

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.2483/MB.IV/2019

*Under section 9 of the Insolvency and
Bankruptcy Code, 2016*

In the matter of

Ajit Kumar Yadav & seven others
...Operational Creditors

Versus

Reliance Tech Services Limited
[CIN: U72900MH2007PLC172690]
... Corporate Debtor

Order pronounced on : 04.08.2020

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Ravikumar Duraisamy : Member (Technical)

Appearances:

For the Operational Creditor : Mr Bimal Rajasekhar, Mr Biju
Joseph & Ms Resmitha R
Chandran, Advocates

For the Corporate Debtor : Mr DJ Kakaliai/b Mulla & Mulla
and Craigie Blunt &Caroe,
Advocates

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Mr. Ajit Kumar Yadav & seven

others(*Operational Creditors*)who are the erstwhile employees, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Reliance Tech Services Limited(*Corporate Debtor*).

2. The Corporate Debtor is an unlisted public company limited by shares and incorporated on 30.07.2007 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U72900MH2007PLC172690. Its registered office is at H-Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai 400 710, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 28.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 62,82,770.00 (Rupees sixty-two lakh eighty-two thousand seven hundred and seventy only) as principal and ₹ 10,76,161.04 (Rupees ten lakh seventy-six thousand one hundred and sixty-one and four paise only) as interest as on 02.01.2018, which is stated to be the date of default.
4. The case of the Operational Creditors areas follows: -
 - (a) The Operational Creditors are erstwhile employees of the Corporate Debtor, having entered into contracts of employment with each of them in 2017 (*para 26 at page A of the Petition*);
 - (b) Two months into the employment, the Corporate Debtor terminated the contracts of the employees-operational creditors. While terminating the employment, it was specifically agreed by the Corporate Debtor that the employees' salaries would be paid upto 30.04.2018 (*para B at page 12 of the Petition*);

- (c) Thereafter, full and final settlement slips were issued by the Corporate Debtor to the employees, specifying the amount payable to each of them (*para Cat page 12 of the Petition*);
- (d) The Corporate Debtor failed to make any payment to the employees in spite of consistent follow-up (*para E at page 12-13 of the Petition*).
5. Full and Final Settlement Slips in respect of the employees-operational creditors have been placed on record as Exhibit 'C1' to 'C8' at pp.41-56. These Slips do not provide for interest in case of delayed payments. The total debt due and payable to the Operational Creditors is ₹ 73,58,931.04 (Rupees seventy-three lakh fifty-eight thousand nine hundred and thirty-one and four paise only), as mentioned at page 105 of the Petition.
6. The Operational Creditors had served two Demand Notices in Form 3 dated 27.04.2019 and 11.05.2019 to the Corporate Debtor (Exhibit 'E' and 'H', pp.83-86 and 95-98) in terms of section 8 of the IBC. The Corporate Debtor has sent replies dated 03.05.2019 and 11.05.2019 to both the Notices, wherein they have *inter alia* stated that the alleged operational debt was not crystallised, and hence incomplete, unverifiable and unauthenticated. The reply has been annexed at Exhibit 'G' and 'J' at pp.90-94 and 101-104 of the Petition.
7. The Corporate Debtor has unequivocally acknowledged the debt *vide* the Full and Final Settlement Slips as seen from the Petition at pp.41-56 at Exhibit 'C1' to 'C8'.

8. Mr DJ Kakaliai/b Mulla & Mulla and Craigie Blunt &Caroe, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.
9. In its reply dated 27.09.2019, the Corporate Debtor has set up the following defence:-
 - (a) Each employee will have a distinct and separate claim against the Corporate Debtor arising out of separate and distinct Appointment Letters, which cannot be combined in one petition (*para 4 at page 3 of the Reply*);
 - (b) There is no provision for payment of any interest on the pending dues of employees (*para 7 at page 4 of the Reply*);
 - (c) The other seven employees-Operational Creditors have issued powers of attorney in favour of the petitioner-Operational Creditor. These are defective. The power of attorney at p.107 of the petition is issued by one Sonal Malhotra who is not one of the seven employees mentioned in Form 5 in favour of one Ankush Jhulka and not Mr Ajit Kumar Yadav, the petitioner herein (*para 9 at page 4 of the Reply*);
 - (d) The powers of attorney placed at page nos.107, 111, 113, 116, 118, 121 and 123 have been issued in favour of one Ankush Jhulka and not Mr Ajit Kumar Yadav, the petitioner (*para 9 to 15 at page 4-5 of the Reply*).
10. We have heard the arguments of both sides and perused the records.

11. The Corporate Debtor sought for and was granted several opportunities on the grounds of attempting a settlement, but these efforts have come a cropper.
12. It is noted that the Corporate Debtor has admitted the liability by issuing Full and Final Settlement Slips at p.41-56. The affidavit in reply dated 27.09.2019 of the Corporate Debtor. The arguments of the Corporate Debtor are limited to technical glitches in the petition, and not on the merits of the petition. We notice that the petitioners are the erstwhile employees of the Corporate Debtor, and there is no denial of this fact either in the reply to the Demand Notice or in the reply to the Petition. There is also no denial about the authenticity of the claim itself, or the fact that the petitioners were employees of the Corporate Debtor and that they are agitating for their dues.
13. In matters like these, where the petitioners are erstwhile employees, we do not wish to dwell so much on the procedural aspects of the petition as we would like to do on the substantive merits of the petition itself. Thus, even if we discount the powers of attorney given by the other petitioners and look at the claim of Mr Ajit Kumar Yadav alone, we find that the Corporate Debtor owed him a sum of ₹ 4,89,617/- (p.44 of the petition). This in itself is sufficient to maintain the present petition, as it was in excess of the prescribed threshold in terms of section 4(1) of the IBC at the relevant time. Therefore, we are constrained to admit the present petition.
14. The application made by the Operational Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in

excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

15. The Operational Creditors have not proposed the name of any Interim Resolution Professional (IRP) in the matter.
16. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) No.2483/MB-IV/2019 filed by Mr Ajit Kumar Yadav & seven others, the Operational Creditors, under section 9 of the IBC read with rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Reliance Tech Services Limited [CIN: U72900-MH2007PLC172690], the Corporate Debtor, is admitted.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- (iii) 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 (Sarfaesi) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) Since the Operational Creditor has not proposed the name of any IRP in the matter, this Adjudicating Authority hereby appoints Mr Anjan Bhattacharya, Registration No.IBBI/IPA-001/ IP-P00926/2017-18/ 11533, having address at No.603, Palm Island-II, Royal Palms Estate, Aarey Colony, Goregaon (East), Mumbai 400065 [email: anjan.bhattacharya@aaainsolvency.com, Mobile: 9557539539] as the IRP. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP of the Corporate Debtor.
- (i) The Operational Creditors shall deposit a sum of ₹ 3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These

expenses are subject to approval by the Committee of Creditors (CoC).

- (j) In terms of section 9(5)(i) of the IBC, the Registry is directed to communicate this Order to the Operational Creditors, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-

Ravikumar Duraisamy
Member (Technical)

Sd/-

Rajasekhar V.K.
Member (Judicial)