

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

*** **

MA No. 4004/MB/2019
in
CP (IB) No. 619/MB/2018

1. Ankit Agrawal,
15th Floor, Maker Chambers III,
Nariman Point, Mumbai – 400 021.
2. Rajendra Prasad Agrawal,
15th Floor, Maker Chambers III,
Nariman Point, Mumbai – 400 021.
3. Atul Agrawal,
15th Floor, Maker Chambers III,
Nariman Point, Mumbai – 400 021.
4. K. N. Chaturvedi,
15th Floor, Maker Chambers III,
Nariman Point, Mumbai – 400 021.

... *Applicants*

Versus

Devang Sampat,
Resolution Professional
of Nicomet Industries Ltd
615, Shiv Plaza, Plot 79 A,
Marol Co-op Industrial Estate,
Off Andheri – Kurla Road, Marol,
Andheri (E), Mumbai – 400 059.

... *Respondent*

In the matter of:

Nico Extrusion Limited	...	Operational Creditor
V/s		
Nicomet Industries Limited	...	Corporate Debtor

Order Dated: 10.06.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicants: Mr Sanat R. Jariwala, Practising
Chartered Accountant.

For the Respondent: Mr Rishabh Chandra, Advocate i/b
Vaish Associates, Advocates.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Applicants, who are the Suspended Management / former employees of the Corporate Debtor have filed this Application for the following reliefs:

- a) Direct the Resolution Professional to explain the reasons for holding back the salaries of Applicants herein for January to April, 2019;*
- b) Direct the Resolution Professional to disburse the salaries for the months of January to April, 2019 forthwith and thereafter as and when the same becomes due, to the Applicants herein, without any further delay and report compliance with the same to the Hon'ble Adjudicating Authority within a period of*

30 days from the date of the Hon'ble Adjudicating Authority's Order;

- c) Direct the Resolution Professional to disburse the superannuation dues of the Applicant No. 4 forthwith, without dispute or demur;*
- d) In the event RP proposes to terminate the employment and if permissible, the Resolution Professional to give due notice of termination along with pay for notice period, in terms of the appointment letters of the Applicants, as updated from time to time.*

2. The Applicants submit that an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) was admitted and the Corporate Debtor was put under Corporate Insolvency Resolution Process (CIRP) by an order of this Tribunal dated 14.12.2018. Mr. Devang P. Sampat (the Respondent) was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor who was later confirmed as the Resolution Professional (RP) in the meeting of the Committee of Creditors (CoC) held on 02.05.2019. The order of admission was stayed by the Hon'ble Supreme Court for a brief period from 08.01.2019 to 23.04.2019.
3. It is submitted that the Applicant No. 1 was the Executive Director, Applicant No. 2 was the Chairman and the Managing Director, Applicant No. 3 was the Whole Time Director and Applicant No. 4 was the Chief Finance Officer of the

Corporate Debtor. Details of the salaries due to them are as follows:

Sr. No.	Name	Designation	Amount not considered in CIRP cost (₹)	Period
A	Suspended Management			
	Rajendra Prasad Agrawal	Chairman & Managing Director	23,00,000	15.12.2018 to 30.11.2019
	Ankit Agrawal	Executive Director	11,50,000	----Do----
	Atul Agrawal	Whole Time Director	11,50,000	----Do----
	Total Amount (A)		46,00,000	
B	K. N. Chaturvedi	CFO		
		Salary	9,89,350	Jan 19 to March 19
		Salary	15,85,800	May 19 to August 19 , the date relieving
		Superannuation Benefits	69,73,619	Including leave encashment, Gratuity, LTA and ex-gratia
	Total Amount (B)		95,48,769	
	Grand Total to be considered in CIRP Cost (A+B)		1,41,48,769	

4. It is submitted by the Applicants that subsequent to the commencement of the CIRP w.e.f. 14.12.2018, they have not received their respective salaries. The RP has discriminated against them and failed to disburse the salaries of the Applicants as shown in the above table.

5. The RP also failed to consider the same as CIRP costs without assigning any reason even though other employees of the Corporate Debtor have received the salary for the said period. RP has orally communicated that no salary will be paid to the suspended management and that he will not consider the expenses incurred during the period from 08.01.2019 to 23.04.2019 when the CIRP order was stayed by the Hon'ble Supreme Court.
6. Further, the RP has also declined to pay TDS on salary pursuant to the period from 14.12.2018 to 31.03.2019, stating that TDS does not pertain to CIRP period.
7. The Respondent has filed his reply. It is submitted that the Applicants are not entitled to any of the reliefs sought for in the present Application. Further, it is noteworthy that the non-payment of dues of the erstwhile management was the direct result of lack of funds and reluctance on the part of the CoC to approve such payments. The RP based on the discussion held in the 6th meeting of the CoC had filed Miscellaneous Application for the purpose of raising interim finance. The same is pending adjudication. The salaries of the suspended management were then included in the agenda of the 12th meeting of the CoC along with other costs. The said resolution came to be rejected by the CoC with majority. Presently an amount of Rs. 32,30,000/- plus GST continues to remain outstanding on account of RP's professional fees besides other expenses. All these potential payments have to be previously approved by the CoC and the RP being an

independent party in the process cannot be held liable for such non-payment of dues. The Applicant Nos. 1 & 3 were present during the 12th meeting of the CoC wherein the agenda for payment of salaries was put to vote and rejected by the CoC. Further, it were the Applicants who had failed to provide all the required information in terms of salaries etc. which caused delay in CIRP and compelled the RP to file an Application under Section 19(2) of the Code. Therefore, the allegations that no justification has been provided by the RP for non-payment or violation of the provisions of the Contract Act are denied.

8. We have heard the counsels appearing for the parties and have gone through the pleadings. The following are the observations of this Bench:
- i. On 16.12.2020 in IA No. 713 of 2020 this bench ordered liquidation of the Corporate Debtor and appointed Mr. Divyesh Desai as the liquidator.
 - ii. In view of the above order, the Applicants are directed to approach the liquidator with proper details of their claims in respect of the salary dues for the CIRP period. The liquidator shall decide the same in accordance with law.
 - iii. Applicant No. 4 has claimed a sum of ₹. 69,73,619/- towards superannuation benefits apart from salary during CIRP. As far as this claim is concerned, major portion of the claim relates to pre-CIRP period and thus he has to file the claim as an Operational Creditor and

the liquidator should consider the same in accordance with Law.

ORDER

The Application be and the same is disposed of with the above directions. There would however be no order as to costs.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)