IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

C.P. (IB) 1075/MB/2021

Under section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Vinod Kanojia & Ors.

Having currently residing at B68,
Bhagya Apartment, Bhardwadi,
Mumbai 400058; and

Having permanent address at 101/1,
Saikrupa Building, Saat Rasta,
Jacob Circle, Mumbai 400011

….. Petitioner/ Operational Creditor

Versus

Business Broadcast News Private Limited

Having its address at Manek Mahal, 6th
Floor, 90 Veer Nariman Road,
Mumbai – 400020 Maharashtra, India

….. Respondent/Corporate Debtor

Order Delivered on :- 22/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Chirag M. Shah

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Vinod Kanojia & Ors.** (hereinafter called as "Financial Creditor") praying, inter-alia, for initiation of Corporate Insolvency Resolution Process (CIRP) against **Business Broadcast News Private Limited** (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Operational Debt of Rs. 2,09,84,154 (Rupees Two Crores Nine Lakhs Eighty Four Thousand One Hundred and Fifty Four Only)

The submissions of the Operational Creditor are as follows:

2. It is submitted that vide various Employment Contracts signed and executed between the Corporate Debtor i.e. Business Broadcast News Private Limited ("BBNPL") and the Operational Creditors, BBNPL employed the

Operational Creditors on different dates since the year of 1992 until 2018, for various posts at Business Television India ("BTVI").

3. The Operational Creditors were shocked to receive an email dated 31 August 2019 from the Head of Human Resources of BBNPL, regarding the abrupt discontinuation of its business of operating the channel. There was no period of notice given to the Operational Creditors, who suddenly found themselves without a source of livelihood. This is against the very spirit of the contract and also in blatant violation and contravention of their duly executed employment contracts.

4. It was only on 4 December 2020 that Mr. Anil Kumar of BBNPL, via an email, informed the Operational Creditors that the ownership control of BBNPL had been transferred to The New Paper ('TNP') Group around 28 August 2020.

5. Throughout this period, BBNPL's representatives kept on falsely assuring the Operational Creditors that their salaries would be paid and they were given false assurances at every step with the intention of taking advantage of their position.

6. It is further submitted that 35 of the Operational Creditors are also entitled to payment of gratuity, being a basic employment benefit, since they were in service with BBNPL for a period of more than 5 years. However, until date, BBNPL has not paid the Operational Creditors their legally entitled dues.

7. The Operational Creditors had accordingly, vide their applications for gratuity for 28 employees dated 22 March 2021 and remaining 7 employees

dated 14 July 2021, called upon BBNPL to pay them their statutorily entitled pending gratuity amounts. However, BBNPL has maliciously and blatantly ignored their notice and repeated requests to pay their gratuity and have not responded to their notice till date.

8. On 7 July 2021, the Operational Creditors collectively, through their Advocates, served a Demand Notice at the registered address of BBNPL by RPAD under the provisions of Section 8 of Insolvency and Bankruptcy Code, 2016. Further, the Demand Notice was served upon the registered email address of BBNPL, as per the records available on the website of Ministry of Corporate Affairs.

9. The Operational Creditors have been collectively following up on their dues since September 2019 but to no avail. It is in these circumstances that the total amount of Rs. 2,09,84,154 (Rupees Two Crores Nine Lakhs Eighty Four Thousand One Hundred and Fifty Four Only) has become due to the Operational Creditors. along with interest at the rate of 18% accruing until actual realization.

10. In the view of the above facts and circumstances, the Applicant submits that the Corporate Debtor is unable to pay its debts and, therefore, in these premises, it is just and equitable that Corporate Insolvency Resolution Process may be initiated against the Corporate Debtor under the orders and directions of this Hon'ble Tribunal in order to do substantive justice to the operational creditors of the Corporate Debtor Company. Hence the present Petition.

11. Upon notice, initially Mr. Amit Tungare, Advocate appeared on behalf of the Corporate Debtor. It is seen from the record that no reply has been filed on behalf of the Corporate Debtor with the result that the matter was proceeded ex-parte vide order dated 20.07.2022

Analysis and Findings:

12. We have heard the Counsel for the Petitioner and gone through the record.

13. The present Petition under Section 9 of the IB Code, 2016 has been filed jointly by as many as 36 petitioners through their authorized representative, Mr. Vinod Kanojia. The total claim amount mentioned in para IV of the Petition is 2,09,84,154/- (Rupees Two Crores Nine Lakhs Eighty Four Thousand One Hundred and fifty Four Only). The Petitioners are stated to be the employees of the Corporate Debtor and the claim amount is the pending salaries and other emoluments of the Petitioner. Now, the question arises whether the Petitioners can jointly maintain the present Petition under 9 of the IB Code, 2016 or not.

14. As per the detail of the operational debt given, no breakup of the claim of each of the Petitioner has been given and a total sum of Rs. 2,09,84,154/- has been claimed and it has only been stated that the amount is due being gratuity of 1,19,55,784/- in respect of 35 employees and Rs. 90.28 lakhs on account of two months salaries of 34 employees. Therefore, it can easily be made out that the individual claim of each employee is less than the threshold limit of Rs. 1 crore, considering the fact that the present Petition was filed on 13.10.2021 when the threshold limit stood enhanced from Rs. 1 lakh to Rs. 1 crore. ***In Sadashiv Nomaya Nayak & Ors. Vs. Gammon Engineers Contractors***

Private Limited, ***Company Appeal (AT) (Insolvency) No. 218 of 2023***, it was held by the Hon'ble NCLAT that if the individual claim of each of the Operational Creditors is less than the threshold limit, the Petition is liable to be dismissed being non-maintainable. In this very case a reference has also been made to the law laid down in the matter of ***Mr. Suresh Narayan Singh Vs. Tayo Rolls Limited, Company Appeal (AT) (Insolvency) No. 112 of 2018.*** It is, therefore, evident that the Operational Creditors can file a Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 jointly but each of Operational Creditor has to meet the threshold limit of Rs. 1 crore failing which the Petition cannot be maintained.

15. In the light of the aforesaid discussion and the law laid down in the afore-cited cases, the Present Petition jointly filed by 36 Petitioners is liable to be dismissed on the ground that the individual claim of each employee does not meet the threshold limit of Rs. 1 crore each. Hence, the present **Company Petition is dismissed** under Section 9 of Insolvency and Bankruptcy Code, 2016. It is ordered accordingly. File be closed and consigned to records.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)