

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH IV
COMPANY PETITION NO. IB/509/ND/2020

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:
MAHENDER KUMAR

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

WELD METALS INDIA PRIVATE LIMITED

...RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 06.07.2021

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)



MEMO OF PARTIES

MAHENDER KUMAR

S/o Shri. Parshu Ram,
R/o Village, Nimhar
P.O. Maloshi,
Distt -Oriyya, U.P.-209306

...APPLICANT/OPERATIONAL CREDITOR

Versus

WELD METALS INDIA PRIVATE LIMITED

Having office at:

M-54, C.R. Park,
Delhi 110019

...RESPONDENT/ CORPORATE DEBTOR

FOR THE APPLICANT : Mr. Shubham Kurushetra, Adv.
FOR THE RESPONDENT : Mr. Abhishek Prasad, Adv.



ORDER**Per-Dr. Deepti Mukesh, Member (Judicial)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Mr. Mahender Kumar, an employee of corporate debtor, filing the application in the capacity of the operational creditor under Section 5(20) r/w Section 5(21) (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Weld Metals India Pvt. Ltd. for brevity ('Corporate Debtor').
2. The Applicant is an individual residing at Village Nimhar, Post office Maloshi, District - Oriyya, U.P. -209306. The applicant joined the corporate debtor on 19.05.1997 on the post of "Milling Operator". The present application is filed by the applicant for recovery of his employment dues as the services of the applicant were illegally terminated on 25.04.2010 by the corporate debtor without giving any notice.
3. The Corporate Debtor is a private limited company, registered with Registrar of Companies - Delhi, incorporated on 15.02.1996 under the provisions of Companies Act, 2013 bearing CIN: U27109DL1996PTC076338 and having registered office at M-54, C.R. Park, New Delhi -19. The corporate debtor is involved in the business of manufacturing of resistance welding products and their marketing.
4. The applicant states pursuant to the illegal termination, without any show cause notice or domestic enquiry, aggrieved by the same, he filed a claim before the Ld. Labour Court, Gurugram, praying for reinstatement. On 17.01.2014, the said claim was decided in favour of the applicant, with the finding that the

services of the applicant was illegally terminated and the applicant is entitled to reinstatement in service with continuity of service and back wages to the extent of 40% on the basis of last drawn salary amounting to Rs. 1,61,040/-. The said order dated 17.01.2014 of the Ld. Labour Court, Gurugram is annexed.

5. The applicant submits that the award was challenged by the corporate debtor vide a writ petition before the Hon'ble High Court of Punjab and Haryana dismissed as withdrawn vide order dated 09.01.2020, the said order records as under :

"CM No.215-CWP-2020

Present application has been filed by the applicant-petitioner praying for permission to withdraw the present writ petition as there is likelihood of reaching an amicable settlement."

6. That in spite of the desire to settle the matter amicably, the corporate debtor has failed to settle the matter till date. Hence, applicant was constrained to issue a letter dated 13.01.2020 through its advocate, calling upon the corporate debtor for payment of unpaid dues. In response to the said notice, the corporate debtor issued letter dated 17.01.2020, requesting time for release of unpaid debt. The same is recorded as:

"3. Thus, in light of the aforementioned, we request you to:-

a. Consider a reduced amount for the dues so as to enable us arrive at a settlement; and

b. Grant us 3[three] months time for making such payment."

The letters dated 13.01.2020 and 17.01.2020 have been annexed.

7. The applicant issued demand notice dated 25.01.2020 under Section 8 of the code, seeking a payment of outstanding dues of Rs 8,11,219/-. As per the tracking report the said notice was delivered to corporate debtor on 29.01.2020, at its registered office, as per the MCA address. The tracking

report has been annexed. The corporate debtor failed to respond to the said notice.

8. The applicant filed application under Section 9 for the total outstanding debt of Rs.8,11,219/- (Rupees Eight Lakhs Eleven Thousand two Hundred only), comprising of principal amount of Rs.3,90,009/- (Rupees Three Lakhs Ninety Thousand and Nine Only) and interest @ 18% p.a. till 17.01.2020 amounting to Rs 4,21,210/- (Rupees Four Lakhs Twenty One Thousand Two Hundred and Ten Only).
9. The corporate debtor filed reply denying the contentions of the applicant and made the following averments :
 - a) That the applicant had falsely claimed that he joined the services of corporate debtor on 19.05.1997, the correct date of joining was 01.06.1997 and thereafter abruptly abandoned the services on 12.04.2010. The corporate debtor issued letter dated 05.05.2010 and 10.05.2010, to explain the reasons of absence from work. The applicant instead of resuming services or respond to the letters filed a claim before the Ld. Labour Court, Gurugram. No notice of the said claim was served upon the corporate debtor prior to filing of claim.
 - b) In due course, in or about July 2011, the factory of the corporate debtor stopped functioning, and the only immovable property of the corporate debtor was being auctioned. The corporate debtor states that he is under severe financial constraints.
 - c) It is stated that the claim filed by the applicant was an outright abuse of the process of law with the sole object of coercing money out of the Corporate Debtor. Vide order dated 17.01.2014, the Ld. Labour Courts, Gurugram passed an award in favour of the applicant. An application before the Ld. Labour Courts, Gurugram praying for setting aside/review of the award dated 17.01.2014 filed by corporate debtor, was dismissed.

d) Thereafter, the corporate debtor filed a writ before the Hon'ble High Court of Punjab and Haryana for quashing of award dated 17.01.2014, which was withdrawn, vide order dated 09.01.2020. The corporate debtor approached the applicant for amicable settlement. Accordingly, the corporate debtor issued a letter dated 17.01.2020, requesting the applicant to consider settling at a reduced amount and grant time to corporate debtor for making payment.

e) It is the contention of the corporate debtor that the claim of the applicant is disputed and not accepted by the corporate debtor, having no basis under law. Further the interest claimed by the applicant has never been agreed upon by the corporate debtor and there is no statutory provision for claiming interest at the rate of 18% p.a. Moreover, the applicant could not have been treated as workman, in terms of Section 2(s) (iv) of the industrial Dispute Act, 1947, as the salary of the applicant was more than Rs.1600/- per month Hence, the claim before the Ld. Labour Court, Gurugram was not maintainable and relying on the said Award, the applicant is claiming salary/backwages @ 40% of the last drawn salary, which is bad in the eyes of law.

12. As per Part IV from 5 the default last occurred on 17.01.2020, when the corporate debtor vide its letter, instead of releasing the payment, sought more time.

The present application is filed on 11.02.2020. Hence the application is not time barred and filed within the period of limitation.

13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

14. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete.

15. Considering the submissions made documents on records, it is observed that the corporate debtor has failed to produce any substantial evidence to support its defence. No termination or resignation letter has been annexed. The applicant is relying upon the Award of the Ld. Labour Court, which has reached finality, for crystallization of the amount payable to applicant, in view of the review application and Writ petition getting dismissed without setting aside the said order of Labour court dated 17.01.2014. Moreover, the order of the Hon'ble Punjab and Haryana High Court records the submission of corporate debtor who accepted debt and shown willingness to settle the dispute amicably. There is a specific admission by the corporate debtor to settle amicably and also seeking time to repay dues, vide its letter dated 17.01.2020, after the dismissal of writ Petition by the Hon'ble Punjab and Haryana High Court. The corporate debtor has also admitted in its reply that corporate debtor is non functional since 2011 onwards leaving no doubt that the corporate debtor is unable to pay the debt to its creditor, therefore it would be fit to send the corporate debtor for CIRP for the benefit of the creditors.
16. The Applicant has proposed the name of an IRP, accordingly, this bench appoints Mr. Anil Matta as IRP of the corporate debtor, having registration no. IBBI/IPA-001/IP-P00223/2017-2018/10422, having address at 308, RG Trade Tower, Plot No. B-7, Netaji Subhash Place, Pitampura, New Delhi - 110034, subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent. The specific consent has been filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. 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.
18. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Anil Matta to meet out the expenses and 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 applicant. 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.
19. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

SUMITA PURKAYASTHA
MEMBER (T)

SD/-

DR. DEEPTI MUKESH
MEMBER (J)