



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 325/Chd/Hry/2022
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Anand Prakash Garg
R/o House # 36A, Sector 21C,
Faridabad- 121001

...Petitioner-Operational Creditor

Vs.

Knorr-Bremse India Private Limited
Through its Director, with its registered
office at: 51/4, Delhi-Mathura Road,
Village & P.O. Baghola Palwal,
Haryana-121102

...Respondent-Corporate Debtor

Order delivered on: 19.04.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : 1). Mr. Anand Chibbar, Senior Advocate
2). Mr. Vaibhav Sahni, Advocate
3). Ms. Ananya Ghosh, Advocate
4). Mr. Doel Bose, Advocate

For the Respondent-
Corporate Debtor : 1). Ms. Munisha Gandhi, Senior Advocate
2). Mr. Prashant Kumar Kapila, Advocate
3). Mr. Arnab Ray, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by Anand Prakash Garg (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to



initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Knorr-Bremse India Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Knorr-Bremse India Private Limited, is a Company incorporated on 05.11.1993 under the provisions of the Companies Act, 1956 with CIN No. U35203HR1993PTC034722 with its registered office at 51/4, Delhi-Mathura Road, Village & P.O. Baghola Palwal, Haryana-121102. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A1.

3. The facts of the case, briefly, as stated in the petition, are that Corporate Debtor is engaged in manufacturing and supplying air brake systems, HVAC and Door systems for various road vehicles. The operational creditor is an Indian citizen employed as Managing Director of the Company from 01.08.2008 to 31.12.2020, and his terms of employment were governed by Employment Agreement dated 08.07.2009 under which he was entitled to various payments and benefits. The employee and company separated with effect from 31.12.2020 through a termination notice dated 30.12.2020 "without cause", and the employee had to serve a 12-month notice period. The employee was entitled to receive a full and final settlement of Rs. 6,62,60,076/- towards gratuity, superannuation benefits, performance bonus, leave encashment, and leave travel assistance. However, payment was not made to the employee.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 1,88,04,397- (Rupees One Crore Eighty Eight



Lakhs Four Thousand Three Hundred Ninty Seven Only). The default occurred on 31.12.2021, i.e. when the employee had to serve a 12-month notice period ending on 31.12.2021. The copy of the Employment Agreement (Annexure A2), Company policy on gratuity (Annexure-A4), Company policy on superannuation (Annexure A5), letter for the annual increase in salary (Annexure A6), Bonus Letter (Annexure A7), Termination notice dated 30.12.2020 (Annexure- A8), Salary slips (Annexure A9), Employee Performance (Annexure A11, A12 & A13) and TDS Certificate (Annexure A17) are attached with the main petition.

5. A demand notice in Form 4 is stated to be issued by the operational creditor on 20.04.2022, and the same has been delivered to the corporate debtor vide registered post as the tracking report and postal receipts are attached with the main petition (Annexure A14 and A15). The corporate debtor gave a reply dated 09.05.2022 to the demand notice (Annexure A16).

6. Vide order dated 01.12.2022 of this Adjudicating Authority learned senior counsel appeared on behalf of the respondent and opposed the issuance of notice stating that the present petition is not maintainable as the petitioner is claiming a performance bonus. The affidavit was filed by respondent-corporate debtor vide Diary No. 02516/1 dated 19.12.2022, wherein it is stated that the disputed claims are not admissible as Operational Debt as there is a pre-existing dispute between the parties regarding the petitioner's claims arising from the termination of his employment February to March 2021 while the petitioner has admitted to receiving payment post termination of employment, he has raised two



amounts as due and payable under the present petition, i.e. performance bonus for 2020 (Rs. 1,20,67,160/-) and leave encashment for 2021 (Rs. 67,37,237/-). The petitioner's claim for a performance bonus for 2020 is not an operational debt. As per Clause 9 of the Employment Agreement, it does not cast an obligation on the respondent to pay the petitioner any bonus for the period prior to the notice of termination, which establishes that the petitioner's entitlement to performance bonus was discretionary and cannot be claimed as a matter of right. The leave encashment is also not an operational debt. The IBC cannot be used as a money recovery tool.

7. The counter affidavit was filed by the petitioner/ operational creditor by Diary No. 02516/3 dated 23.01.2023, wherein it is stated that there is no pre-existing dispute qua employees' claim. The Corporate Debtor denied its liability to pay a performance bonus for 2020 and leave encashment for 2021 without assigning any reason. There is no judicial authority that has given the conclusive finding that the performance bonus payable to the employee is not operational debt under IBC. The payment of the performance bonus for 2020 was not discretionary but was mandated under Employment Agreement. As per Clause 2, the gross bonus is 31% of total remuneration (45% of annual base salary). The dues towards leave encashment are Operational debt.

8. The short note was filed by the petitioner vide diary no. 02516/6 dated 06.02.2023 and by respondent by Diary No. 02516/7 dated 06.02.2023.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.



10. A decision on the maintainability of this application will depend on whether prima facie there is a debt and default involved in the present application for initiation of proceedings under Section 9 of the IBC. It is an admitted fact that the applicant was in the employment of the respondent, and there was an employment agreement between the two. The provisions of the said employment agreement clearly laid down the terms and conditions for determining the various payments and benefits to the applicant. Subsequently, the service of the applicant was terminated by issuing a termination notice dated 30.12.2020. The same termination notice was followed by a closure letter concerning the cessation of employment stating, inter alia, the position of the company with regard to the various payments to be made to the applicant. All these documents are required to be considered to determine whether there was an undisputed claim and whether a default in payment of the same has taken place. The judicial decisions relied upon by the Respondent are mainly on the issue of whether the claim of performance bonus and leave encashment will fall within the ambit of operational debt. These decisions are clearly distinguishable from the facts of the present case, where the issue is to decide whether there is a debt in terms of the contractual agreement between the parties and, thus, do not in any way support the contention of the respondent. Moreso, the question of pre-existing dispute is a question of facts which can be decided on merits.

11. In view of the above facts, we hold that the present application is maintainable without expressing any opinion on the merits of the claims made in the said application. Since the respondent/ corporate debtor is



already appearing, there is no requirement for issuance of the notice. Learned counsel for the respondent/ corporate debtor is directed to file reply, if any, be filed within three weeks after receipt of notice with a copy in advance to the counsel opposite. Rejoinder thereto, if any, be filed one week thereafter, with a copy in advance to the counsel opposite. Matter be listed on 06.07.2023.

-sd- 19.04.2023
(Subrata Kumar Dash)
Member (Technical)

-sd- 19.04.2023
(Harnam Singh Thakur)
Member (Judicial)

April 19, 2023
SM/TB