

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-1402(PB)/2018

IN THE MATTER OF:

Sandeep Mehta

....Operational Creditor/Petitioner

v.

Pearls infrastructure Projects Ltd....Corporate Debtor/Respondent

SECTION : Under Section 9 of The Insolvency and Bankruptcy Code, 2016

Judgement delivered on 31.01.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT

DR. DEEPTI MUKESH
HON'BLE MEMBER (J)

PRESENTS

For the Operational Creditor: Mr. Vivek Malik, Mr. Utsav Mukharjee & Mr. Yesh Kotak, Advs.

For the Respondent Mr. Akash Rukhaiyar, Ms. Jaya Rukhaiyar, Mr. Dev Roy, Advs.

M.M. KUMAR, PRESIDENT

JUDGMENT

Mr. Sandeep Mehta has preferred the instant petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor-Pearls Infrastructure Projects Limited. The petitioner

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has claimed that it is an 'Operational Creditor' and that the respondent is a 'Corporate Debtor'.

2. The Corporate Debtor 'Pearls Infrastructure Projects Limited' was incorporated on 05.04.2005. Its CIN number is U45203DL2005PLC134737 Its authorized share capital is 150,00,00,000/- and paid up share capital is Rs. 133,65,18,000/- and it is based at 2nd Floor, A-Wing, Statesman House, Barakhamba Road, Connaught Place, New Delhi-110001.

3. Before embarking upon consideration of legal issue raised in the instant petition it would first be necessary to notice few material facts. As per the pleaded case, the petitioner was offered a job in the designation of General Manager with a gross salary of Rs. 1,67,000/- per month and other perquisites through letter of intent dated 15th October, 2013 (Annexure-D) by the Respondent Corporate Debtor. Thereafter, the appointment letter dated 21st October, 2013 was provided to the Petitioner and he was kept on probation.

4. Thereafter, on satisfactory completion of probation period, the employment of the Petitioner was continued and confirmed as regular employee in the Respondent Company through letter dated 22nd April,



2014 (Annexure-E) with the same gross package of salary and perquisites.

5. Thereafter, from time to time, the gross package of salary and perquisites was increased and as per the last pay slip, the monthly salary and perquisites of Rs. 1,84,314/- was paid to the petitioner.

6. The Petitioner, from the commencement of his service in 2013, has performed his duties as per the requirement and satisfaction to the Respondent Corporate Debtor. The Petitioner has been paid salary, perquisites, bonus etc. from time to time, from the commencement of the employment till the salary and perquisites due for the month of August, 2016. Thereafter, the Petitioner was paid advance salary and perquisites for the month of September and October, 2016 on 14th September, 2016. The petitioner was also paid advance salary of Rs. 5,00,000/- on lump sum basis on 30th November, 2016 however, the same has been marked as lien by the order of Recovery Officer of SEBI dated 02.02.2017.

7. The Petitioner was given an assurance that the salary and perquisites due was to be paid in due course of time and was requested to continue in the employment in critical times of the Respondent



Corporate Debtor Company. The Petitioner further submitted that even on request made by him, the management did not provide relieving letter from the employment and asked him to continue in the employment.

8. The Petitioner, on the request of the management, continued in the employment with the hopes that the dues with regard to salary and perquisites shall be paid in due course of time, however, the same was not paid to the Petitioner. It is the case of the petitioner that he has not been paid any salary and perquisites due for the month of beginning from November, 2016 till the date of filing the present petition.

9. Feeling aggrieved by the aforesaid action of respondent, he issued a demand notice (dated 08/09/2018) in Form No. 3 (Annexure-F) along with its annexures and Form No. 4 to the Respondent Corporate Debtor. However, the Respondent Corporate Debtor neither made the payment nor entered any reply to the demand notice issued in Form No. 3/4. The Respondent Corporate Debtor has also not raised any objection with regard to the default committed by them in making payment of Rs. 40,54,908/- to the Petitioner and has avoided to make payment on one or the other pretext.

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10. The Operational Creditor has proposed the name of Resolution Professional, Mr. Vinod Tarachand Agrawal , 204 Wall Street-1, Opp Orient Club, Near Gujarat College, Ellis Bridge, Ahmedabad- 380006. He has registration No. IBBI-IPA-001/IP-P00641/2017-18/11090. A written communication dated 27.09.2018 sent by Mr. Vinod Tarachand Agrawal in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record (at pgs. 29-31). There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or ICSI Insolvency Professional Agency. In addition, further necessary disclosures have been made by Mr. Vinod Tarachand Agrawal, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

11. The Corporate Debtor has filed the reply to the petition.

12. We have heard the learned counsels for the parties at considerable length.

13. Admittedly the petitioner has been working as a General Manager of the respondent company. He has not been paid his salary from November, 2016. The aforesaid fact has not been disputed in the reply

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filed and in fact in the email dated 08.11.2018 sent by the Corporate debtor, the factum of non-payment of salary since November, 2016 stand categorically admitted and the email reads as under:-

“Dear Mr. Sandeep Mehta,

We have come to know that you are pursuing with NCLT for your pending dues. We value your long association with our esteemed organisation, you were always with us in all difficulties in past and present.

We never denied that we have not paid you since November, 2016 to till date, and owns you your all pending dues since then.

We are facing some financial difficulties due to the same we were not able to pay you your salaries on time in past. Now, we are in the process of arranging some funds and we are sure that we will clear your all pending dues till now in one go.

You are therefore advised to continue your employment with us and give us some time to clear your all pending dues. I will make sure that after this you will get your monthly salary and perks on time.

Till the time you are advised not to pursue with the NCLT and give us some time along with continuing your employment as earlier.”

14. In reply to the aforesaid email the petitioner has responded by sending an email on 13.11.2018 and has offered to withdraw the petition if the pending dues were to be cleared before the next date of hearing. However, many hearings have taken place after 13.11.2018 but the dues of the operational creditor have not been cleared. Even at the time of hearing Mr. Akash Rukhaiyar, Ld. Counsel for the respondent

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stated that corporate debtor has not denied the liability to make payment and has expressed the financial stress of the corporate debtor.

15. As a sequel to the above discussion, this petition is admitted and Mr. Vinod Tarachand Agrawal, Registration number IBBI/IPA-001/IP-P00641/2017-18/11090 is appointed as an Interim Resolution Professional.

16. In pursuance of Section 13 (2) of IBC we direct that public announcement shall be immediately made by the Interim Resolution Professional with regard to admission of this application under Section 9 of the Code. We also declare moratorium in terms of Section 14 of the Code. The consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;


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- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government. Additionally, the supply of the essential goods or services to the Operational Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services.

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18. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Operational Debtor, its promoters or any other person associated with the Management of the Operational Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Operational Debtor. In case there is any violation by the ex-management or its ex-directors the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Operational Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.





19. The petitioner is directed to pay sum of Rupees two lakhs to the Interim Resolution Professional to meet out the expenses to 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. This shall however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

20. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd/-

(M. M. KUMAR)
PRESIDENT

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

31.01.2019
RITU SHARMA

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