

(2020) 02 NCLT CK 0083

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : (IB) No. 743/ND Of 2019

Asha Devi

APPELLANT

Vs

Karan Motors Pvt. Ltd

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6

Insolvency And Bankruptcy Code, 2016 — Section 9

Citation : (2020) 02 NCLT CK 0083

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;Kapal Kumar Vohra, Member (Technical)

Bench : Division Bench

Advocate : S.V. Rateria, Chandra Prabha, C.S. Gupta, Anand Shukla

Judgement

Abni Ranjan Kumar Sinha, J

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Petitioner/Operational Creditor, i.e. "Asha Devi" for initiation of Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor Company "M/S. Karan Motors Private Limited".

2. The Operational Creditor (Herein referred to as 'OC') was employed as Assistant Engineer-Design as per appointment letter dated 02.04.2012. The OC was punctual, hardworking and always gave his best since the day of joining. There was not a single incident where CD had directed the OC for want of his performance.

3. The CD started keeping the salary of the OC for the reason best known to CD. This keeping of salary started from a delay in the payment by one week and gradually increasing to month's altogether.

4. The OC requested the CD to clear the payment outstanding salary but the CD assured the OC that the same will be cleared very soon, but instead of clearing the outstanding salary, the CD chose to withhold the salary and went on withholding the same up to 6 month starting January 2013 to June 2013. The OC started going through extreme financial hardship and requested the CD in the month of June 2013 to clear the outstanding salary as she was left no money.

5. The CD then started paying the salary from July 2013, but in the year 2017 the CD again adopted the same strategy and withheld the salary for the period of April 2017 to September 2017. Due to non-payment of salary, OC started facing financial hardship and therefore stopped going to CD Company since end of September 2017 and finally tendered his resignation on 03.10.2018.

6. The last salary of the OC was Rs. 28,600/- pm. Demand was also sent by OC through his counsel on 14.02.2019 which has been duly served to them on 25.02.2019, however no payment has been received till date.

7. The total outstanding as overdue salary amount is Rs. 4,90,709/- plus interest @18% P.A. from 14.02.2019 till the realisation of outstanding amount is Rs. 4,22,447/-.

IX. The CD in its reply to the Application has stated almost same facts as stated by him in the Reply to the application by Ms. Shally Sati [IB-702/ND/2019] except the following contention. Therefore, we would like to mention only new facts in the reply:

a. Petitioner was appointed on false representation by OC's husband Mr. Ranjeet Singh working in-charge of production in the Machine Shop. He informed that OC was well qualified and can work as Assistant Engineer-Design and thus used his influence and position in the company to get higher salary. As a matter of fact, the OC did not attend office and wasn't competent and qualified and the OC suffered with respect to quality and loss of business of several lacs besides loss of reputation in international market which is entirely on account of the petitioner.