

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - V
Company Petition (IB) No.791/ND/2020**

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

Sections 9 of the Insolvency and Bankruptcy Code, 2016 and related rules framed under the Insolvency and Bankruptcy Code, 2016

AND

In the matter of :

**SHRI RIZWAN KHALEEL,
A702, EBONY, (TOWER 01),
GODREJ WOODSMAN ESTATE,
BELLARY ROAD,
HEBBAL, BENGALURU,
KARNATAKA-560024
*...Operational Creditor***

VERSUS

**SPICEJET LIMITED
REGISTERED OFFICE:
INDIRA GANDHI
INTERNATIONAL AIRPORT,
TERMINAL ID,
NEW DELHI-110037.
CORPORATE OFFICE:
319, UDYOG VIHAR,
PHASE-IV,
GURUGRAM-122016,
HARYANA.**

...Corporate Debtor

ORDER DELIVERED ON:. 08/10/2021



CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Adv. Vivek Malik

For the Respondent/ Corporate Debtor: Adv. Amit Punj

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 by the operational creditor, i.e. "**Shree Rizwan Khaleel**" for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor Company "**SpiceJet Ltd.**".

2. Brief Facts of the case are as follows:

- i.** The applicant accepted Letter of Offer dated 11.10.2011, issued by the Corporate Debtor for the post of "Transition Captain (B 737)", as a Commercial Pilot to fly their various Planes and accordingly, Letter of Appointment dated 01.11.2011 was issued by the Corporate debtor
- ii.** All terms and conditions of such employment, were also duly agreed and attached to the aforesaid "Letter of Appointment".
- iii.** Further, on 21.09.2012, the Corporate Debtor satisfied with the Operational Creditor's performance and finding them "Good" is pleased to confirm the Operational Creditor's appointment with retrospective effect from 01.05.2012. All other terms and conditions continued to remain the same.



- iv.** Further, Corporate debtor enhanced his Annual Compensation to Rs.65,40,000/- and thereafter to Rs.70,80,000/-, vide letters dated 28.05.2014 and 18.06.2015.
- v.** Further, the Operational Creditor in accordance with Clause 11 of the Letter of Appointment dated 01.11.2012, served a Letter of Resignation dated 01.07.2016 seeking to resign from the services of the Corporate Debtor effective from 01.01.2017 and vide e-mail dated 15.07.2016, the Corporate Debtor acknowledge receipt of the aforesaid Letter of Resignation.
- vi.** Further, the Operational Creditor, also handed over the Company Identity Card and the "AEP Card" to the Security Staff of the Corporate Debtor.
- vii.** With the notice period for resignation duly completed on 31.12.2016 / 01.01.2017, the Operational Creditor submitted the requisite Employee Clearance Form dated 18.01.2017 to the Corporate Debtor and requested that his pending dues, by way of –

 - a) outstanding dues towards salary for the months of November-December, 2016;
 - b) outstanding dues towards Leave Encashment; and
 - c) outstanding dues towards Gratuity.
- viii.** Further, in the absence of any response and payment of the outstandings due, the Operational Creditor addressed an e-mail dated 28.06.2017 to the Corporate Debtor, seeking payment of his outstanding dues.
- ix.** Further, between June 2016 and thereafter the Operational Creditor made various oral Representation(s) and personal visit(s) to the Corporate Office of the corporate Debtor, pleading for compliance of the various requirements listed in the mail dated 28.06.2017. Finally,



on 20.10.2019, the Corporate Debtor provided the much required "No-Objection Certificate" to the Operational Creditor permitting the Operational Creditor to seek / obtain employment outside the Corporate Debtor. It would be pertinent to state, that such "No-Objection-Certificate" was provided unduly belatedly, through Notification dated 27.10.2009 issued by the Office of the Director General of Civil Aviation explicitly mandates, that such "No-Objection" may be provided immediately on the expiry of "the notice period of six-months".

- x.** Further, vide emails dated 21.11.2019 exchanged between the Operational Creditor and the Corporate Debtor, the Operational Creditor seeks re-payment of his pending dues by way of unpaid salary for the months of November-December, 2016 and unpaid dues towards gratuity. It is contended by the Operational creditor that, by their response, instead of complying the Corporate Debtor queried, as to why, the dues had been delayed for so long. By their further response(s), they assured the Operational Creditor that they were processing the Operational Creditor's dues, in stating –

"You need to speak to your HR SPOC as I'll have to process the ECF as per notes on it.

Further, I'll share your ECF in the 1st week of Dec 2019 with Finance department. It's delayed as we are not processing FNF case which are of last financial year. However, kindly clarify on your salary before I forward it to the Finance department because once processed it'll not be revised".

- xi.** Operational Creditor issued a Demand Notice dated 27.12.2019 invoking the applicable / relevant provisions of / under the Insolvency and Bankruptcy Code, 2016 demanding a sum of Rs.15,55,000/-, by way of –



- a) Unpaid salary @ Rs.5,90,000/- per month for the period from November-December, 2016; and
- b) Rs.3,75,000/- towards gratuity w.e.f. date of Joining of Service till 31.12.2016.

xii. The Corporate Debtor, via reply to demand notice dated 09.01.2020, denying the dues of the Operational Creditor.

3. Total amount of Debt is a sum of Rs.15,55,000/- (Rupees Fifteen Lacs and Fifty Five Thousand Only) alongwith interest @ 12% per annum in the manner claimed above. The above debt is due since 31.12.2016.

4. The Corporate debtor contended the following in its reply dated 01.02.2021:

- i.** The alleged claims of the Petitioner is barred by limitation and the Petitioner cannot initiate any proceedings against the Respondent Company for recovery of his alleged outstanding dues.
- ii.** Further, as per the case of the Petitioner, he is claiming wages for the months of November and December, 2016, which became due in the months of December, 2016 and January, 2017, respectively.
- iii.** Further, the Petitioner/OC joined Spicejet Ltd. (hereinafter referred to as 'Respondent Company/CD') on 01.11.2011 and submitted his resignation on 01.07.2016. As per guidelines of DGCA, the Petitioner/OC had to serve Respondent Company/CD for a period of six months (mandatory notice period) after tendering his resignation and as such, the Petitioner/OC was supposed to work with the Respondent Company/CD till 31.12.2016. It is submitted that the Petitioner/OC, however, committed intentional and deliberate breach of his aforesaid resignation letter and failed to serve Respondent



Company/CD for the entire period of six months, post his resignation dated 01.07.2016.

- iv.** Further, the petitioner reported for his duty till 08.11.2016. the next two days i.e. 09.11.2016 and 10.11.2016 was "OFF" for the petitioner. From 11.11.2016 till 25.11.2016, the Petitioner/OC reported 'SICK' every day. On and after 25.11.2016, the Petitioner/OC was supposed to have reported to CME (Chief Medical Examiner) as well as before the panel of DGCA Doctor to obtain his 'fit to fly' certificate. It was mandatory for the Petitioner/OC to get the said certificate in as much as he was reporting himself 'SICK' continuously for more than 14 days. The Petitioner/OC failed to appear before the CME and continuously reported himself 'SICK' until 29.11.2016. The Crew Roster of the Petitioner/OC, maintained by the Respondent Company clearly reflects the aforesaid factual position.
- v.** Further, despite repeated calls and reminders, the Petitioner/OC failed to either report before the CME or to produce a valid and legal 'Medical Certificate' at any stage, thereafter.
- vi.** Further, after 29.11.2016, the Petitioner/OC was un-contactable. The Flight Operations department of the Company tried to contact the Petitioner/OC many a times, but he never responded to any phone call made by the said department of the Respondent Company.
- vii.** On 30.11.2016, the Petitioner/OC, in a clandestine manner, with malafide intention and ulterior motives, handed over his Company ID Card and AEP (Airport Entry Pass) to Security Staff at Bengaluru Airport. It is stated that as per the correct protocol, the Petitioner/OC ought to have handed it over to OPS ADMIN (Operations Administration) department of the Flight Operations.



- viii.** Further, the Petitioner/OC failed to communicate his medical status or the reasons for his absentia from his duties from 29.11.2016 to 31.12.2016. The Petitioner/OC failed to either appear before the CME and/or produce his own legal and valid Medical Certificate, for his reportedly SICK status, from 08.11.2016 to 29.11.2016.
- ix.** From the aforesaid, it is evident that the Petitioner/OC failed to discharge his duties and report for work, after 08.11.2016. The Petitioner/OC failed to operate/execute the flights assigned to him from 08.11.2016 to 30.11.2016/31.12.2016. The aforesaid neglect/ breach on the part of the Petitioner/OC has caused serious disruption of Crew Roster and loss to the Respondent Company. As a consequence of not reporting for the flight operations by the Petitioner/OC, the roster had to be changed and other Pilots had to be re-assigned to the flight duties. This caused financial loss to the Respondent Company.
- x.** Further, the Petitioner has failed to serve the complete notice period of six months and has also committed intentional and deliberate breach to the regulations and guidelines of DGCA, besides committing breach of his letter of appointment and Service Bond, having signed and executed by him with the Respondent Company.
- xi.** Further, the Respondent Company estimates the losses and damaged suffered by it to be not less than Rs. 20.00 lacs and reserves its rights to claim the same from the Petitioner.
- xii.** Further, only ordinary civil courts would have jurisdiction to entertain, adjudicate and decide the disputes between the parties, which are subject matter of the present petition.



5. The Operational Creditor contends the following in its rejoinder dated 10.02.2021:

- i. The petition sufficiently discloses as to how, the Petition is within the Laws of Limitation.
- ii. The Petitioner never reported sick and consequently there was no reason or ground for the Petitioner to either produce a Medical Certificate or produce himself for examination before the CME.
- iii. Since, the Duty Manager Security reached the Petitioner's residence with the demand that the Company "ID Card & AEP" be handed over to them, the Petitioner complied with their instructions to avoid any allegation of breach or disobedience.
- iv. The petitioner enclosed the following documents with the rejoinder:
 - a. Letter/ Handing over Certificate dated 30.11.2016 issued by the Duty Manager Security, Bangalore Airport to the Operational Creditor for receiving the Company 1D Card & AEP.
 - b. A Certificate dated 03.11.2017 issued by Capt. Bhavesh Misra, Chief of Flight Safety acknowledging that the Petitioner was employed with the Respondent from 01.11.2011 till 31.12.2016.
 - c. A Certificate dated 19.11.2020 issued by Capt. Mahender Singh, Chief of Flight Safety acknowledging that the Petitioner was employed with the Respondent from 01.11.2011 till 31.12.2016.
 - d. Member Service History dated 06.11.2020 issued by the Employees Provident Fund Organisation, India recording the date of



joining as 01.1.2011 and date of exit as 31.12.2016.

- e. E-mail dated 03.01.2017 issued by the Operations Administration of the Respondent, directing the Petitioner to submit his Clearance Form, so that his "Full and Final" Settlement could be processed by their Human Resources.
- f. E-mail dated 03.01.2017 issued by the Assistant Manager (Human Resources) of the Respondent, confirming that the Petitioner's exit was "pending" subsequent to his resignation.

6. The Corporate Debtor in its written arguments dated 20.07.2021 contends the following:

a. **CLAIM OF THE OC BARRED BY LIMITATION.**

The alleged claims of the Petitioner/OC are barred by limitation. The Petitioner/OC left the Respondent Company on 08.11.2016. The Petitioner/OC, as such, could have initiated recovery proceedings for recovery of his alleged dues within three years from the aforesaid date. Even as per the case of the Petitioner/OC, he is claiming wages for the months of November and December, 2016, which became due in the months of December, 2016 and January, 2017, respectively. It is submitted that the present Petition, which has been filed much after expiry of the limitation period, as prescribed above, is clearly barred by law and is liable to be dismissed. The OC has tried to explain that the limitation extended on account of e-mail communications between the parties and also by the act of issuance of NOC. It is submitted that in the said e-mails, the CD never ever admitted any claim to be due and payable by it. Rather, in one of the e-mails, it was stated that No Salary is due, as per the noting on the ECS form. It is



submitted that acknowledge for extension of limitation is required to qualify the necessary ingredients contained in Section 18 of Limitation Act.

In the present case, it is admitted that there is no such acknowledge, which, by any stretch of imagination extends the limitation and a such, the claim of the OC is clearly time barred. It is submitted that issuance of NOC, by no stretch of imagination would extend limitation.

DISPUTED QUESTIONS OF FACTS: The respondent has stated almost same facts as stated in their reply, hence it is needless to repeat the same, except the following:

In the rejoinder, the OC has vaguely denied the aforesaid averments and has stated that no documents have been filed in this regard.

7. Ld. Counsel for the petitioner raised all the facts mentioned in the petition and rejoinder and submits that the petition is not barred by limitation on the ground that debt is acknowledged by the Corporate Debtor.

8. He has also referred to email dated 21.11.2019 exchanged between the parties and submits that vide this email, the Corporate Debtor has acknowledged the debt.

9. He further contended that since the debt has been acknowledged in November, 2019. Therefore, from that period the application is within time.

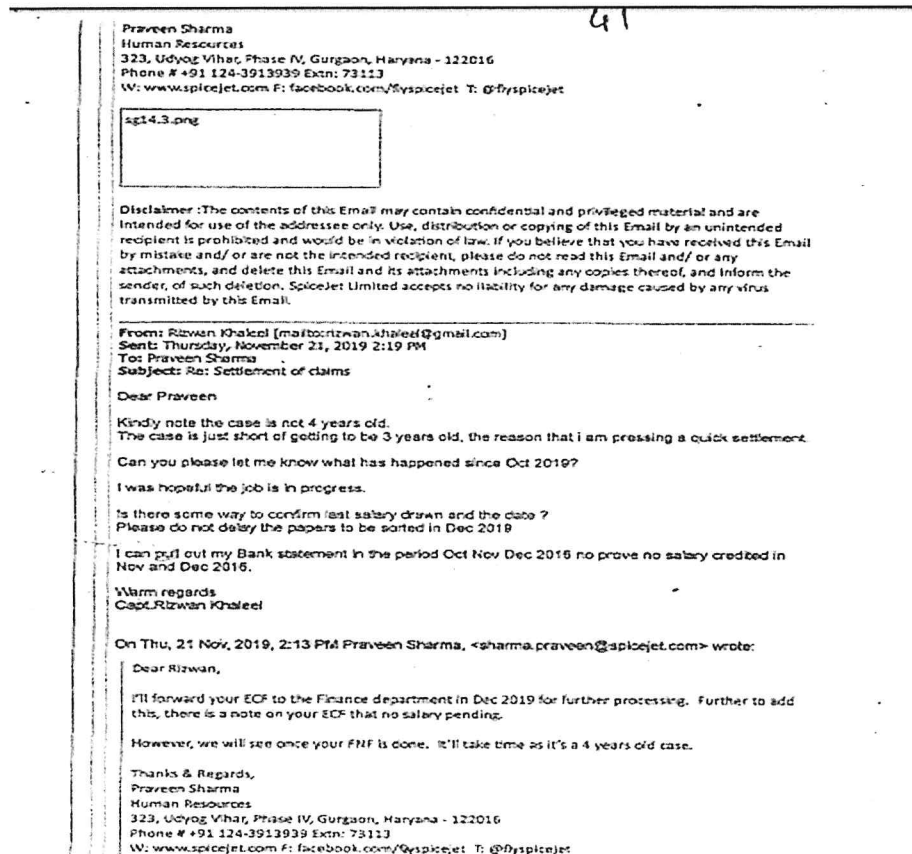
10. On the other hand, Ld. Counsel for the Corporate Debtor submits that email dated 21.11.2019 never shows that the debt has been acknowledged because the previous correspondence made in between the petitioner and the Human Resource Department of the Corporate Debtor shows that as per note of office, no salary was pending.

11. Ld. Counsel also referred to email dated 21.11.2019 and submits that vide this email the Mr. Parveen Sharma, Human Resource Department has informed the petitioner that no salary was pending as per the note of the office.

12. Since, both the parties are placed reliance upon the email exchanged between the petitioner as well as Mr. Parveen Sharma, Human Resource



Department of the Corporate Debtor. Therefore, we would like to refer the emails which are at page 41 and 42 of the petition and the scanned copy of the same are quoted below:-



Subject: Fwd: Settlement of claims

From: Rizwan Khaleel <rizwan.khaleel@gmail.com> on Sat, 25 Jan 2020 18:03:28
To: mtg_dana@rediffmail.com

Sent from my iPad
Begin forwarded message:

From: Rizwan Khaleel <rizwan.khaleel@gmail.com>
Date: 21 November 2019 at 2:53:30 PM IST
To: Praveen Sharma <sharma.praveen@spicejet.com>
Subject: Re: Settlement of claims

Dear Praveen,
Please let me know the number I can call and speak with you.
As time is passing by the uncertainty to me to increase
Regards
Capt Rizwan Khaleel

On Thu, 21 Nov, 2019, 2:52 PM Rizwan Khaleel, <rizwan.khaleel@gmail.com> wrote:
Dear Praveen

I don't know what is SPOC.

Secondly last salary credited to my account is End Oct 2016.

You will require to take a decision and sort my case which is reaching 3 years delay. Your last year's cases can wait.

I have been at this since sept 2019 and nothing appears to have moved in HR. There seems to not even be a sense of urgency to ensure their own statutory compliance.

All that has moved is the entries in the completion form which were done by me running all over Spicejet HQ personally.

I live in Bangalore and Gujrat is not easy for me to visit any time.

You will need to access my last salary slip or go by my claim for salaries due end Nov and Dec 2016.

Credibility is to be calculated from there.

Please respond to this mail with a committed time frame and certainty of action that will happen.

It shall keep me in order.

Regards

Capt Rizwan Khaleel

On Thu, 21 Nov, 2019, 2:30 PM Praveen Sharma, <sharma.praveen@spicejet.com> wrote:

Dear Rizwan,

You need to speak to your HR SPOC as I'll have to process the ECF as per notes on it.

Further, I'll share your ECF in the 1st week of Dec 2019 with Finance department. It's delayed as we are not processing FNF cases which are of last financial year. However, kindly clarify on your salary before I forward it to the Finance department because once processed it'll not be revised.

Thanks & Regards,

13. Ld. Counsel for respondent has further referred to the document enclosed by the petitioner (which is at page 28 of the petition) and submits that the petitioner has already handed over the company ID and AEP (Airport Entry Pass) to the Corporate Debtor company on 30.11.2016. Therefore, the claim of the petitioner that his salary was due for the months of November and December 2016 is also contrary to the facts that once the petitioner has handed over his company ID and AEP then how he had worked till 31.12.2016 that has not been explained by the petitioner.

14. He further submits that he has also given a reply to the demand notice and specified all the facts which the Corporate Debtor has averred in its reply.

15. In the light of that submission, we firstly examine whether the present application is barred by limitation or not?

16. Admittedly, this application is filed on 16.03.2020, as per demand notice (which is at page 43 relevant page 44 of petition), the date of default is mentioned as 31.12.2016.

17. In part-IV of the application, the petitioner has also averred the date of default first arose on 31.12.2016, on the ground that the petitioner has claimed his salary for the period of November and December, 2016.

18. The contention of the petitioner is that since the No Objection Certificate (NOC) was issued on 20.10.2019 and the email was sent by the Corporate Debtor regarding his salary on 21.11.2019. Therefore, from that period i.e. 21.11.2019, the application is within time.

19. As we have referred to both the emails upon which the parties have placed reliance (supra) and on the basis of that, it is seen that vide email dated 21.11.2019, the Human Resource Department of the Corporate Debtor had informed the petitioner that there is note on your ECF that no salary is pending and in continuation of that email, on the same day, reply to the email was sent by the petitioner, the Human Resource Department had made a request to the petitioner, kindly clarify on your salary before I forward it to the finance department because once processed it'll not be revised.

20. Therefore, in our considered view, when we read both these emails dated 21.11.2019 (first email sent on 2:13 PM and second email i.e reply to the petitioner email has sent on 2:30PM) then we are of the considered view that these emails exchanged in between the parties do not show the acknowledgement of debt towards the salary for the period of November and December 2016. Rather, it was made clear by the Human Resource Department of Corporate Debtor that as per note, no salary is due. Therefore, in our considered view, on the basis of these emails, we are unable to accept the contention of the petitioner that these emails are amounts to acknowledgement of debt by the Corporate Debtor.

21. We further notice that, apart from these emails, there is no other document to show that the Corporate Debtor has ever acknowledged the debt of the petitioner. Hence, we are unable to give the benefit of Section 18 of Limitation Act.

22. Since, the default as per the averments made in demand notice as well as Part-IV of the application was occurred on 31.12.2016 and the petition is filed on 16.03.2020. Whereas, in view of Article 137 of the Limitation Act, the petition must be filed within three years when right to apply accrues. But it is



filed on 16.03.2020 i.e. much after the three years when the default has occurred.

23. **Hence, the present application is barred by limitation and the same is liable to be dismissed.**

24. **Accordingly, the present application stands dismissed.**

Sd/-

**Kapal Kumar Vohra
(Member Technical)**

Sd/-



**Abni Ranjan Kumar Sinha
(Member Judicial)**