IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.P. (IB) 195/MB/2019

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

In the matter of

Pratiksh Pramod Rai

R/o S-60, First floor, Greater Kailash Part-1, New Delhi – 110 048

.....Petitioner

versus

Mylaw Learning Resources Pvt. Ltd.

Registered Office at: D Wing, Chanakya Complex, Mahavir Nagar, Link Road, Kandivali (W), Mumbai- 400 067

.....Respondent

Order Pronounced on: 16.06.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Petitioner: Mr. Ashish Pyasi

For the Respondent: Ms. Sayali Petiwale

Per: Shri. Shyam Babu Gautam, Member

ORDER

1. This Company Petition is filed by Mr. Pratiksh Pramod Rai (hereinafter called as "the petitioner" or as "operational creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP), against Mylaw Learning Resources Pvt. Ltd. (hereinafter called as "the respondent" or "corporate debtor") by invoking the provisions of sections 8 & 9 of Insolvency and Bankruptcy Code (hereinafter called as "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petitioner herein was an employee of the respondent and had started working initially as a consultant and later engaged as a full-time employee with the respondent. The petitioner was duly appointed with the respondent vide an Employee Agreement dated 01.04.2016. This agreement was entered into between the petitioner and Rainmaker Learning Resources Pvt. Ltd. whose name was changed to Mylaw Learning Resources Pvt. Ltd. w.e.f. 10.08.2016.

3. The petitioner herein has submitted that the operational debt is to a tune of Rs.22,69,127/- (consisting of Rs.20,19,970/- as principal dues in the form of unpaid accumulated salaries as on 31.03.2018 plus interest on delayed payment @12% p.a.). The petitioner submits that an amount of Rs. 20,19,970/- has been acknowledged by the respondent vide its email dated 30.03.2018 and also attached ledgers for the past financial years showing that these amounts have been reflected in the books of the respondent.

4. The petitioner has submitted that the respondent, since the time it has entered into the Employee Agreement with the petitioner, has repeatedly delayed and defaulted in making salary payments during most of the months of the employment for over the last 3

financial years even when the petitioner has time and again made requests to the respondent to clear the outstanding dues. The petitioner submitted that the first delay on the part of the respondent was on 07.07.2015 when the salary for the month of June 2015 was delayed by the respondent and later paid only partially. Thereafter, the default continued from month to month as salary payments for the period from July 2015 to March 2018 were either not paid at all or partially paid in an irregular and unsystematic manner. The petitioner submitted that the respondent has also improperly terminated the Employment Agreement with the petitioner on 03.04.2018 with immediate effect through a letter drafted and sent on a law firm's letter head claiming to be acting on the instructions of the respondent accompanied with credit of payment of one month's salary after deduction of TDS and PF contributions (RS.1,21,340) in lieu of notice period in the salary bank account of the petitioner through internet banking fund transfer.

5. Thereafter, the petitioner had issued a demand notice dated 13.04.2018 as per Section 8 of the Code demanding the operational debt of Rs.22,69,127/-. The petitioner submitted the respondent replied to this notice on 23.04.2018 wherein the it has raised frivolous and illusionary dispute, without any documents/records to substantiate the same and that this dispute has been raised by the respondent for the first time and therefore, is a feeble dispute in terms of settled position of law. Later, on 02.05.2018, the respondent addressed an email to the petitioner proposing amicable settlement between the parties and on 18.05.2018, the petitioner received a letter from the advocates of the respondent seeking amicable resolution.

6. The petitioner therefore, submitted that he being an employee of the respondent is entitled to the outstanding operational debt and

the substantial part of which has also been specifically admitted by the respondent. However, despite numerous requests and reminders from the petitioner, the respondent has failed to make payments towards outstanding operational debt. Also, the petitioner is unaware if the respondent has also defaulted in making payment of PF/TDS to respective government authorities in respect of the amount of outstanding dues.

7. The respondent on the other hand has denied all the contentions and averments raised by the petitioner and stated that the present petition and the events and circumstances surrounding it have been a sheer attempt to disrupt the respondent company's business. The respondent contended that this petition has been filed with a sole intent to scuttle the Respondent company's business efforts and degrade the reputation of the Respondent company, its employees, consultants, attorneys, etc.

8. The respondent submitted that not only during the course of the current proceedings, but also prior to the filing of this petition, the respondent was always willing to amicably settle the issues with the petitioner which has also been submitted before this Tribunal. The petitioner had even accepted this offer, and expressed his intent to formalize the settlement vide a written agreement. Various emails were exchanged between the parties in this regard, and the respondent had tendered a cheque for INR 20,19,970/- to the petitioner on 15.07.2019 during the course of the hearing. However, subsequently, the Applicant refused to accept the cheque and enter into any agreement with the respondent, and for this reason the settlement talks did not materialize. The respondent has annexed a copy of this cheque for the principal amount of the petitioner's claim, which was offered by the respondent.

9. The respondent submitted that even after this petitioner was reserved by this Tribunal, the respondent and the counsel for the petitioner made positive efforts at their ends to reach to an amicable settlement. To this effect, a video conference meeting was held, and communications in pursuance to the meeting have been exchanged between the respondent and counsel for the petitioner. The parties agreed on the total amount towards settlement for the matter (INR 16,00,000) and to this effect and the respondent agreed to hand over post-dated cheques for April, 2021 and May, 2021 for this amount immediately upon signing of a mutually acceptable settlement agreement. However, these settlement talks have since not materialized into tangible terms/settlement agreement *solely* because the petitioner did not agree to the payment terms or allow for a settlement agreement to be drawn up. It is evident from the conduct of the petitioner that this petition has been filed by him only with an objective to harass the respondent company and individuals associated with it as he has no intention to settle the matter as he refused to formalize the terms and bring an end to the lis between the parties.

10. The respondent quoted ***Swiss Ribbons Pvt. Ltd. & Anr. v Union of India and Ors.- MANU/SC/0079/2019*** wherein Hon'ble Supreme Court stated that a settlement can be entered into between the corporate debtor and the creditor at any stage before a committee of creditors is constituted under the Insolvency and Bankruptcy Code, 2016.

11. The respondent submitted that it is the petitioner who has consistently refused to enter into settlement, and end the *lis* between the parties right from the start and even before this Tribunal. The Respondent company only wishes to bring an end to the litigation, in the interest of its continuing viable business,

and end the *lis inter se* between the parties, vide a formalized settlement agreement. In these circumstances, the respondent prayed that this Tribunal should reject the present application and not allow the future of the Respondent company to be jeopardized because of the mala fide actions of the petitioner.

FINDINGS

12. We have heard both the parties at length. We have also perused all the documents submitted by them. This matter has been posted for hearing before us on various dates. The corporate debtor has opposed the admission of this petition and prayed for its dismissal on the ground that it is ready and willing to settle this matter with the petitioner. The principal amount as claimed by the petitioner has been acknowledged by the respondent before us and has shown readiness to pay the same. Regarding the interest as claimed by the petitioner, the respondent has raised objection that there was no clause for interest in the agreement entered into between the parties.

13. It is clear from the facts of the case that in July, 2019 the petitioner has been handed over with a cheque for the principal amount of his claim but the petitioner had rejected the same. Further, he has also refused to accept settlement offered by the respondent. The respondent has time and again acknowledged his liability and is willing to pay the entire principal amount. Hence, it is evident that the petitioner is not interested in resolving the dispute or entering into any form of a settlement agreement in the present scenario. This conduct of the petitioner puts question on the bonafides of this petition. We believe that the petitioner has been trying to utilize this forum as a 'recovery mechanism' and

proceed with protracted litigation to take revenge against the respondent as he was removed from the service.

14. Even though there is a debt and default on the part of the respondent, we believe that it is not the respondent who is responsible for filing or the pendency of this petition. The respondent has time and again stated that he is willing to pay the principal amount only as the amount of interest has not been mentioned in the agreement. Here, we believe that it is pertinent to take into consideration the financial position of the respondent and the repercussions if the respondent company is admitted into CIRP more so for a small claim of 22 and odd lakhs. There has been no argument/document shown by the petitioner to prove that the respondent company is not financially sound and therefore, should be admitted into CIRP. The objective of the Code is very clear to aid resolution of the organizations which are insolvent i.e. unable to pay their debts and are consistently defaulting. But in the present scenario, there is nothing on record to prove that the respondent is insolvent. On the contrary, the respondent is still willing to pay the principal amount. The respondent denies to pay the interest because of absence of any clause relating to the interest in the said agreement between the parties.

    Neither the respondent nor this Bench can deny the fact that there has been debt and default on the part of the respondent in making payment to the petitioner, but we believe that initiating CIRP against a solvent company, as in this case is the respondent, will prejudice the company and the people associated with it and this is clearly not the objective of the Code to put a solvent company under CIRP.

15. We would like to further clarify that, IBC is not intended to be a recovery forum. Here, we would like to refer to the case of ***White***

'N' White Minerals Pvt. Ltd. v. Hilltop Concrete Pvt. Ltd. - MANU/ND/7446/2019 wherein the NCLT, Ahmedabad has held that:

"16. It is evident that the Corporate Debtor has agreed to clear the principal outstanding amount and has tried to settle the issue amicably but the applicant was reluctant. That, it will be open to the applicant to move before a court of competent jurisdiction for realisation/ recovery of their dues instead of initiating resolution process which will have adverse effect on a going concern.

That, keeping in mind the basic objective of the IB Code as also considering the fact that the respondent company is a going company and initiation of insolvency process will adversely affect livelihood of number of employees and their family, in the interest of natural justice, the Adjudicating Authority cannot admit the application preferred by the appellant company."

16. That further, we would like to refer to the Order in the matter of ***SBF Pharma v. Gujarat Liqui Pharmacaps Pvt. Ltd.*** – ***MANU/NC/3404/2019*** passed by the NCLT, Ahmedabad wherein it rejected the application for insolvency and held that the IBC Code prohibits and discourages recovery in several ways. This order was subsequently affirmed by the National Company Law Appellate Tribunal, New Delhi in ***SBF Pharma v. Gujarat Liqui Pharmacaps Pvt. Ltd. – 2019 SCCOnLine NCLAT 1440.***

17. Taking all the above facts, circumstances of the case and observations made, we feel that it will be prejudice to the respondent if this matter is admitted and CIRP is initiated against the respondent. Also, this is not a Section 7 petition wherein only debt and default is to be established. Even though there is debt and default in the present matter on the part of the respondent, we feel that this is not the correct forum for the petitioner to

recover the said amount from the respondent company when the company is completely solvent.

18. In the light of the above discussion and observation, this petition stands dismissed. All the pending applications herein, if any, also stands disposed of. No costs.

19. The Registry is hereby directed to communicate this order to both the parties immediately.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)