

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

C.P. No. 587/I&BP/2018

Under section 9 of the IBC, 2016

In the matter of

Ms. Rama Subramanian

R/at B- 501, Vasundhara CHS Ltd,

Krishna Vatika Road, Bengalee

Compound, Gokuldham, Goregaon

(East), Mumbai – 400063.

....Petitioner

v/s.

M/s. Sixth Dimension Project Solution Limited

Shop No. 9, Ground Floor, Shree Anant Bhuvan

CHS Ltd. Veer Savarkar Road, Near Teen Petrol

Pump, Thane – 400601.

....Respondent

Order delivered on: 09.10.2018

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner :Ms. Rama Subramanian, Party in person

For the Respondent: Mr. Harsh Gokale, Advocate a/w Ms. Ekta Tyagi,

Advocate

*Per: V. Nallasenapathy, Member (Technical)*

**ORDER**

1. This Company Petition is filed by Ms. Rama Subramanian (hereinafter called "Petitioner") against M/s. Sixth Dimension Project Solution Limited (hereinafter called "Corporate Debtor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor alleging that Corporate Debtor committed default on 27.12.2017 in making payment of salary dues to the extent of Rs. 24,07,880/- by invoking the provisions of Sections 8 and 9 of I & B Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The Petitioner submits that she was appointed by the Corporate Debtor as Assistant General Manager (Legal) on 10.01.2014 with an annual remuneration of Rs. 10,00,000/- and worked with the Corporate Debtor till 31.12.2016. The letter of appointment issued by the Corporate Debtor is enclosed with the Petition. It was stated that she had tendered her resignation letter on 23.12.2016 with a request to release her outstanding dues of Rs. 24,07,880/-. The Corporate Debtor vide letter dated 27.12.2016 addressed to the Petitioner replied stating as below:

*"I am in receipt of your letter, requesting for immediate release of your outstanding salary dues. Being familiar with all the legal cases, we face as of date, I hope that you will be in a better position to gauge our financial situation, without any explanation. I know you had put in your heart and soul to discharge your duties. Though I desire to release your dues immediately, our financial position does not permit me to do so. I can only promise at this juncture that your claim towards unpaid salary, as claimed in your letter dated 23.12.2016 will be settled in due course of time, in any case, within one year.*

*Hope you will trust and co-operate with us in the above matter.*

*Wish you a bright future."*

3. When the payment was not forthcoming the Petitioner issued demand notice on 15.03.2018 u/s 8 of IBC demanding payment of salary dues of Rs. 24,07,880/- for which there was no response from the Corporate Debtor. Hence this petition. The Petitioner filed affidavit under section 9(3)(b) of the Code stating that no reply was received from the Corporate Debtor. The Petitioner has also filed bank certificate as required under section 9 (3)(c) of the Code.
4. The Corporate Debtor filed reply stating that; there are several deficiencies in the Petitioner's performance as Assistant General Manager (Legal) of the Corporate Debtor and in view of this the managerial staff and Directors of the Company were of the view that the Petitioner was unfit to perform the role, the shortcomings of the Petitioner were communicated to her from time to time during the course of discussion by the Managers of Corporate Debtor, an ad-hoc payment of Rs. 3,00,000/- was made for the services rendered as well as for her future services, the Petitioner has not improved her performance and in fact the performance of the Petitioner deteriorated and it was extensively discussed between the Managers of the Corporate Debtor and a decision was taken to terminate the services of the Petitioner

which was conveyed to the Petitioner orally in late November, 2015, the Petitioner failed to bring on record any evidence supporting her claim and the Petitioner has not produced any salary slip or invoice in support of her claim and also failed to demonstrate the work performed after November, 2015. The Corporate Debtorvehemently denies the existence of debt and seeks for dismissal of this Petition.

5. The above contentions of the Corporate Debtorare diametrically opposite to the contents of the letter dated 27.12.2016 written by the Directorof the Corporate Debtor to the Petitioner in response to her request for release of outstanding salary due, which is extracted supra. Not even a single issue as contended now was raised previously. In fact, the Corporate Debtor referred that the Petitioner had put in her heart and soul to discharge her duties and surprisingly it was stated before this Bench that the Petitioner was unfitto perform the role, etc. It is crystal clear that the contentions raised by the Corporate Debtor in their reply and written submissions are spurious, hypothetical and unfounded.

6. The Hon'ble Supreme Courtin the case of Mobilox 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 defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence 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"*

7. In thecase on hand the contentions raised by the Corporate Debtor are not supported by evidence and those contentions were raised merely to avoid the Corporate Insolvency Process as if there are disputes which were never raised prior to the issue of demand notice by the petitioner. In the circumstance the petition deserves to admitted in view of the proof of debt and default.

8. One Ms. S. Gopalakrishnan, residing R - 2 / 202, Moraj Riverside Park, Takka,Panvel (Raigad District),Maharashtra, 410206having Registration No. IBBI/IPA-002/IP-N00151/2017-2018/10398, email id: gopi63.ip@gmail.com

has given his consent in Form No. 2 to act as an Interim Resolution Professional.

9. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

- (a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 09.10.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Ms. S. Gopalakrishnan, residing R - 2 / 202, Moraj Riverside Park, Takka, Panvel (Raigad District), Maharashtra, 410206 having Registration No. IBBI/IPA-

002/IP-N00151/2017-2018/10398, email id:  
gopi63.ip@gmail.com as an interim resolution professional to carry  
the functions as mentioned under the Insolvency & Bankruptcy  
Code.

10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to both the parties and also to the Interim Resolution Professional.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Bhaskara Pantula Mohan  
Member (Judicial)