

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 296 (ND)/2020

IN THE MATTER OF:

AJAI KUMAR SINGH

R/O K-10, GANESH NAGAR EXT. - II,

SHAKARPUR, DELHI - 110092

...**APPLICANT/OPERATIONAL CREDITOR**

VERSUS

SARE HOMES PROJECT SERVICES PVT. LTD.

(THROUGH DIRECTOR)

7, 383C BANK STREET MUNIRKA,

SOUTH DELHI,

NEW DELHI - 110067

....**RESPONDENT/CORPORATE DEBTOR**

SECTION: U/S 9 of IBC, 2016

Order delivered on: 04.02.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

For the Applicant/Operational Creditor: Adv. Ashutosh Kumar Pandey
for OC and Mr. Ajay Kumar Singh

For the Respondent/Corporate Debtor:

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the



“Code”), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows:

- i. That the Applicant/Operational Creditor joined the Corporate Debtor on 03.10.2018 as a General Manager-Finance with fixed CTC of Rs. 14,50,000/- per Annum for which the Corporate Debtor issued an Appointment Letter dated 03.10.2018.
- ii. That the Corporate Debtor deputed the Applicant to SARE Saamag Realty Pvt. Ltd. (in short SSRPL) with a term that the Applicant during the period of deputation shall be paid same remuneration by SSRPL and if there is any non-payment of salary and allowances/remuneration by SSRPL to the Applicant, the Corporate Debtor shall ensure that the Applicant would receive all such payments and perquisites as the Applicant was the original employee of the Corporate Debtor.
- iii. That the Applicant worked with Corporate Debtor from October, 2018 to January, 2019, as the Applicant was not getting the salary on time, therefore, the Applicant decided to resign from the Corporate Debtor.
- iv. That the Applicant resigned from the Corporate Debtor on 22.01.2019 by an email dated 22.01.2019 to the Corporate Debtor and the same was accepted by the Corporate Debtor by its letter dated 22.01.2019.
- v. That the Applicant in his entire tenure of services had received salary for one month only and has not received any further payment/salary from the Corporate Debtor as on date.
- vi. That the Applicant had sent a demand notice under Section 8 of the Code on 19.03.2019, whereby demanded the



Corporate Debtor to release the salary/payment for an amount of Rs. 3, 97, 890/- along with interest at 18% p.a. and also the Litigation charges.

- vii. That the Corporate Debtor sent a reply dated 04.04.2019, whereby it was stated that the Corporate Debtor is not liable to pay any claim amount as the Applicant was not the employee of the Corporate Debtor and as such the **reply should be treated as the Notice of Dispute.**
- viii. That it is most respectfully submitted that the Corporate debtor had wrongly stated in its reply to demand notice that the Applicant was not the employee of the Corporate debtor. Whereas the Appointment letter dated 03.10.2018 was issued by the Corporate Debtor to the Applicant and the Applicant tendered the resignation to the Corporate Debtor and same was accepted by the Corporate Debtor and the relieving letter dated 06.02.2019 was also issued by the Corporate Debtor.
- ix. That the Applicant being not received any payment/salary from the Corporate Debtor except one month salary is constrained to file the present Application under Section 9 of the IBC before this Hon'ble Adjudicating Authority.

3. We have heard the Learned Counsel appearing for the Applicant and perused the averments made in the application.

4. Learned Counsel appearing for the applicant submitted that vide order dated 28th February, 2020, the copy of the application alongwith notice was served upon the respondent even then none appeared on behalf of the respondent. Thereafter **the proceedings against the respondent was fixed for ex-parte hearing on 24.03.2020.**

5. He further submitted that the applicant was an employee of the respondent company "SARE Homes Project Services Pvt. Ltd." and during his tenure, **he was sent on deputation by the Corporate Debtor.** He



further submitted that he joined his service on 3rd October 2018 and thereafter tendered his resignation, which was accepted with effect from 6th February 2018 but he has not paid salary for the period November 2018 till the date of resignation. He further submitted that the PF was also deducted for the salary of October 2018, the total amount of that is Rs 9498/- which includes the interest. He further submitted that the total outstanding due is Rs. 3,97,889/-. He further submitted that he sent the demand notice, which was duly delivered and a reply to the demand notice was also sent by the Corporate Debtor. He further submitted in its reply to demand notice, the Corporate Debtor stated that the applicant is not the employee of the Corporate Debtor, rather, he was transferred to SARE (Saamag Realty Pvt. Ltd.) as General Manager and he is entitled to get the salary from there. He further submitted that the outstanding dues have not been disputed by the Corporate Debtor. He further submitted so for the contention of the Corporate Debtor made in the reply to the demand notice is concerned, prior to that, no such dispute has been raised by the Corporate Debtor that the **applicant is not the employee of that company.**

6. He further submitted that the appointment has been made by the Corporate Debtor and the resignation has also been accepted by the Corporate Debtor, which would be evident from the email, which is enclosed as page 52 of the Paperbook. He further submitted that the deputation letter, which is at page 46 of the application also referred the clause that on non-payment of salary and allowances / remuneration by **SSRPL, SHPSPL** shall ensure that he will receive all such payments and perquisites, therefore, there is default in payment of amount shown in part -IV of the application.

7. Now in the light of the submissions made on behalf of the Applicant, we consider the averments made in the application and we notice that in part-IV of the application, the applicant has made averments regarding the outstanding due and the total amount is of Rs. 3,97,889/-. We further notice that the calculation chart, which is at page



64 of the paperbook shows that the total amount due is of Rs. 3,97,889/- and it is for the month of November 2018 to January 2019, apart from this, the amount of Rs. 9498/- including the interest amount of Rs. 1330/- deducted as PF is also shown as defaulted amount.

8. At this juncture, we would like to refer the appointment letter, which is at page 19 of the paperbook as Annexure-A and it shows that this has been issued by SARE Homes Project Services Pvt. Ltd., the Corporate Debtor's Company and this has also not been denied by the Respondent in its reply to the demand notice. We further notice vide letter dated 3rd October 2018, (Annexure A-2 at page 25 of the Paperbook) the applicant was sent on deputation to the SARE Saamag Realty Pvt. Ltd. by the Corporate Debtor and in para-4 of this deputation letter, it is clearly mentioned that **“on non-payment of salary and allowances / remuneration by SSRPL to you SHPSPL shall ensure that you receive all such payments and perquisites.”** Therefore, on the basis of this clause, when we consider the defence taken the Corporate Debtor in its reply to the demand notice that SARE Saamag Realty Pvt. Ltd. is liable to pay the amount, in our considered view, in view of clause 4 of the Annexure A-2 at page 25 of the Paperbook i.e. letter dated 3rd October, 2018 is not liable to be accepted. Therefore, the disputes raised by the Corporate Debtor in response to the demand notice, is not a dispute in real sense as defined under the IBC. That too, had not been raised prior to the issuance of the demand notice, rather, it was raised after the receiving of the demand notice.

9. Hence, we are of the considered view that there was not dispute.

10. We further notice that the present application was filed by the applicant on 15th January 2020 and the date of default is November 2018, which is prior to the amendment made in the IBC, therefore, we are of the considered view that as per Section 4 of IBC, 2016, when the default occurred the minimum threshold of the default is of Rs. 01 lakh. Hence, we are of the considered view that the application is within



limitation and the applicant has succeeded to establish this fact that he was appointed by the Corporate Debtor and as per the appointment letter, he was entitled to get that salary and it is the Corporate Debtor who sent the applicant on deputation with a condition that if the salary and other remuneration will not be paid by that company then that will be paid by the Corporate Debtor.

11. For the reasons discussed in the aforementioned Paragraphs, we are of the considered view that the applicant has succeeded to establish that there is a default of more than Rs. 01 lakh which is a minimum threshold to trigger the CIRP against the Corporate Debtor. And we further notice that after the service of the notice, none appeared on behalf of the Respondent and therefore the proceeding was fixed for ex-parte hearing.

12. So, under such circumstances in view of Section 9(5)(i), when the application made under sub-Section 2 is complete, there is no payment of unpaid operational debt and no notice of disputes has been received by the Operational Creditor and there is no record of disputes in the information utility then the Adjudicating Authority has no option but to admit the application, if there is no disciplinary proceeding pending against the Resolution Professional. Here in the case in hand, the applicant has not proposed the name of the IRP, therefore we are of the considered view that the application filed by the applicant is complete, there is a default of more than Rs. 01 lakh and there is no dispute raised by the respondent and no payment has been made. Hence, we have no option but to admit the application.

12. Accordingly, we **ADMIT** this application and initiate Corporate Insolvency Resolution Processes against the Corporate Debtor. Since the applicant has not proposed the name of the IRP therefore, we appoint Mr. Anil Kumar Sharma, Registration No.- IBBI/IPA-003/IP-N00218/2019-2020/12514, email id:- mikonict@gmail.com, Mobile No.-



971101941 as IRP. A moratorium in terms of Section 14 of the IBC, 2016 shall come into **effect forthwith staying**: -

1. (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;

(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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.

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating



Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

13. Operational Creditor is directed to deposit the fee of Rs. 1,00,000/- to meet the immediate expenses of the IRP within two weeks of the order. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

14. Registry is directed to communicate the order to the IRP as well both the parties.

Sd/-

K. K. VOHRA

Member (T)

Sd/-
04.02.2021

ABNI RANJAN KUMAR SINHA

Member (J)