	28700	12915	5740	830			2870	48185	35270	12915
May-10	28700	12915	5740	830			2870	48185	35270	12915
Jun-10	28700	12915	5740	830			2870	48185	35270	12915
Jul-10	28700	12915	5740	830			2870	48185	35270	12915
Aug-10	28700	12915	5740	830			2870	48185	35270	12915
Sep-10 P. L. Thomas	33150	14917.5	6630	830			33150	55527.5	40610	14917.5
Oct-10	33150	14917.5	6630	830			33150	55527.5	40610	14917.5

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Nov-10							
Dec-10	33150	14917.5	6630	830	55527.5	40610	14917.5
Jan-11	33150	14917.5	6630	830	55527.5	40610	14917.5
Feb-11	33150	14917.5	6630	830	55527.5	40610	14917.5
Mar-11	33150	14917.5	6630	830	55527.5	40610	14917.5
Apr-11	33150	14917.5	6630	830	55527.5	40610	14917.5
May-11	33150	14917.5	6630	830	55527.5	40610	14917.5
Jun-11	33150	14917.5	6630	830	55527.5	40610	14917.5
Jul-11	33150	14917.5	6630	830	55527.5	40610	14917.5
Aug-11	33150	14917.5	6630	830	55527.5	40610	14917.5
Sep-11	39500	17775	7900	830	55527.5	40610	14917.5
Oct-11	39500	17775	7900	830	66005	48230	17775
Nov-11	39500	17775	7900	830	66005	48230	17775
Dec-11	39500	17775	7900	830	66005	48230	17775
Jan-12	39500	17775	7900	830	66005	48230	17775
Feb-12	39500	17775	7900	830	66005	48230	17775
Mar-12	39500	17775	7900	830	66005	48230	17775
Apr-12	39500	17775	7900	830	66005	48230	17775
May-12	39500	17775	7900	830	66005	48230	17775
Jun-12	39500	17775	7900	830	66005	48230	17775
Jul-12	39500	17775	7900	830	66005	48230	17775
Aug-12	39500	17775	7900	830	66005	48230	17775
Sep-12	39500	17775	7900	830	66005	48230	17775
Oct-12	39500	17775	7900	830	66005	48230	17775
Nov-12	39500	17775	7900	830	66005	48230	17775
Dec-12	39500	17775	7900	830	66005	48230	17775
Jan-13	39500	17775	7900	830	66005	48230	17775
Feb-13	39500	17775	7900	830	66005	48230	17775
Mar-13	39500	17775	7900	830	66005	48230	17775
Apr-13	39500	17775	7900	830	66005	48230	17775
May-13	39500	17775	7900	830	66005	48230	17775
Jun-13	39500	17775	7900	830	66005	48230	17775
Jul-13	39500	17775	7900	830	66005	48230	17775

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Aug-13	39500	17775	7900	830	66005	48230	17775
Sep-13	43000	19350	9000	830	72180	52830	19350
Oct-13	43000	19350	9000	830	72180	52830	19350
Nov-13	43000	19350	9000	830	72180	52830	19350
Dec-13	43000	19350	9000	830	72180	52830	19350
Jan-14	43000	19350	9000	830	72180	52830	19350
Feb-14	43000	19350	9000	830	72180	52830	19350
Mar-14	43000	19350	9000	830	72180	52830	19350
Apr-14	43000	19350	9000	830	72180	52830	19350
May-14	43000	19350	9000	830	72180	52830	19350
Jun-14	43000	19350	9000	830	72180	52830	19350
Jul-14	43000	19350	9000	830	72180	52830	19350
Aug-14	43000	19350	9000	830	72180	52830	19350
Sep-14	48000	21600	12000	830	72180	52830	19350
Oct-14	48000	21600	12000	830	86680	65080	21600
Nov-14	48000	21600	12000	830	86680	65080	21600
Dec-14	48000	21600	12000	830	86680	65080	21600
Jan-15	48000	21600	12000	830	86680	65080	21600
Feb-15	48000	21600	12000	830	86680	65080	21600
Mar-15	48000	21600	12000	830	86680	65080	21600
Apr-15	48000	21600	12000	830	86680	65080	21600
May-15	48000	21600	12000	830	86680	65080	21600
Jun-15	48000	21600	12000	830	86680	65080	21600
Jul-15	48000	21600	12000	830	86680	65080	21600
Aug-15	48000	21600	12000	830	86680	65080	21600
Sep-15	50000	22500	13500	830	86680	65080	21600
Oct-15	50000	22500	13500	830	93080	70580	22500
Nov-15	50000	22500	13500	830	93080	70580	22500
Dec-15	50000	22500	13500	830	93080	70580	22500
Jan-16	51335	23100.75	15914	3932	93080	70580	22500
Feb-16	51335	23100.75	15914	3932	95564.75	72484	23100.75
Mar-16	51335	23100.75	15914	3932	95564.75	72484	23100.75
Apr-16	51335	23100.75	15914	3932	95564.75	72484	23100.75

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Nov-21		74672.6	33602.68	23148.51	5719.67	1865.82	21070.94	160080.239		160080.2
Dec-21	110%	74672.6	33602.68	23148.51	5719.67	1865.82	21070.94	160080.239		160080.2
Jan-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Feb-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Mar-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Apr-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
May-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Jun-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Jul-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Aug-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Sep-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Oct-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Nov-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Dec-22		82139.9	36962.95	25463.36	6291.637	2052.402	23178.03	176088.2629		176088.3
Jan-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Feb-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Mar-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Apr-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
May-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Jun-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Jul-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Aug-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Sep-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Oct-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Nov-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Dec-23		90353.9	40659.24	28009.7	6920.801	2257.642	25495.84	193697.0892		193697.1
Jan-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Feb-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Mar-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Apr-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
May-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Jun-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Jul-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8

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Aug-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Sep-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Oct-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Nov-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Dec-24		99389.3	44725.17	30810.67	7612.881	2483.406	28045.42	213066.7981		213066.8
Jan-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Feb-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Mar-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Apr-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
May-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Jun-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Jul-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Aug-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Sep-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Oct-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Nov-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Dec-25		109328.2	49197.68	33891.73	8374.169	2731.747	30849.96	234373.4779		234373.5
Jan-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Feb-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Mar-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Apr-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
May-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Jun-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Jul-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Aug-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Sep-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Oct-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Nov-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Dec-26		120261.0	54117.45	37280.91	9211.586	3004.922	33934.96	257810.8257		257810.8
Jan-27		132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083		283591.9
Feb-27		132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083		283591.9
Mar-27		132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083		283591.9
Apr-27		132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083		283591.9

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May-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Jun-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Jul-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Aug-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Sep-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Oct-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Nov-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Dec-27	132287.1	59529.2	41009	10132.74	3305.414	37328.46	283591.9083	283591.9
Jan-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Feb-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Mar-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Apr-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
May-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Jun-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Jul-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Aug-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Sep-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Oct-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Nov-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Dec-28	145515.8	65482.12	45109.9	11146.02	3635.955	41061.3	311951.0991	311951.1
Jan-29	160067.4	72030.33	49620.89	12260.62	3999.551	45167.43	343146.209	343146.2
Feb-29	160067.4	72030.33	49620.89	12260.62	3999.551	45167.43	343146.209	343146.2
Mar-29	160067.4	72030.33	49620.89	12260.62	3999.551	45167.43	343146.209	343146.2
Apr-29	160067.4	72030.33	49620.89	12260.62	3999.551	45167.43	343146.209	343146.2
May-29	160067.4	72030.33	49620.89	12260.62	3999.551	45167.43	343146.209	343146.2
Total	11183478.1	8258988	3466878	856617	280132	3155727	2,39,75,397	

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13. On perusal of the Annexure-M, it is seen that the Applicant has calculated the dues till May 2029, on the presumption that he will be promoted and get the aforesaid amounts.

14. At this juncture, we would like to refer to the reply filed by the Respondent. On perusal of reply, we observe that the Respondent has enclosed the resignation letter and the acceptance of resignation was also communicated to the Applicant placed at Page 31, 32 and 34 of the reply. The scanned copy of the same are reproduced below:-

ANNEXURE - 1 (COLLY)

31

**From:** thomas purathur [mailto:thomas\_purathur@hotmail.com]  
**Sent:** 30 October 2020 15:46  
**To:** asha@amakaan.com; Kavi Goel  
**Subject:** Resignation letter

Madam

Please find attachment of my resignation letter.

Kindly clear my dues at the earliest.

Thanks and regards

Thomas



32

The managing director  
Amakon Overseas Pvt Ltd.  
NFC.

Madam,

I would like to inform you of my intention to resign  
from your company with effect from today i.e. 30-10-2020  
Kindly delete my name from all statutory books and  
banks where as a signatory.

Request you to clear my dues including  
Salary, leave encashment, gratuity and bonus for  
2019-20 & 20-21.

Thanks to Amakon for an opportunity for  
serving a long period.

Thanks

Thomas PL

P.L. THOMAS.

30-10-2020.

TRUE COPY  
BV

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34

From: Kavi Goel <kavigoel@amakaan.com>  
Sent: Monday, November 2, 2020 5:30 PM  
To: thomas\_purathur@hotmail.com <thomas\_purathur@hotmail.com>  
Cc: ashaoberoi <asha@amakaan.com>  
Subject: FW: Resignation letter

Dear Mr P.L.Thomas,

This refers to the resignation letter submitted by you through email (attached herewith).

We accept your resignation with effect from 30<sup>th</sup> October 2020 as mentioned in your resignation letter.

The Company is conducting full audit of all accounts which were under your supervision.

Thanks for sending the calculations of dues prepared by you which is also attached herewith (converted to pdf). This is based on the fact that you have been out of the office since 9<sup>th</sup> October 2020.

All dues payable to you are being computed and will be paid as due as per Company rules and law.

Regards,

Kavi Goel (General Manager)

AMAKAN Overseas (P) Limited  
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15. On conjoint reading of these documents, we observe that the applicant had sent an email on 30.10.2020 at 15:46 pm enclosing his resignation letter. We further observe that by tendering his resignation, he made a request to clear the dues including salary, leave encashment, gratuity and bonus for Financial Year 2019-20 and 2020-21 only and his resignation was accepted by the management and communicated to the Applicant vide mail dated 02.11.2020 at 5:30 pm.

16. At this juncture, we would also like to refer to the argument advanced on behalf of the Applicant. Ld. Counsel for the Applicant submitted that since the Applicant had expressed his intention to tender his resignation, therefore, it can be treated as an offer to resign and not treated as a resignation letter.

Whereas the Ld. Counsel for the Respondent/Corporate Debtor submitted that the resignation has been accepted and communicated to the Applicant, therefore, there is no relationship of employer and employee between the Applicant and the Respondent/Corporate Debtor, after the acceptance of the resignation on 02.11.2020. At this juncture, we would also like to refer to the relevant provisions of the Contract Act and the same are reproduced below:-

**Section 3 of The Indian Contract Act, 1872**

*“Communication, acceptance and revocation of proposals.—The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it. —The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.”*

**Section 4 of The Indian Contract Act, 1872**

*Communication when complete.—The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. —The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.” The communication of an acceptance is complete,— as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer. The communication of a revocation is complete,— as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge.*

**Section 5 of The Indian Contract Act, 1872**

*Revocation of Proposals and acceptance.—A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. —A proposal may be revoked at any time before the communication*



of its acceptance is complete as against the proposer, but not afterwards." An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Illustrations A proposes, by a letter sent by post, to sell his house to B. A proposes, by a letter sent by post, to sell his house to B." B accepts the proposal by a letter sent by post. B accepts the proposal by a letter sent by post." A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards." B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards."

### **Section 6 of The Indian Contract Act, 1872**

*Revocation how made.—A proposal is revoked— —A proposal is revoked—"*

*(1) by the communication of notice of revocation by the proposer to the other party;*

*(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;*

*(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or*

*(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.*

### **Section 7 of The Indian Contract Act, 1872**

*Acceptance must be absolute.—In order to convert a proposal into a promise the acceptance must— —In order to convert a proposal into a promise the acceptance must—"*

*(1) be absolute and unqualified;*

*(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal*

*shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.*

17. On conjoint reading of the provisions referred to supra, we observe, communication of offer (proposal) is complete the moment the letter is received by the person to whom it was addressed. The offer is completed on the part of person, who express his intention. When it comes to the knowledge of the person to whom it is made and the communication of an acceptance is complete as against the proposal when it is put in a course of transmission to him so as to be out of the power of the acceptor and as against the acceptor, when it comes to the knowledge of the proposal. Similarly, the communication of a revocation is complete as against the person, who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person, who makes it and as against the person to whom it is made, when it comes to his knowledge.

18. Applying the principle referred to supra, now we consider the contention of the Applicant. We observe that the day when the email was received by the Respondent/Corporate Debtor, the communication of proposal is complete against the corporate debtor and the communication of acceptance of that offer is complete as against the Applicant when it is put in a course of transmission and as against the Corporate Debtor when it comes to the knowledge of the proposal. The email dated 02.11.2020 shows that resignation of the Applicant was accepted and it was communicated to the Applicant through mail.

19. The Applicant has not produced any document to show that before the receiving of the mail dated 02.11.2020, he had made any intention to withdraw his offer to resign. Hence, in our considered view, the resignation of the applicant was accepted, and acceptance was communicated to the applicant vide email dated 02.11.2020. We further observe that in Part-IV of the application, the Applicant has challenged the acceptance of the resignation and also calculated the amount which, he would have got, had he continued in the service till his retirement. In our considered view, these are the questions, which are to be decided by competent Court having jurisdiction to examine these issues, after considering the evidence led by the parties.

20. The Applicant himself has raised a dispute about his employment in the Respondent/Corporate Debtor's office. Apart from that, we also notice that the Applicant has claimed the amount on the basis of Annexure-M, and as per this annexure, the amount is due from July, 2005. The further claim of the Applicant is that it is a continuing default, therefore, at this juncture, we would like to refer to Section 3(12) of the IBC and the same is reproduced below:-

### **Section 3: Definitions**




...

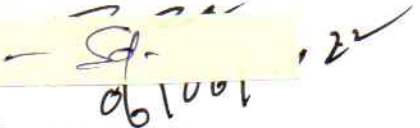
(12) "**default**" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not <sup>1</sup>[paid] by the debtor or the corporate debtor, as the case may be;

...

21. Mere plain reading of the provision shows that the default occurs when whole or any part of instalment of debt has become due and payable and is not paid by the Debtor or the Corporate Debtor, as the case may be. If we accept the contention of the Applicant that the default has occurred in the month of July, 2005 then we are of the considered view, the application filed by the Applicant is also barred by limitation, as there is no document to show that any acknowledgment was made within three years from the date, when the default has occurred. Apart from that, we also observe that the Applicant has failed to produce any document to show that the amount which he has referred to in Annexure-M, the applicant is entitled to get in the absence of any document. Hence, we are unable to accept the contention of the Applicant that these amounts are due and payable. The amount mentioned in Annexure-M has also been challenged by the Respondent by filing the reply to the demand notice as well as by filing the reply.

22. In sequel to the above, we are of the considered view, the existence of relationship between the Applicant and the Corporate Debtor as an employee and employer is in dispute, the amount claimed by the Applicant, even after the acceptance of resignation is also in dispute and the acceptance of resignation is also challenged by the Applicant. Therefore, these issues are to be decided by the Regular Court having jurisdiction to try such issues. Hence the present application is not maintainable. Accordingly, the same is **dismissed being not maintainable.**

  
(L. N. Gupta)  
Member (Technical)

  
(Abni Ranjan Kumar Sinha)  
Member (Judicial)