

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH – II, SPECIAL BENCH  
KOLKATA**

***C.P (IB) No. 692/KB/2020***

*An application 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.*

*In the matter of:*

**Kuldip Kumar Jetley**, residing at B/10/ Flat No. 7487, Vasant Kunj, New Delhi-  
110070.

*...Operational Creditor*

*Versus*

**Reacon Engineers (INDIA) Private Limited** [CIN -U145201WB1988PTC045417],  
227 Kamalalaya Center, 156A, Lenin Sarani, Kolkata – 700013

*...Corporate Debtor*

**Date of Hearing: 31.10.2022**

**Date of pronouncing the order: 09.01.2023**

**Appearances (through Video Conferencing/physical hearing)**

***For the Operational Creditor*** : Mr. Sumit Kumar, Advocate  
: Mr. Asis Kumar Das, Advocate  
: Md. Ghulam Muztafa, Advocate

***For the Corporate Debtor*** : Mr. Siddhartha Banerjee, Advocate  
: Ms. Meenakshi Manot, Advocate  
: Mr. Abhishek Baran Das, Advocate

***Coram:***

***Rohit Kapoor*** : ***Member (Judicial)***

***Balraj Joshi*** : ***Member (Technical)***

**ORDER**

***Per Balraj Joshi, Member (Technical)***

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Shri. Kuldip Kumar Jetley (*‘Operational Creditor’*)**, for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against **Reacon Engineers (INDIA) Private Limited (*‘Corporate Debtor’*)**.
3. The present Petition was filed on **4 February, 2020** before this Adjudicating Authority. The total amount claimed in default is Rs.83,82,247/- (Rupees Eighty-Three Lakh Eighty-Two Thousand Two Hundred and Forty-Seven only), inclusive of interest calculated @18% per annum from the date of accrual. The first default occurred in July, 2016 i.e., the date on which the monthly salary became due.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.15,00,00,000/- (Rupees Fifteen Crore only) with paid up Capital as Rs.9,01,82,200/- (Rupees Nine Crore One Lakh Eighty-Two Thousand Two Hundred only).
5. ***Submissions by the Ld. Advocate appearing on behalf of the Operational Creditor.***
  - 5.1 The Operational Creditor was an employee of the Corporate Debtor. He was appointed as Project Manager on 20.12.2009 on full time employment and the same was confirmed *vide* a letter dated 14.09.2010.<sup>1</sup> The monthly salary was also revised and enhanced to Rs.1,00,395/- w.e.f. 01.04.2010. He was further promoted to the post of Deputy General Manager (DGM) with a further increment in his monthly salary as 1,32,522/- w.e.f. 01.04.2013.<sup>2</sup>
  - 5.2 Thereafter, the Operational Creditor was transferred to the subsidiary company

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<sup>1</sup> Annexure-5, Page 67 of the Petition

<sup>2</sup> Annexure-6, Page 68 to 70 of the Petition

of the Corporate Debtor namely Omaxe Infra Construction Limited (OICL) w.e.f. **01.05.2016** by an office order.<sup>3</sup> He was posted as Project-in-Charge to handle the Air Force Naval Housing Board Project (AFNHB Project) at Meerut to ensure expeditious completion of the project and in respect of the same a Special Power of Attorney was also executed by OICL in favour of the Operational Creditor *vide* Power of Attorney dated 04.03.2016<sup>4</sup> and the same was informed to the Director General of AFNHB Project *vide* letter dated 18.05.2016.<sup>5</sup>

- 5.3 The Operational Creditor states that the monthly salaries for one year was paid by the Director General of AFNHB Project as per the special arrangements/ agreement between the subsidiary company i.e., OICL and the Director General of AFNHB Project. The said salary was one year was adjusted towards the due salary for the period from June 2015 to June 2016.
- 5.4 In or about June, 2017, the Corporate Debtor granted increment to the Operational Creditor and his gross salary became Rs.1,50,000/-. Thereafter, AFNHB stopped the salaries of the Operational Creditor along with vendors, suppliers and labour of the subsidiary company i.e., OICL.
- 5.5 Subsequently, the Income Tax Department *vide* a letter dated 01.08.2017<sup>6</sup> issued a notice to the Operational Creditor for non-filing of returns for the year 2014-2015 and 2015-2016. The Operational Creditor requested the subsidiary company i.e., OICL to furnish form 16 for the years 2014-2015, 2015-2016 and 2016-2017 *vide* email dated 11.09.2017. The Operational Creditor *vide* an email dated 14.03.2018 acknowledged receipt of Form-16 for the year 2016-2017 and further requested to furnish him with Part-B of Form 16 so that he is able to file returns before 31.03.2018.
- 5.6 It is from July 2017 that AFNHB stopped the payment of salaries/payments of the Operational Creditor along with vendors, suppliers and labour of the subsidiary company i.e., OICL and ultimately the Chairman of AFNHB Project

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<sup>3</sup> Annexure-8, Page 72 of the Petition

<sup>4</sup> Annexure-10, Page 74 to 76 of the Petition

<sup>5</sup> Annexure-9, Page 73 of the Petition

<sup>6</sup> Annexure-17, Page 80 of the Petition

cancelled the project on 30.10.2017 and directed all the deployed employees of OICL to leave the site on immediate effect and appointed the Arbitrator.

- 5.7 On receiving the above notice, the Operational Creditor was directed by the CMD of the Corporate Debtor to report to Mr. A.C Varshney, Project Co-Ordinator at Delhi office to assist him in to prepare the claim before the Arbitrator on behalf of the company.
- 5.8 Thereafter on 18.07.2018, the Operational Creditor approached the Head Office with request of two months leave since there was no assignment or deployment available for him. In response to the same, Ms. Madhushree, G.M. Admin and the daughter of CMD had asked the Operational Creditor to approach Mr. A.C Varshney to get the same sanctioned as he was reporting to him at that particular point of time.
- 5.9 The Operational Creditor after getting the leave sanctioned informed the same to Ms. Madhushree and proceeded on his leave w.e.f. 19.07.2018. On his return, he approached Mr. A.C Varshney to join service but he was directed to approach CMD but he failed to get appointment to meet the CMD till 04.11.2018. On meeting the CMD, the Operational Creditor was informed that he was a discontinued staff and hence no salary or dues will be paid to him.
- 5.10 The Operational Creditor states that he was appointed by the Corporate Debtor for full time employment after issuance of formal letter of appointment and till date no termination letter has been issued to him. The Operational Creditor further insisted that the dues and unpaid salaries are valid and the company is liable to make payment of the same, the CMD asked the Operational Creditor to submit his full and final dues. The same was immediately shared by the Operational Creditor *vide* email dated 04.11.2018 and the same was acknowledged by the official of the Corporate Debtor *vide* email dated 11.11.2019 which was to be reimbursed to the tune of Rs.11,11,530/-. It is further stated by the Operational Creditor that till date no dues have been cleared by the Corporate Debtor.
- 5.11 The Operational Creditor on 17.11.2019 sent a Demand Notice to the Corporate Debtor through email and registered post. The said notice was received by the

Corporate Debtor on 17.11.2019 and it sent a reply dated 27.11.2019 through email.<sup>7</sup>

5.12 It is further contended by the Operational Creditor that the Corporate Debtor in the Reply to the notice issued under Section 8 dated in para (d) admitted:

*“(d) that you vide e mail dated 29.11.2018 yourself have acknowledged that you had been paid all the salaries till June 2017, which includes direct payments from the client where you were posted at Meerut for the period commencing from May 2016 to October 2017, the rest of the salaries as has been contended is severally disputed.....”*

5.13 Further, the Corporate Debtor in its Reply filed to the present petition has admitted:

*“21. I say that the applicant last performed his duties as an employee of the Corporate Debtor and/or Reom in and around end of October, 2017....”*

*“24. .... Thus, even going by the case sought to be made out by the applicant, he was supposed to be paid his salary not by the Respondent/Corporate Debtor and Reom the then subsidiary to the Corporate Debtor but by the Director General of the Principal Employer of the project till October, 2017....”*

5.14 The Operational Creditor submits that it may be safely concluded that the Respondent has been unable to pay a debt of at least Rs. 6,00,000/- (Rupees Six Lakh only) to the Applicant and the Respondent is liable to undergo Corporate Insolvency Resolution Process.

5.15 The Corporate Debtor has acknowledged a debt of Rs. 11,11,530/- via email dated 02.11.2019<sup>8</sup> and a sum of Rs. 6,00,000/- via Reply to Demand Notice out of the total debt being Rs. 83,82,247/-.

5.16 The Operational Creditor states that the Corporate Debtor has not been able to produce any document to show any previous dispute raised by the Corporate

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<sup>7</sup> Page 53 of the Petition

<sup>8</sup> Page 83 of the Petition

Debtor prior to the date of demand notice. The complaint filed to the police dated 12.12.2019 is an afterthought just to deny the rightful dues of the Operational Creditor's hard-earned money.

**6. *Submissions by the Ld. Advocate appearing on behalf of the Operational Creditor.***

- 6.1 The Corporate Debtor states that on 1<sup>st</sup> May, 2016 the Operational Creditor was transferred to OICL in relation to a particular project undertaken at Meerut by OICL in the State of Uttar Pradesh.<sup>9</sup>
- 6.2 The project at Meerut suffered a massive set back purely by reason of the failure and negligence on the part of the Operational Creditor in discharging his duties, therefore on 11.10.2017<sup>10</sup> the AFHNB vide a communication had complained about the serious lapses and laches on the part of the Operational Creditor.
- 6.3 Subsequently, the Operational Creditor was asked to report at the Delhi office of one Reom Infrastructure and Construction Limited (earlier known as OICL) and to work with Mr. A.C. Varshney<sup>11</sup> for a certain purpose, however, the Operational Creditor refused, declined, failed and neglected to discharge such duties and also did not report to OICL office at Delhi.
- 6.4 The Corporate Debtor states that the Operational Creditor availed a loan from the Corporate Debtor and he was paid Imprest Money of Rs. 12,28,324/- which was to be adjusted from his salaries and other allowances, if any. The Operational Creditor has conveniently suppressed such important material fact in the present application.
- 6.5 The Corporate Debtor states that the Operational Creditor alleges that he was not paid salaries from July 2016 to November 2017 but the Operational Creditor has made statements at Page 20 and 21 of the application that his monthly salaries were paid by the Director General of AFHNB project for one year i.e., till June, 2016 as an employee of OICL and the balance if any has to be claimed from OICL or Reom and not from the Corporate Debtor who is just a

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<sup>9</sup> Page 42 of the Reply

<sup>10</sup> Page 44 of the Reply

<sup>11</sup> Page 8, para 19 of the Reply

shareholder of Reom.

- 6.6 The Corporate Debtor states that the Operational Creditor has not been able to produce any documents in support of his contention that after October, 2017 he discharged any duty for the Corporate Debtor.
- 6.7 The Operational Creditor has in order to substantiate his purported claim has relied upon a purported communication allegedly issued by one Mr. Pranab Kumar Biswas whereas when such document was shown to him, he clearly said that the document was forged and the signature appearing on the said document does not bear his signature<sup>12</sup>. In these circumstances, the Corporate Debtor had filed a police complaint with the Bow bazar Police Station<sup>13</sup> which is now culminated into a criminal proceeding.
- 6.8 The Operational Creditor has also raised a claim on account of ex-gratia payment but it will be evident from the terms of appointment<sup>14</sup> that he was never entitled to any ex-gratia payment, as falsely alleged in the application.
- 6.9 The Corporate Debtor also states that the claim of Rs.11,68,887/- raised by the Operational Creditor towards reimbursement of alleged expenses is purely fictitious and unsubstantiated as the Operational Creditor has not been able to produce a single document in this regard.
- 6.10 The Corporate Debtor further states that the Operational Creditor was not entitled to payment of rent and in support of this, the Corporate Debtor relies on an Inter-Office Memo<sup>15</sup> and also states that the Operational Creditor was never entitled to such rent as the salaries payable to him himself had a component of house rent allowance. The Operational Creditor would stay in his own residence and had been provided with a personal vehicle for commutation.
- 6.11 The Operational Creditor was also not entitled to any leave encashment since in his own admission he has stated that he absented himself from his duties in an unauthorized manner. The claim on account of leave encashment is, therefore,

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<sup>12</sup> Page 47 & 48 of the Reply

<sup>13</sup> Page 49 of the Reply

<sup>14</sup> Page 32 of the Reply

<sup>15</sup> Page 80 of the petition

purely speculative as the leave was not in accordance with the conditions<sup>16</sup> for availing leave in a proper manner.

6.12 The Corporate Debtor contends that the present petition is hopelessly time barred as the purported claim of the Operational Creditor dates back to July, 2016 whereas the petition was affirmed in January, 2020, therefore, such time barred claim cannot lawfully sustain an application under Section 9 of the Insolvency and Bankruptcy Code.

6.13 The Operational Creditor was to discharge his duties under OICL, later known as Reom Infrastructure and Construction Limited (now sold to Javitri Estates Private Limited). The Corporate Debtor had sold its shares in Reom Infrastructure and Construction Limited to Javitri Estates.<sup>17</sup> During the employment of the Operational Creditor with OICL, it received salaries from the principal employer of the project and not from the Corporate Debtor, therefore the Corporate Debtor had in no manner of application to pay any salary to the Operational Creditor.

## **7. Issue**

7.1 Is there any pre-existing dispute between the parties

7.2 Is the application barred by limitation

## ***Analysis and Findings***

8. Heard the Ld. Counsel appearing for both the parties and perused the concerned documents annexed to the Petition.

9. It is noteworthy to mention that one of the important points while deciding any petition is **whether the petition was filed within limitation or not**. In the instant case, the Operational Creditor claims that his salary became due from July 2016<sup>18</sup> and the application was filed on 04.02.2020. Hence, it is very clear that the present petition was filed after a period of 3 (three) years.

10. In the light of the above, it is observed that the claim of the Operational Creditor

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<sup>16</sup> Page 37 of the Reply

<sup>17</sup> Page 55-119 of the Reply

<sup>18</sup> Page 12 of the Petition

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is barred by limitation as it was filed beyond the limitation period. Hence, the petition being *CP(IB) No. 692/KB/2020* stands **rejected**.

- 11.** A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

The order is pronounced on the 9<sup>th</sup> day of January, 2023

*FA(LRA)*