

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 3008/I&BP/2019

Under section 8 &9 of the IBC, 2016

In the matter of

Omprakash Rohra

605, Mahan Apartment, Near Lassi Hall,
Ulhasnagar – 421 001

.... Petitioner

v/s.

A A Estate Private Limited

RNA Corporate Park, next to Collectors
Office, Kalanagar, Bandra (east), Mumbai –
400 051

.... Corporate Debtor

Order delivered on: 14.11.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

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

For the Petitioner : Mr. Amritpal Singh Khalsa, Advocate.

For the Corporate Debtor : Mr. Vijay Tiwari, Company Secretary.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This company Petition is filed by Omprakash Rohra (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against A A Estate Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default on 10.04.2018 in making salary dues to the extent of Rs. 17,40,375/- as a salary and other allowances due along with interest of Rs. 1,83,420/- amounting to the total due of Rs. 19,23,795/-, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. Petition reveals that the Petitioner has joined the Corporate Debtor on 02.03.2009 as a Senior Executive -Estimation and Contract which is evident from the appointment letter enclosed to the petition.

3. Subsequently, the Corporate Debtor by its letter dated 18.01.2013 revised the compensation package of the Petitioner from Rs. 10,35,000/- p.a.to Rs. 11,75,000/- p.a. w.e.f. the month of October 2012.



4. Further, the Corporate Debtor by letter dated 16.12.2014 promoted the Petitioner from the position of Senior Manager-Contracts to the position of Assistant General Manager- Contracts with effect from 01.01.2015. Further, Corporate Debtor by letter dated 29.01.2019 promoted the Petitioner from the Position of Assistant General Manager- Contracts to the Deputy General Manager with effect from 01.01.2019. The above facts clearly reveals that the Petitioner has performed well and was given promotions.

5. The Petitioner on 28.06.2019 issued demand notice under Section 8 of the Code to the Corporate Debtor demanding the arrears of salary, leave encashment and bonus, due to the extent of Rs. 17,40,375/- as due and payable by the Corporate Debtor. Further, the Petitioner has claimed interest on the non-payment of arrears right from March, 2018. A detailed calculation sheet is enclosed to the demand notice. There is no response from the Corporate Debtor for the demand notice.

6. The Corporate Debtor filed reply to the petition. Professional representing the Corporate Debtor contends that the Petitioner has failed in providing his services to the Corporate Debtor for the past 10-12 months and they have issued many informal warnings to the Petitioner. Subsequently, on 26.10.2018, the Corporate Debtor has issued the following warning letter:

"Mr. Omprakash

It has been brought to our notice that you have been indulging in absenteeism and also not promptly attending to matters coming to your desk. You are hereby warned in your own interest to improve and ensure that all pending work is completed in the next three days.

Please submit a list of pending matters with you to the undersigned."

7. The first dispute raised by the Corporate Debtor is that the Petitioner was indulged in absenteeism and he was warned to complete the pending works in 3 days. However, there is not even any disciplinary proceedings initiated against the Petitioner and hence the absenteeism as alleged by the Corporate Debtor cannot be taken as a dispute with regard to the salary arrears claimed by the Petitioner. The mere issue of a warning letter, without there being any further proceedings initiated by the Corporate Debtor against the Petitioner, will not fall within the purview of Section 5(6) of the Code.

8. The second dispute raised by the Corporate Debtor is that the Petitioner without providing any resignation letter or any notice expressing his desire to quit the services, quit the job and hence they have the right to deny payment of any due, arrears or terminal benefits in terms of the appointment letter issued by them. The petition reveals that the salary due is from the month of March 2018 to June



2019 and this petition has been filed in the month of July 2019. There is no claim regarding any terminal benefits. Admittedly before the issue of demand notice the Corporate Debtor has not even called for any explanation from the Petitioner why he has discontinued the services without informing the Corporate Debtor and when a petition is filed under Section 9 of the Code for the arrears of the salary, the proceedings cannot be stalled on the guise of non-issue of resignation letter by the Petitioner.

9. During the hearing the Counsel for the Petitioner produced a letter dt 14.03.2019 issued by the Corporate Debtor which reads as below:

"we confirm the following details regarding Mr. Omprakash J. Rohra employed in our company A A Estate Pvt. Ltd. (Group company of RNA Corp).

- His salary is 15,88,600 per annum gross less statutory deductions.*
- Designation : Deputy General Manager – Contracts.*
- He is employed on a permanent full time basis.*
- He working with us since 02/03/2009*

Due to certain business situations his salary has not been credited since the month of December 2018 till date, also Form – 16 has not been issued to him since Financial Year 2014-15."

10. An ordinary scanning of the letter clearly establishes the debt due to the Petitioner and the default on the part of the Corporate Debtor.

11. The Hon'ble Supreme Court in the case of Mobiloxx Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited- 2017 (SCC Online SC 1154) held as below :-

"40..... 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 defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense 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".

12. When the law laid down by the Hon'ble Supreme Court in the above case is applied to the facts of the present case, we are of the view that the disputes raised by the Corporate Debtor are spurious, illusory and the contentions does not require any further enquiry and will not fall within the ambit of Section 5(6) of the Code. Hence the Petition deserves admission.



- (f) that this Bench hereby appoints Mr. Gaurav Khurana, office at Building No. 10, Tower B, 8th Floor, DLF Cyber City, Phase II, Gurgaon, Haryana – 122 002; having Registration No. IBBI/IPA-001/IP-P01282/2018-2019/12001 as Interim Resolution Professional to carry the functions as mentioned under the Code.
16. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)



Certified True Copy
Copy issued "free of cost"
On 25/11/19
Assistant Registrar
National Company Law Tribunal Mumbai Bench