

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No. 2697/ND/2019

IN THE MATTER OF:

**Rajender Kumar
Village-Khaisergarh
Sirsa, Haryana-125 055**

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

**M/s. Desein Private Limited
CIN No. U74899DL1970PTC00547
Registered Office- 414, Sitaram
Desein House, Greater Kailash-II
New Delhi-11 0 048**

... RESPONDENT / CORPORATE DEBTOR

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on:. 28.01.2022

CORAM:

MR. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

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The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by Continuous Dyeing & Printing Mills, (hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Desein Pvt. Ltd. (hereinafter, Respondent/Corporate Debtor).

Page 1 of 6

2. As per averments made in the petition, the applicant is an individual employed with the Corporate Debtor from the period between August 2007 till November 2018 at the rank of Senior Engineer Mechanical. It is the case of the applicant that initially he was appointed in the company namely "The Indure Private Limited" and was transferred into the corporate debtor vide inter office memo dated 24.04.2018. The applicant has not been paid salary for seven months from April, 2018 to October, 2018. Despite repeated reminders the Corporate Debtor has failed to make payment of legitimate employment dues of the applicant.
3. The applicant issued Demand Notice dated 22.07.2019 in terms of section 8 of the Code to corporate debtor which was served through speed post. Service affidavit of the same is also enclosed.
4. As per part IV of the application, Rs. 4,44,265/- , alongwith interest is still pending to paid by Corporate Debtor since 01.04.2017.
5. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:
 - a) It is alleged that there was deficiency in services by the applicant in terms of the employment contract executed between the parties. Apparently, the applicant has taken various leave without prior approval from the employer and this amounts to breach of employment terms.
 - b) It is also stated that the claim of applicant is inaccurate as the applicant has not adjusted the loan taken by him and the same has not been repaid by him.

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- c) It is therefore, argued that the claimed amount has no veracity and is not supported by documents/evidence as there were some adjustments of leave taken by applicant and repayment of loan amount.
- d) The Corporate Debtor by way of an additional affidavit has filed attendance sheets of the applicant to show the leave taken by him and also filed its Balance Sheet in order to prove its solvency.
6. The petitioner has filed rejoinder to the reply of respondent and submitted as follows:
- a) The leave taken by applicant were well informed and duly approved. It is also stated that the said loan taken from respondent has been duly adjusted by applicant in calculation sheet titled as 'advance' attached with the Demand Notice and nothing apart from that is payable by applicant to respondent.
- b) It is also stated that the respondent itself has issued the service reliving certificate at the time of his resignation. the certificate dated 01.11.2018 indicates that there was no dispute between the parties at the time of his resignation. The applicant also relied upon No dues certificate dated 31.10.2018 in which it is mentioned that Rs. 5699/- was payable by applicant and the same amount was also adjusted in the Demand Notice.
7. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and additional affidavits filed by the parties.

8. It is seen from the records that the applicant was relieved from its services w.e.f 01.11.2018. From bare perusal of the relieving certificate it is revealed that there was no dispute pending between the applicant and the Corporate Debtor. The Corporate Debtor has not placed any documents establishing the fact that the applicant has breached the terms of its employment agreement. Mere allegation without any supporting evidence would not help the Corporate Debtor.
9. As far as the loan taken by the applicant is concerned the applicant has already adjusted that amount from salary dues claimed in demand notice. The corporate debtor has failed to establish the fact that there is any pre-existing dispute between the parties. The Corporate debtor has also failed to prove that the salary dues are not payable to applicant or has already been paid off.
10. Considering the documents on records and submissions made, it is clearly established that the default in payment of the operational debt has occurred by the corporate debtor.
11. This leaves no doubt that the default has occurred for the payment of the operational debt to the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute as laid down in "**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**", the Hon'ble Supreme Court observed:

"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

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creditor or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of 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 required 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.”

12. Therefore, in the given facts and circumstances, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor. The present application is admitted.
13. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Akhil Ahuja, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P2072/2020-2021/13213 and email id caakhilahuja@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures be made as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
14. We direct the applicant to deposit a sum of Rs. 2 lacs with the

Interim Resolution Professional, namely Mr. Akhil Ahuja, to meet out the

expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

16. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

-Sd-

(SUMITA PURKAYASTHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)