
(2023) 06 NCLT CK 0062

In the National Company Law Tribunal

Case No : CP(IB)-1217/MB/2020

Ajay Hans Vs Reliance Realty Ltd. & Ors ?

Date of Decision : 23-06-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 4, 9

Citation : (2023) 06 NCLT CK 0062

Hon'ble Judges : Kishore Vemulappali, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Murtaza Bohra, Nelly Mehta

Final Decision : Dismissed

Judgement

Kishore Vemulapalli, Member (Judicial)

1. This a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Ajay Hans ("the Operational Creditor") on 21.09.2020, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against The Reliance Realty Ltd. ("the Corporate Debtor") - R1 & Ors. (Mr. Rakesh Gupta – Director (R2), Mr. Ramanan Alangudi Laxminarayan – Director (R3), Mr. Jaywant Chandrashekhar Prabhu – CFO (R4) & Mr. Gourav Ranawat Singh – Director (R5).
2. The Corporate Debtor is a Company incorporated on 14.07.1993 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45300MH1993PLC173775. Its registered office is at H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai, Thane- 400 710. Therefore, this Bench has jurisdiction to deal with the present Petition. Three other Respondents are the Directors and one Respondent is the CFO of the Corporate Debtor.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of ₹ 1,17,53,013/- (Rupees One Crore Seventeen Lakh Fifty-three Thousand Thirteen only). The date of default is 15.05.2019 as

mentioned in Part-IV of the Petition.

4. The case of the Operational Creditor is that he joined in Reliance Infrastructure Ltd. on 29.09.2017 as "COO-EPC (Civil Infra)" with a CTC of ₹ 2,55,00,000/- p.a. with break-up thereof. After few months he has been transferred to group company viz. Reliance Realty Ltd. w.e.f. 01.06.2018 as "Chief Executive Officer" of Reliance Realty Ltd.

5. The Operational Creditor tendered his resignation on 30.04.2019, which was accepted by the Corporate Debtor and relieved him on the same day. However, the Corporate Debtor did not make the full and final settlement in terms of pending salaries, performance linked incentives, etc. He followed up for his payment through several e-mail communications, however, the Operational Creditor did not receive the arrears for quite long time, hence, sent a demand notice dated 11.08.2020 to the Corporate Debtor u/s 8 of the IBC, 2016. The working of the amount claimed by the Operational Creditor is as follows:

Particulars

Amount (₹)

As per Form 26AS for year 2018-19 (2217828/- less

20,09,390/-

TDS 2,08,438/-)

Performance Linked Incentive for the period June 2018 to April 2019

59,58,333/-

Notice Pay Salary for 3 months (basic)

16,26,573/-

Interest @18% on the both above amounts from

21,58,717/-

16.05.2019 up to August 2020

Total

1,17,53,013/-

Since no payment received even after the demand notice, the Operational Creditor filed this Petition seeking CIRP of the Corporate Debtor.

6. The Corporate Debtor filed its reply on 17.12.2021 wherein it denied the claim of the Operational Creditor saying that the Petition is bogus, vague and not maintainable. It also mentioned that there is a pre-existing dispute with regard to the operational debt.

7. The Corporate Debtor stated that amount of ₹ 20,09,390/- is deductions made

towards irregularity in attendance and ₹ 59,58,333/- as profit linked incentive, which is not declared by the management and hence not liable to pay by the Corporate Debtor. Further, ₹ 16,26,573/- claimed as 3 months' notice pay is not liable to be paid by the Corporate Debtor as the Operational Creditor resigned himself requesting to relieve him immediately and the Corporate Debtor did the same. According to the Corporate Debtor, there is no amount payable to the Operational Creditor.

Hence, the Petition is liable to be dismissed.

Findings:

8. This Bench finds that the Applicant has claimed a sum of ₹ 1,17,53,013/- in default. This amount includes an interest of ₹ 21,58,717/- claimed @18% from 16.05.2019 up to August 2020. The Applicant was asked whether there is any stipulation for payment of interest in the letter of appointment or any communication from the Corporate Debtor undertaking to pay interest on the amount in default, as this Bench could not find any evidence in the petition substantiating the claim of interest by the Applicant. If this claim of the interest is excluded the amount claimed in default shall come down to ₹ 95,94,296/-. The present Petition has been filed on 21.09.2020 and the minimum threshold limit prescribed under Section 4 of the Code was ₹ 1.00 crore, after having been increased vide notification No. S.O. 1205(E), dated 24.03.2020. Accordingly, this Bench is of the considered view that the present petition is not maintainable in terms of Section 4 of the Code.

9. Nonetheless, the Corporate Debtor has pleaded that no debt is due and payable to the Operational Creditor. The amount of ₹ 20,09,390/- was adjusted against the irregularity in attendance and acting in derogation of the terms of employment. This Bench also finds that the Operational Creditor has resigned from the services hence claim of notice pay salary amounting to ₹ 16,26,573/- is disputed by the Corporate Debtor. Further, as per the appointment letter dated 29.09.2017, the performance linked incentive is payable after determination of performance as per management policy upon completion of minimum 6 months. The Operational Creditor has not placed on record any document evidencing the determination of performance incentive for the period from June 2018 to April 2019. The document placed with the Petition evidences determination of Performance Linked Incentives (PLI) for the financial year 2017-18. The Corporate Debtor has disputed claim on this account also. Without going into the merits of the argument, this bench is of the view that there exists a prima facie dispute in relation to debt, claimed to be due by the Operational Creditor. Accordingly, this Petition is not maintainable on the ground of pre-existing dispute also.

10. In view of the above, the petition bearing No.: CP(IB)-1217/(MB)/2020 filed by Ajay Hans; the Operational Creditor, under Section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Reliance Realty Limited [CIN: U45300MH1993PLC173775] & Ors.; the Corporate Debtor, is hereby dismissed.

11. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the Applicant before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.