

FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-597/(ND)/2018

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

In the matter of:

Gursimran Singh Lamba.
H.No.E-28, Bali Nagar,
New Delhi-110015

...Applicant

Versus

M/s Satkar Terminals Ltd.
Registered office at:
B-72, 2nd Floor Rohit House,
Vishwakarma Colony, Tughlakabad,
M. B. Road, South Delhi,
New Delhi-110044

...Respondent



Coram:

DR. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

Counsel for Applicant: Pankaj Jain, Sagar Bansal, " " , Advocates
Counsel for Respondent: Vaibhav Dabas, Ashim Vachher. Advocates



(Handwritten signature)

ORDER

Per Dr. V. K. Subburaj, Member (Technical)

Date:03.09.2019

1. This is an application filed by Shri Gursimran Singh Lamba ("the Applicant") seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of M/s Satkar Terminals Ltd. ("the Respondent") for the alleged default on the part of the Respondent in not settling the salary component of Rs. 8,30,480/- for the services rendered by him. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant was employed by the Respondent company. The Respondent owes Rs. 8,30,480/- as salary to the Applicant.
- ii. The Applicant was entitled to monthly salary of Rs. 1,50,000/- and received part salary of Rs. 1,05,000/- for the month of June 2017 and hence a balance of Rs. 45,000/- for the month of June 2017 was due and receivable. Further full salary of July 2017 to September 2017 aggregating to Rs. 4,50,000/- and salary of October 2017 amounting to Rs. 1,35,480/- was due and receivable from the Respondent.
- iii. The Respondent has not deposited the deducted TDS (for the months June 2016 to March 2017) aggregating Rs. 2,00,000/-



[Handwritten Signature]

- (i.e. Rs. 20,000/- per month) to the Income Tax Department on the Applicant's behalf.
- iv. The Applicant has deposited the tax amounting to Rs. 2,00,000/- for tax on his salary with the Income Tax Department (corresponding to TDS for the months of June 2016 to March 2017).
 - v. The Applicant has issued and served notice of demand dated 10.04.2018 on the Respondent under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
 - vi. The Applicant has received the reply dated 19.04.2018 to the demand notice dated 10.04.2018 from the Respondent on 20.04.2018 but till date the Applicant has not received any payment against the outstanding amount from the Respondent.
 - vii. In response to the reply dated 19.04.2018 it is stated that the Applicant is an ordinary employee of the Respondent and was holding office as director merely to safeguard its investment and loans to the Respondent. The Applicant is a minority shareholder of the Respondent, holding merely 2% stake. The Applicant states that he has not given any consent to waive his salary. Further the holding of any Board meeting as alleged by the Respondent is also denied and the Applicant was never



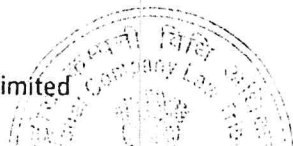
M. Singh

served any notice of the Board meeting for waiver of his salary.

viii. The payments made to the Applicant by the Respondent and its associates during 2017-18 is reflected as payment towards salary in the bank statements of the Applicant. The contents of the reply are baseless and frivolous.

2. Consequent to the issue of notice to the Respondent by this Tribunal, the Respondent recorded its presence through the counsel. Despite several opportunities the Respondent failed to file a reply, although documents relating to board meeting dated 09.11.2016 were filed by it on a specific direction by the Tribunal vide order dated 13.11.2018.

3. The Tribunal heard the oral arguments of the parties on maintainability of the application. The issue to be decided was whether the Applicant can maintain this application on the claim that he is an operational creditor to whom operational debt is owed by the Respondent. The Applicant relied on the judgment given by the Hon'ble High Court of Calcutta in *Sajid Mowjee vs. Income Tax Officer* and Section 197(6) of the Companies Act, 2013 to show that he was receiving monthly salary for the services rendered by him to the Respondent company. In *Sajid Mowjee* it was held that there can



Muller

be a relationship of employer and employee between the company and a director, depending on the facts of the particular case. Section 197(6) of the Companies Act, 2013 states that a director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company.

4. Form DIR-12 filed by the Applicant shows that he was appointed the executive director of the Respondent company on 25.07.2014. An appointment letter to the same effect was issued by the Respondent company on 25.07.2014 which also stated that mutually agreed remuneration will be paid to the Applicant. Form DIR-11 shows that the Applicant left the directorship with effect from 28.10.2017. A resignation letter dated 28.10.2017 was also submitted by the Applicant to the Respondent. The Applicant has also filed Form No. 16 which shows that the Respondent deposited TDS for the salary paid to the Applicant. On the basis of the above material produced by the Applicant the Tribunal was satisfied about the maintainability of the application and the proceedings were continued.
5. The counsel for the Respondent argued that no remuneration was owed to the Applicant as the Applicant himself, in the capacity of a director, had waived the payment of the same vide board resolution



dated 09.11.2016 which was passed in the board meeting of the Respondent company held on 09.11.2016. The resolution dated 09.11.2016 stated that considering the financial position of the Respondent company the directors shall not be paid any remuneration and compensation with effect from 01.11.2016 till the time the position of the Respondent company improves. This was strongly objected to by the Applicant on the grounds that he was not present during the meeting and was not a party to such a resolution.

6. A perusal of the minutes of the meeting ("MoM") filed by the Respondent relating to the said Board Meeting indicates that the said decision was taken as agenda item no.6. It is very interesting to note that the serial numbering of the items in the MoM is jumbled and item no.5 is found on pages 3 and 4, both. It is also interesting to note that some of the text on page no.4 is printed upside-down. In the absence of production of the original MoM for the perusal of the Tribunal, the reliance cannot be placed by this Tribunal on the MoM filed. Further, the Applicant has stated that it leads to the suspicion that the page no.4 is inserted by the Respondent and it is an afterthought.



7. The records submitted by the Applicant indicate that the remuneration was paid to the Applicant till June, 2017 and the default is from June 2017 partly and for subsequent months. Even assuming that a decision was taken on 09.11.2016 regarding the non-payment of remuneration to the directors considering the poor financial position of the company, the company would have implemented the decision with immediate effect had there been an actual paucity of funds and should not continue to pay the remuneration till June, 2017 i.e. into the next year. In light of the inconsistency in the Respondent's claims this Tribunal is not in a position to rely upon the documents submitted by the Respondent. Since the Applicant has established the existence of debt and the default on the part of the Respondent, this Tribunal initiates CIRP on the Respondent.

8. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



- (b) transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.
- (2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



FREE OF COST COPY

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

8. The Applicant has proposed the name of Mr. Gyaneshwar Sahai for appointment as the interim resolution professional and is being confirmed by this Bench as the IRP in the present matter. He shall take such further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

9. Renotify this case for report of the IRP on 14.10.2019.

-Sd/-

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd/-

(Dr. P.S.N. PRASAD)
MEMBER (JUDICIAL)

Dcepak