



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-302
IB-630/ND/2022

IN THE MATTER OF:

Siddharth Sharma And Ors.

....Applicant

Vs.

Chikai Global P. Ltd.

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 19.10.2023

CORAM:

SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets. IB-630/ND/2022 stands **dismissed**.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

CP IB NO. 630/(ND)/2022

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

IN THE MATTER OF:

SIDDHARTH SHARMA & ORS.

C-172, Second Floor, South City-2
Sohna Road, Gurgaon
Haryana

...Operational Creditor(s)

Versus

CHIKAI GLOBAL P. LTD.

B-3/115, 1st Floor,
Janakpuri, New Delhi,
Delhi-110058

...Corporate Debtor

Order Delivered on: 19.10.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Ms. Sharanya Bhatnagar, Ms. Kritika Khanna, Adv.

For the Respondent: Adv. Sandeep Bisht



O R D E R

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

1. This is a Company Application jointly filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘the Code’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Siddharth Sharma, (**‘Operational Creditor’**) on behalf of 28 other claimants as well, duly authorized vide Letter of Authority for initiation of Corporate Insolvency Resolution Process (**‘CIRP’**) against **M/s Chikai Global Private Limited (‘Corporate Debtor’)**.
2. **Mr. Siddharth Sharma (‘Operational Creditor’)** is having his office at C-172, Second Floor, South City-2, Sohna Road, Gurgaon, Haryana. **M/s Chikai Global Private Limited (‘Corporate Debtor’)** is a company registered under the Companies Act, 1956 [CIN- U74999DL2018FTC341835], having its registered office at B-3/115, 1st Floor, Janakpuri, New Delhi, Delhi-110058. The Corporate Debtor has Authorized Share Capital of Rs. 10,00,000 (Ten Lacs) and Paid-Up Share Capital of Rs 10,00,000 (Ten Lacs).
3. The present Application was filed on 21.07.2022 before this Adjudicating Authority by Mr. Siddharth Sharma, (the Operational Creditor), duly authorized to initiate Corporate Insolvency Resolution Process (**‘CIRP’**) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**). The total amount claimed is Rs. 1,66,72,743 (Rupees One Crore Sixty-Six Lacs Seventy-Two Thousand Seven Hundred and Forty-Three). The **date of default** is stated to be 31.10.2021.
4. **Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.**
 - a) That the present application is filed with respect to the unpaid employment dues, consisting of the entirety of salaries and



bonus/incentives/ variable remuneration of the 29 former employees of the Corporate Debtor which is admitted by the Corporate Debtor, however, withheld from April 2021 till date.

- b) That in April 2021, the Corporate Debtor formalized a policy in the organization, of withholding 50% of the employee remuneration on the pretext of financial constraints. For the senior employees (example CFO/CRO), 100% of their remuneration was withheld.
- c) That the Corporate Debtor also failed to make statutory contributions and deductions towards TDS and PF.
- d) That on 06.08.2022, vide a company-wide policy email, the Corporate Debtor gave a categorical assurance that 'all outstanding payments' would be cleared by end of October of 2022. However, on the failure of the Corporate Debtor to clear the same, the common date of default of all the employees came to be 31.10.2022.
- e) That on the failure of the Corporate Debtor to clear the outstanding dues, the Operational Creditors issued a Demand Notice dated 09.06.2022 but the same returned unserved. Therefore, the said demand notice was sent to the Corporate Debtor via email on 18.06.2022, which was replied to by the Corporate Debtor vide a Letter dated 04.07.2022.
- f) That the Corporate Debtor had acknowledged the Variable Pay, incentives, bonus and other benefits accrued therein, which is evident from the multiple communications as mentioned under Annexure 6 of the present application, therefore, the Corporate Debtor is estopped from asserting that such variable pay, incentives, bonus and other benefits are wrongfully claimed.
- g) That the demand notice dated 09.06.2022 contains the total amount owed to the 29 employees, which is exceeding Rs. 1 crore, jointly, calculating only the amounts as admitted by the Corporate Debtor in its FnF Slips, or its email communications issued to the employees or



in their own Reply to the instant Petition. Therefore, the Operational Creditors has filed the present application.

5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a) That the Corporate Debtor is into the business of providing accommodation services to the students intending to go abroad for studies.
- b) That the ex-employees/Operational Creditors were governed by the terms and conditions of the offer letter and their respective employment agreement and such an agreement mentions about the circumstances under which the performance linked incentive (PLI)/variable pay/bonus etc. would be payable.
- c) That no employee can claim variable pay or bonus or PLI or annual compensation as a matter of right as the same are based on 3 parameters i.e., the performance of the employee, the performance of the team and the company's performance.
- d) That the Corporate Debtor had made the ex-employees aware of the fact that the company is undergoing financial losses since covid time and is making efforts to bring-in investments and thereafter, issued the F&Fs. Therefore, the amount related to performance was conditional.
- e) That the Operational Creditors have wrongly clubbed all the purported individual claims of 29 ex-employees to cross the threshold mark of Rs. 1 crore as required by Section 4 of the Code. If the performance linked amount is reduced, the claim amount comes out to INR 76,60,087/- (Rupees Seventy-Six Lacs Sixty Thousand Eighty-Seven), which is not disputed by the Corporate Debtor.
- f) That some of the ex-employees have failed to fulfil the exit formalities and failed to handover the assets back to the Corporate Debtor. That some of the ex-employees have failed to annex any document in



support of their claim. Therefore, such ex-employees have no right to claim anything from the Corporate Debtor.

Analysis & Findings

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by both the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 09.06.2022 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 1,66,72,743 (Rupees One Crore Sixty-Six Lacs Seventy-Two Thousand Seven Hundred and Forty-Three).
8. In the present case, there are two issues that needs to be adjudicated by us, i.e.,
 - (i) Whether a joint application under Section 9 of the I & B Code, is permitted to be filed by the several workmen/employees claiming to be the Operational Creditors, when each of them is having claim against the same Corporate Debtor?
 - (ii) In cases, where joint application under Section 9 of the Code, is permitted to be filed by the several workmen/employees claiming to be the Operational Creditors, whether the pecuniary threshold of Rs. 1



crore is mandatorily required to be met by each of them individually or jointly?

9. As to the Issue No. 1, the present case is the one, where a joint application is filed by the 29 ex-employees of the Corporate Debtor. It is to be noted that the term ‘Operational Debt’ is defined under Section 5(21) of the Code as: ‘Operational Debt’ means a claim in respect of the provision of goods or services **including employment** or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, or any State Government, or any other local authority.’ Further, under the Code, the manner of initiating the CIRP under Section 9 is provided under Form 5. The note to Form 5 is reproduced hereinafter as: “Note: Where workman/ employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorized for the purpose.”
10. Having considered the abovementioned provisions of the Code, we are of the view that the Code permits the joint application to be filed by the workmen/employees, where each of them is claiming to be the Operational Creditor. The Applicants in the present case have also relied on the decision of the Hon’ble Supreme Court in the case of **JK Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Company [(2019) 11 SCC 332]**, whereby, the Hon’ble Supreme Court has held that:

“It is clear that an ‘Operational debt,’ meaning a claim in respect of employment, could certainly be made by a person duly authorized on behalf of a workman. Rule 6 Form 5 of the IBC Rules, 2016 also recognizes the fact that claims may be made not only in an individual capacity, but also conjointly.”



It is pertinent to mention here that the issue in **JK Jute Mill** was altogether different from that in present case. The issue in JK Jute Mill was that whether a Trade Union could be said to be an Operational Creditor? However, no such issue of Trade Union exists in the present case. Therefore, considering the applicable provisions of the Code and the decision of the Hon'ble Supreme Court in the **JK Jute Mill (supra)**, we are of the view that as mentioned in issue no. 1, a joint application by ex-employees under Section 9 of the Code is permitted to be filed, however, the said provision is not to be read in isolation and the other essential conditions, as required by the Code, shall also be mandatorily required to be fulfilled in support of the claim.

11. As to the Issue No. 2, the reference is taken from the decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the case of **Mr. Suresh Narayan Singh V. Tayo Rolls Limited [Company Appeal (AT) Ins. No.112 of 2018]**, wherein, the Hon'ble NCLAT has held that:

“If the application is maintainable by one of the workmen, in that capacity, it should have been treated to be an application of Operational Creditor and others could have been asked to file their respective claim before the Resolution Professional. Only if in an individual claim of Operational Creditor the amount of debt is less than one lakh rupees, it can be rejected being not maintainable.”

12. Further, in the case of **Sadashiv Nomaya Nayak & Ors. V. Gammon Engineers & Contractors Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 218 of 2023]**, the Hon'ble NCLAT referred **Mr. Suresh Narayan Singh (supra)** and upheld the decision of the Adjudicating Authority (AA) in which, the AA rejected the application filed under Section 9 on the ground that the Appellants have not individually crossed the threshold of Rs. 1 Crore as provided under Section 4 of the Code. The appeal was preferred in the Hon'ble



Supreme Court against the order of the Hon'ble NCLAT upholding the decision of the AA, wherein, the Hon'ble Supreme Court vide its order dated 15.05.2023 dismissed the appeal and confirmed the decision of the Hon'ble NCLAT. The relevant extract of the decision laid down in **Sadashiv Nomaya Nayak (supra)** is reproduced hereunder: -

“9. In support of his submissions, he has relied upon a decision of this Tribunal in the case of Mr. Suresh Narayan Singh Vs. Tayo Rolls Limited, Company Appeal (AT) Ins. No. 112 of 2018, to contend that issue involved in the present case has been answered in manner that “only if in an individual claim of ‘Operational Creditor’ the amount of debt is less than one lakh rupees, it can be rejected being not maintainable”. It is further submitted that in that case, all the employees/workmen had the claim of Rs. 1 lakh which was the threshold amount at that time therefore the application was held to be maintainable.

10. We have heard Counsel for the parties and after perusal of the record are of the considered view that there is no merit in the present appeal because the Judgment relied upon by Counsel for the Appellant in the case of JK Jute Mill (supra) does not apply to the facts and circumstances of the present case because the question which has been answered in the JK Jute Mill is altogether different from the issue involved in the present appeal because the issue here in this case is as to whether all the workmen can together by adding their amount which is being claimed against the Corporate Debtor can cross the threshold set up under Section 4 of the Code. In our considered opinion, the Judgement relied upon by Counsel for the Respondent in the case of Mr. Suresh Narayan Singh (supra) answers the question.”



13. Therefore, we are of the view that a joint application by multiple Operational Creditors is not barred to be filed, however, such an application shall only be admitted when each of the Operational Creditor fulfils the threshold limit of Rs. 1 Crore (as required by Section 4 of the Code) in its individual capacity. We are of the view that, in the present case, each of the operational creditors failed to meet the pecuniary threshold of Rs. 1 crore in their individual capacity. Hence, the present petition is not maintainable and is liable to be dismissed.
14. Accordingly, the application bearing CP (IB) No. 630/ND/2022 filed by, Mr. Siddharth Sharma & Ors. ('Operational Creditors') under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s. Chikai Global Private Limited ('Corporate Debtor') is not maintainable and therefore, the same stands **dismissed**. The petitioner can prosecute his claims before the courts/other legal forums, as per law.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)