

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IBA/422//2020

Under Section 9 Rule 6 of the IBC, 2016

In the matter of M/s. RCL Electric Controls (P) Ltd.

Mr. Sudharshan Applicant

Vs.

M/s. RCL Electric Controls Pvt.Ltd. Respondent
(U31908TN2010PTC07621)

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Operational Creditor : Ms. Rohini Ravikumar, Advocate
Mr. Mahesh Kumar, Advocate

For Corporate Debtor : Mr. B.A. Prakash, Advocate

Per : R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on : 27.04.2021.

Under consideration is an application filed pursuant to Section 9 of the I & B Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules) by Mr. Sudarshan (*Applicant*) against M/s. RCL Electric Controls Private Limited (*Respondent*), on the ground that

Corporate Debtor failed to pay the amount of Rs.15,57,244/- decreed by the City Civil Court, Chennai.

2. Learned counsel for the Applicant submits that Respondent Company had approached the applicant to engage the services to market their Solar EPC, I&C and O&M products. Both the parties entered into a written contract i.e. "Profit Sharing Agreement" on 23.03.2017. As per clause-E8 of the agreement , in consideration of the consultancy services rendered by the applicant, the Respondent Company promised to pay a fixed salary of Rs.80,000/- per month and considered the applicant as an employee provided with all the statutory benefits. As per the agreement both the parties agreed to share the profit realized from the sale of services owing to the efforts of the applicant in the ratio of 15% : 85%. According to the Applicant, the money received from the projects referred by the applicant was being apportioned to other projects by the Respondent and thereby delayed payment of fixed salary to the Applicant. After sending e-mails dated 09.11.2017 and 08.12.2017, the applicant was constrained to send a legal notice dated

19.02.2018 demanding repayment of outstanding amount and in response, the Respondent sent a reply to the legal notice on 06.03.2018 refuting the contents of the allegations as false and misconceived.

3. In the *Counter* filed by the Respondent on 22.02.2021, it is submitted that the Operational creditor shared confidential information, trade secrets of the Corporate Debtor to the Competitors. On 27.01.2018, it has become clear that the Operational Creditor has been simultaneously working with the Corporate Debtor's competitor DVK GROUPS and the Operational Creditor diverted all the projects to the said DVK GROUPS. Hence, the Corporate Debtor has sent an email on 10.02.2018 terminating the Operational Creditor as employee from the month of February 2018.
4. Further, the Operational Creditor has filed civil suits for damages of Rs.5,06,517/- in O.S. No.2598/2018 and for liquidated sum of Rs.7,55,470/- in O.S. No.1590/2018 before the Hon'ble VIII Asst. Judge, City Civil Court, Chennai and obtained ex parte orders



in both cases against the Corporate Debtor. Immediately, the Corporate Debtor has filed necessary papers to set aside the exparte order dated 08.06.2018 in O.S. No.1590 of 2018 and the same is still pending before the City Civil Court. Furthermore, the issue of dispute between the Corporate Debtor and the Operational Creditor is also still pending before the Civil Court. When the dispute between Corporate Debtor and the Operational Creditor is 'subjudice', the Operational Creditor ought not to have invoked the provisions of IBC. The Civil Suit has not obtained finality.

5. Heard both the parties and perused documents placed before this Adjudicating Authority. It is seen that there was business dealing between both the parties and they have entered into an "Profit Sharing Agreement". As per the agreement, it was agreed to share the "profit realized from the sale of services" in the ratio of 15% : 85%. Hence, in the present application, existence of 'debt' and 'default' has not been proved.



6. In respect of pre-existing dispute which is pending on the file of City Civi Court, it is very clearly held in the matter of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited by the Hon'ble Apex Court follows:

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the

Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.

8. In terms of the above, this Insolvency and Bankruptcy Application IBA/422/2020 is **dismissed**. No costs.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

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(R. SUCHARITHA)
MEMBER (JUDICIAL)