

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP (IB) No.1156/MB/2022

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.

Manish Walia,
#A/701, Palm Beach Residency,
Plot #24, Sec-4, Nerul,
Navi Mumbai, 400706

... Operational Creditor/Petitioner

Versus

Taron Material Handling Equipments Private Limited,
[CIN: U74999MH2018PTC313884]
302, 3rd Floor, Ruby Crescent Business Boulevard,
Ashok Nagar, Kandivali (East), Mumbai, 400 101

...Corporate Debtor/Respondent

Order Delivered on: 11.08.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical): Ms. Anu Jagmohan Singh

Appearances:

For the Operational Creditor : Mr. Vidit Divya Kumavat, Advocate

For the Corporate Debtor : Mr. Rohan Agrawal, Advocate

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. The present Company Petition is filed by **Manish Walia**, (hereinafter referred to as **“the Operational Creditor”**) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **“the Code”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (**“CIRP”**) against **Taron Material Handling Equipments Private Limited**, (hereinafter referred to as **“the Corporate Debtor”**).
2. The Corporate Debtor was incorporated on 11.09.2018, under Companies Act, 2013. Its registered office is situated at 302, 3rd Floor, Ruby Crescent Business Boulevard, Ashok Nagar, Kandivali (East), Mumbai 400101. Hence, this Tribunal has the jurisdiction to entertain the present Company Petition.
3. The total amount of debt alleged to be in default is amounting to the tune of Rs. 1,38,79,669/- including Unpaid Bonus amounting to the tune of Rs. 49, 99,996/-.
4. It is submitted that the Corporate Debtor *vide* their E-mail dt. 12.10.2021, extended an Offer to the Operational Creditor for the post of the Chief Executive Officer and pursuant to which an Appointment Letter dt. 19.10.2021, was signed between the Operational Creditor and

the Corporate Debtor, detailing the terms and conditions of the appointment of the Operational Creditor as the Chief Executive Officer.

5. It is further stated that as per Clause 3 to the Appointment Letter, the Operational Creditor was entitled to a fixed salary amounting to the tune of Rs. 7,50,000/- each month and the fixed salary will be paid by the last day of the month for which the services were rendered and the Operational Creditor was entitled for the fixed salary as provided in the clause with effect from the date of joining.
6. In addition to the fixed salary the Operational Creditor was also entitled to receive a performance bonus at the end of each financial year ("Performance Bonus") at the discretion of the Company and the Performance Bonus was to be calculated at the rate of Rs. 3,33,333/- for every month of service provided by the Operational Creditor under the letter agreement subject to maximum of Rs. 40,00,000/-. The fixed salary and performance bonus were in accordance with Clauses 3(i) & 3(ii). The performance bonus was subject to the discretion of the company.
7. Thereafter, *vide* an acceptance E-mail dt. 19.10.2021, the Operational Creditor herein was confirmed as the Chief Executive Officer of the Corporate Debtor and on 17.11.2021, the Managing Director of the

Corporate Debtor introduced the Operational Creditor to the entire staff and extended a grand welcome to him as its Chief Executive Officer. Thereafter, the Operational Creditor has shared a signed copy of the Appointment Letter from his end to a team Member of the Corporate Debtor *vide* an E-mail dt. 26.11.2021.

8. Thereafter, the Operational Creditor served as a Chief Executive Officer of the Corporate Debtor in Kandiwali Office till 07.02.2022, for a period of over Four Months. It is submitted that on 08.02.2022, the Corporate Debtor asked the Operational Creditor through a Telephonic Communication to take a break from his day-to-day operations as Chief Executive Officer of the Corporate Debtor, without any cogent reasoning given to him relating to the same.
9. It is stated that pursuant to the same, the Operational Creditor wrote several reminder E-mails to the Corporate Debtor and its senior Management on 01.03.2022, 25.04.2022, 12.05.2022, 18.05.2022 and 25.05.2022 along with a letter dt. 14.07.2022, but till date the Operational Creditor has not even received a single Reply from the Corporate Debtor in relation to the same and till date the Corporate Debtor has not made any formal communication regarding the termination of the Operational Creditor as the Chief Executive Officer.

10. It is further stated that the Operational Creditor was in shock when he received an E-mail dated 17.05.2022 from Mrs. Sonia Gaur who is the Company Secretary and Head Legal at the Corporate Debtor where the Company Secretary has made several false, whimsical and frivolous allegations regarding the appointment of the Operational Creditor herein and stated that the Appointment Letter which was shared with the Operational Creditor was only a draft; upon which, the Operational Creditor stated that the Appointment Letter was formally accepted by both the Parties and the Corporate Debtor failed to disclose any statement or representation which the Operational has made, which can be considered as a false or misleading statement relating to his appointment or about his credentials.
11. It is submitted that the Operational Creditor has received salaries for five months (i.e. from October, 2021 to February, 2022) and the same is also reflected in the 26AS Certificate.
12. Operational Creditor further submitted that he was submitting his daily attendance for the period he was employed with the Corporate Debtor and has also attended several formal meetings as the Chief Executive Officer and even made representations to the Board of Directors of LEAP India Private Limited, which is the parent Company of the Corporate Debtor.

13. It is further submitted that the Operational Creditor has actively participated in various business/strategy related discussions with the Corporate Debtor and other Senior Management people belonging to LEAP/Corporate Debtor and thus it is unfathomable to consider that his appointment was never formalized with Taron as he has on record, completed all the job joining formalities and has provided all the required documents to the HR Department of the Corporate Debtor.
14. The Operational Creditor has issued Demand Notice on 27.09.2022, demanding payment in respect of unpaid operational debt due from the Corporate Debtor. The Corporate Debtor has also Replied to the said Demand Notice on 03.10.2022.
15. The Operational Creditor has filed the present company petition for unpaid salary for the period of February 2022 till January 2023 amounting to Rs. 88,79,674/- along with bonus for the period of November 2021 till January 2023.

Submissions advanced on behalf of the Corporate Debtor

16. The Corporate Debtor has filed Affidavit in Reply to the present Company Petition, wherein it is submitted that the entire claim of the Operational Creditor is based on a purported Appointment Letter dt. 12.10.2021, which was never executed between the Parties and any

association between the Operational Creditor and the Corporate Debtor was never formalized. The Corporate Debtor further submitted that the purported letter annexed to the present Company Petition is also an unsigned and unexecuted document.

17. It is submitted that the Operational Creditor has offered services to the Corporate Debtor as Chief Executive Officer between October, 2021 and 07.02.2022 and the Operational Creditor admitted that all salaries due to him by the Corporate Debtor for the above said period were fully paid. The Corporate Debtor submits that the claim in the present Company Petition does not include any claim for the period between October 2021 to 07.02.2022.
18. The Corporate Debtor denied any liability to pay any amounts claimed by the Operational Creditor contending that the email dt. 17.05.2022 was sent by the Corporate Debtor much prior to the issuance of the Demand Notice dt. 27.09.2022, by the Operational Creditor under Section 8 of the Code.
19. The Corporate Debtor submits that the Operational Creditor has failed to produce a single document prior to February, 2022 requesting for an executed copy of the Appointment letter dt. 12.10.2021. It is further stated that the Operational Creditor was aware that due to reservations at the end of both the Parties, the same was never signed or executed

formally. Hence, the claim of the Operational Creditor has been disputed by the Corporate Debtor much prior to the issuance of the Demand Notice. In view of the same, the Corporate Debtor submits that there being the pre-existing disputes between the Parties and thus the present Company Petition is liable to be dismissed.

20. The Corporate Debtor further submits that claim of the Operational Creditor is towards the Bonus and Damages and the same is not permissible to be agitated in proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016. It is further submitted that the claim forming part of the present Company Petition in fact varies from the amounts claimed in the demand notice issued by the Operational Creditor.
21. The Corporate Debtor further submits that bonus, if any, to be paid was solely at the discretion of the Corporate Debtor and the same cannot be claimed by the Operational Creditor as a matter of right. The Corporate Debtor further submits that assuming that the unpaid salary was payable to the Operational Creditor, the claim in respect thereof would fall below the mandatory threshold limit of Rupees One Crore as prescribed in Section 4 of the Code.
22. It is also submitted that there are pre-existing disputes between the Parties and a substantial part of the claim forming part of the present

Company Petition is towards alleged unpaid bonus, which was payable to the sole discretion of the Corporate Debtor.

Findings:

23. We have heard the submissions advanced by both sides and perused the record.
24. The Petitioner/Operational Creditor through the captioned company petition is claiming unpaid salary and bonus due to him by the Corporate Debtor. It is the Petitioner's case that he was employed as CEO of the Corporate Debtor vide Appointment Letter dated 12.10.2021 which was accepted by the Petitioner vide an email dated 19.10.2021 and the Respondent while terminating him as the CEO of the company, has not followed the procedure laid down under the termination clause of the Appointment Letter which includes 90 days written notice or payment in lieu of notice.
25. Accordingly, the Petitioner addressed an email dated 25.04.2022 to one Mr. Sunu Matthew requesting the Respondent to formally release the Petitioner from service and settle his account. The Respondent vide email dated 17.05.2022 replied to the aforesaid email of the Petitioner and stated that since there was no formal agreement executed between parties the question of terminating the Respondent does not arise.

26. He further submits that the Petitioner's last working date was 04.02.2022 and it is the Petitioner's own admitted case that he has received salary upto February 2022. Therefore, the Petitioner claim for the salary and bonus from February 2022 to January 2023 does not arise.
27. The Ld. Counsel appearing for the Respondent has invited our attention to email dated 17.05.2022 addressed by Ms. Sonia Gaur, Legal Head of the Respondent reiterating that offer letter dated 12.10.2021 was for discussion purpose only and the same was not finalized. Further, it was stated that certain representations made by the Petitioner with respect to previous employment were inaccurate. Accordingly, there were pre-existing disputes amongst the parties.
28. The contention of the Respondent that the appointment letter was at draft stage and never executed cannot sustain. The conduct of the Respondent from record available with us establishes the fact that it was in terms of the appointment letter. The Respondent has issued a welcome email dated 17.11.2021 to the Petitioner under the caption 'Welcome aboard -Manish Walia (Taron India Private Limited) and has paid to the Petitioner salary due to him till February 2022.
29. The second defense raised by the Respondent is that the bonus component claimed by the Petitioner was discretionary in terms of

clause 3(ii) of the appointment letter. Therefore, if the bonus component amounting to Rs. 49,99,996/- is taken out from the claim of Rs.1,38,79,669/-. The balance amount of Rs.88,79,674/- is below threshold limit of Rupees One Crore prescribed under section 4 of the code.

30. In view of the aforesaid facts, it is observed that the bonus can't be claimed by the Petitioner as the same was subject to the discretion of the Corporate Debtor. Even otherwise, bonus dues do not fall within the definition of Operational Debt. Accordingly, section 9 Petition for initiating CIRP against the Corporate Debtor is liable to be rejected.
31. Further, it is time and again reiterated by innumerable judicial pronouncements that proceedings under the Code are not recovery proceedings. The object of the code is to put back the Corporate Debtor on its feet and not initiate CIRP against going concerns for disputes which are required to be adjudicated by civil courts. The Petitioner is at liberty to agitate his grievance before the appropriate forum.
32. In the above circumstances the petition bearing **CP (IB) 1156/MB/C-I/2022** filed by **Manish Walia**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Taron**

**Material Handling Equipment's Private Limited [CIN:
U74999MH2018PTC313884], the Corporate Debtor, is rejected**

Sd/-

Sd/-

ANU JAGMOHAN SINGH

H. V. SUBBA RAO

Member (Technical)

Member (Judicial)

11.08.2023

Priyal/Vedant