



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-1108/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Mr. VISHAL SETHI

Registered Address:

R/o RZ-33, 1st Floor,

Gali No. 2, Subhash Park Extn - 2,

Uttam Nagar, Delhi-110059

...Operational Creditor

Versus

M/s COLLAGE GROUP INDIA PRIVATE LIMITED

Registered Office at:

Somdatt builders house, 56-58,

Community Centre, East Kailash

New Delhi - 110065

...Corporate Debtor

Delivered on: 02.03.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha

Hon'ble Member (Technical)



Appearances:

Operational Creditor : Adv. Shashwat Anand, Adv. Dhruva Vig
Corporate Debtor: Adv. Anurag Tandon, Adv. Saumay Kapoor

ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

1. The instant application bearing IB-1108/ND/2019 is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, Mr. Vishal Sethi is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Collage Group India Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

- a. It is submitted that, the Operational Creditor Mr. Vishal Sethi, vide appointment letter dated 10.10.2014 was appointed to the post of General Manager to manage Sales & Marketing in the Corporate Debtor Company and was posted at Dehradun.



- b. It is averred that, Corporate Debtor was not paying the monthly salary to the Operational Creditor on due time as there was a regular delay of one month. Thereafter, after the passage of some time, the Corporate Debtor started paying salary after a delay of two-three months and finally in the year 2015, the Corporate Debtor stopped paying the salary altogether. However, the Operational Creditor was assured by the Corporate Debtor that, as soon as the funds were made available, the balance salary would be paid.
- c. It is further submitted that, on 13.01.2016, the Operational Creditor got a call from HR of the Corporate Debtor Company by one Mr. Amit Madan, who asked the Operational Creditor to resign giving the reason that there was shortage of funds.
- d. It is further averred that, Operational Creditor seeing no alternative resigned from his job and sent an email to the Corporate Debtor dated 26.01.2016. In the said email the Operational Creditor mentioned that his arrear balance salary to the tune of Rs. 9,50,530/- is due and requested the Corporate Debtor to pay him his due salary as soon as possible. Thereafter, the Operational Creditor had issued Demand Notice dated 06.03.2019 under section 8 of IBC, 2016 at the registered office of the Corporate Debtor. Corporate Debtor has not given reply to the said notice.



3. Notice was issued by this Adjudicating Authority to the Corporate Debtor on 11.11.2021. Corporate debtor has also filed its reply to the captioned petition.

4. We have heard the arguments advanced by Ld. Counsels appearing for Operational creditor as well as for the Corporate debtor and also perused the record.

5. The Operational Creditor's claim is based on the facts that Applicant was appointed to the post of General Manager to manage Sales & Marketing in the Corporate Debtor Company. Due to some difficulty and insufficient funds, the Corporate Debtor failed to pay the salary of the Operational Creditor. It is stated by the Applicant that the Corporate Debtor did not make the due payment of his Operational debt.

6. Per contra, Corporate debtor has raised one contention:-

I. The Operational Creditor was not an employee of the Corporate Debtor Company and no dues are payable by the Corporate Debtor to the Applicant.

7. Explaining the contention raised by the Corporate Debtor, it is submitted by the Corporate Debtor that Applicant was not an employee of the Corporate Debtor company. The Applicant was initially appointed by the Respondent as GM – sales & marketing by the way of letter of appointment dated 10.10.2014. The letter of appointment is reproduced below for reference:-



 **COLLAGE**
G R O U P
Collage Group Infrastructure Pvt. Ltd.

October 10, 2014

Mr. Vishal Sethi
RZ - 33, 1st Floor, Subhash Park,
Ext-2, Gali No.2, Uttam Nagar
New Delhi - 110059

Subject: Letter of Appointment

Dear Mr. Sethi,

With reference to your application and subsequent interview with us, Management is hereby pleased to appoint you in our organization from 10/10/2014 on the following terms & conditions:

1. **DESIGNATION:** You will be designated as **GM – Sales & Marketing.**
2. **PLACE OF POSTING:** You will be posted at **Dehradun.** However, at any time during the period of appointment, you will be liable to transfer in such other capacity that the Company may determine to any other Department/Branch/Establishment or any other Company under the same management without adversely affecting your emoluments and general conditions of service.

Thereafter, the applicant was subsequently transferred to M/s MNT Infratech Private limited Company and remained an employee of M/s MNT Infratech Private Limited from April 2015 till his resignation on 26.01.2016. Thereafter, Full & Final Settlement was executed Between Applicant and M/s MNT Infratech Private Limited, it is also pertinent here to refer the 'Full & Final' agreement executed between the parties same is reproduced below for reference:-



FULL & FINAL SETTLEMENT

The present settlement is entered between M/s MNT Infratech Private Limited (Hereinafter called Management/ Employer).

And


Sh. Vishal Sethi (Hereinafter called Employee / Workman).

Whereas the Employee Sh. Vishal Sethi was working with the company from 10th October, 2014 to 26th January, 2016 as General Manager-Sales & Marketing.

With regard to his various claims with the employer same stands finally settled after due negotiations on the following terms and conditions.

1. Employee will be paid an amount of Rs. 9, 28,972/- (Rupees Nine Lac Twenty Eight Thousand Nine Hundred Seventy Two Only) as full & final settlement of all his/her claims which include his back due Salary /wages, Gratuity, Bonus, Incentives and all unpaid salaries/ wages for the entire period of employment.
2. Employee will forgo all his/her claims of re-employment, reinstatement etc. in all respect after the present settlement and shall not claim anything over the above amount being paid under the present settlement. All his/her other claims are treated to be withdrawn and forgone.
3. The present settlement shall be treated as a settlement under section 18 of the ID Act and the Management shall be at liberty to file the same before the authorities concerned.
4. The present settlement has been reached between the parties of this settlement with free will and without any undue force and influence.
5. The Employee will execute a separate receipt of the money received by him from the management which shall be part of the present settlement.


For MNT Infratech Pvt. Ltd.
Authorized Signatory
Management


Employee

Thus, on the proof the above annexed document it can be seen that, the agreement was executed between Applicant and M/s MNT Infratech Private limited. Therefore, any claim regarding arrear of salary is to be made to his employer M/s MNT Infratech Private Limited. It is advantageous at this juncture refer the decision of Hon'ble Supreme Court in the matter of *Vodafone International Holdings v. Union of India & Anr. (Civil Appeal No. 733 of 2012)*. The relevant para of the decision is reproduced below:-



(PARA-56)

Companies Act in India and all over the world have statutorily recognised subsidiary company as a separate legal entity.

(PARA – 59)

Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary are allowed decentralized management. Each subsidiary can reform its own management personnel and holding company may also provide expert, efficient and competent services for the benefit of the subsidiaries.

(PARA – 75)

Further, as stated above, a company is a separate legal persona, and the fact that all the shares are owned by one person or a company has nothing to do with the existence of a separate company. Therefore, though it may be advantageous for a parent and subsidiary companies to work as a group, each subsidiary has to protect its own separate commercial interests.

8. In the light of the decision referred to ***supra***, the Hon'ble Supreme Court held that the legal relationship between a holding company and its subsidiary is that they are two distinct legal persons, and the holding company does not own the assets/liabilities of the subsidiary. It is clear from the perusal from the Full & Final Settlement Agreement executed between the parties that, applicant rendered his services to M/s MNT Infratech Private Limited working under the



same management. Therefore, it appears to us that the services of the Operational Creditor was placed with M/s MNT Infratech Private Limited, which is a separate Company and Operational Creditor continued his services with the said Company.

9. Taking into consideration all the aforesaid facts, we are of the view that, the Operational Creditor has failed to prove existence 'Operational Debt' which is payable by the Corporate Debtor. Thus, we have no hesitation to hold that, the claims raised by the Operational Creditor against the Corporate Debtor i.e., M/s Collage Group India Private Limited are neither tenable in the eyes of law nor on facts.

10. **Accordingly, the instant Application bearing IB-1108/ND/2019 stands dismissed.**

SD/-

(Dr. Binod Kumar Sinha)
Member (Technical)

SD/-

(Bachu Venkat Balaram Das)
Member (Judicial)