
(2023) 07 NCLT CK 0027

In the National Company Law Tribunal

Case No : C.P. 1141/IB/MB/2021 And I.A. No.1035 of 2022 IN C.P. 1141/IB/MB/2021

Gammon Engineers And Contractors Private Limited Vs Shailesh Shenoy ?

Date of Decision : 18-07-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9

Citation : (2023) 07 NCLT CK 0027

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Mayank Sharma, Pradnyesh Sabnis

Final Decision : Disposed Of

Judgement

Anuradha Sanjay Bhatia, Member (Technical)

1. The above Company Petition is filed by Mr. Shailesh S Shenoy, Mr. Vijay Agarwal and Mr. Venkataramana N Heggade jointly, (hereinafter called as Operational Creditors) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Gammon Engineers and Contractors Private Limited, (herein after referred to as Corporate Debtor) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy code (hereinafter called "Code"), read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016, for a Resolution of aggregate Operational Debt of Rs. 2,19,18,147/- which is payable to Mr. Shailesh S Shenoy (Rs. 87,14,761/-), Mr. Vijay Agarwal (Rs. 70,94,988/-) and Mr. Venkataramana N Heggade (Rs. 61,08,398/-).

2. The Petitioner submits that the Operational Creditors are the ex-employees of Gammon Engineers and Contractors Private Limited and are being represented by the Mr. Shailesh S Shenoy. In the year 2017, the Corporate Debtor become erratic in the payment of salaries of the three Petitioners. After a period of about one year of waiting for regularization of their outstanding salaries, the three Petitioners (Operational Creditors) tendered their resignations.

3. The Petitioners have submitted that as no payments were received by them, the Petitioners issued a demand notice dated 6th September, 2021 demanding a sum of Rs. 2,19,18,147/-. The Corporate Debtor did not respond to the said demand notice.

Reply filed by the Corporate Debtor

4. The Corporate Debtor filed its reply, dated 08.04.2022, opposing the above Company Petition. The Corporate Debtor submits that he has challenged the very maintainability of the Company Petition and prayed for summary dismissal of the Petition at the outset on the ground of maintainability.

5. The Corporate Debtor submits that the Petition is not maintainable in view of the increase in threshold of the minimum amount of default as prescribed under Section 4 of the Insolvency & Bankruptcy Code, 2016. By the Notification No. (F. No. 30/9/2020-Insolvency) dated 24th March 2020, the threshold limit under Section 4 of the Insolvency and Bankruptcy Code, 2016 was increased to Rs. 1 crore. In the present case, even if the alleged claim of each of the Petitioner is considered at its face value, it is below the threshold of Rs. 1 crore and the Petition has been filed on 01.03.2022 i.e. after the date of the said notification, i.e. after 24th March 2020.

6. The Corporate Debtor placed reliance on the order of the Hon'ble NCLAT, in the matter of Jumbo Paper Products vs Hansraj Agrofresh (Company Appeal (AT) (Ins) No. 813 of 2021) which has clearly laid down that a petition under Section 7 and Section 9 of IBC, filed after 24th March 2020 is not maintainable, if the default amount is below Rs.1 crore.

7. It was submitted by the Corporate Debtor that admittedly an individual claim of each of the Petitioners is below the threshold of Rs. 1 crore. In order to portray that the claim is above the threshold, the three Petitioners have filed this Petition jointly although their respective claims are independent of each other, arising from separate service contracts and separate services. In case of operational debt, the petitioner must individually have a claim above the mandatory threshold. If multiple operational creditors are permitted to combine their claim in order to cross the threshold, the very purpose of having a threshold of default would be defeated.

8. The Corporate Debtor further submits that as the individual claim of each of the Petitioners is below the threshold of default, the Petition is not maintainable and is liable to be dismissed .

FINDING

9. Heard the Ld. Professional appearing for the Operational Creditor, and the Ld. Counsel appearing for the Corporate Debtor and perused the material available on record.

10. After hearing the submissions of both sides, this Bench notes that the issue

qua the maintainability of the present Petition in respect of the definition of Operational Debt read with the Notification issued by the Government of India dated 24th March, 2020, has been laid to rest by a catena of Judgments delivered by the Hon'ble NCLAT as well as the Apex Court.

11. The Ld. Counsel appearing for the Corporate Debtor has placed reliance upon the order passed by the NCLT, Mumbai Bench (Court IV) in the case of Sadashiv Nomaya Nayak Vs. Gammon Engineers and Contractors Private Limited wherein the Company Petition No. 1265 of 2021 has been dismissed on the ground that the claim of the Petitioner is below the threshold limit as per the notification dated 24.03.2020. In this case too, the Company Petition has been filed by three Petitioners jointly to reach the threshold limit. The Hon'ble

Bench IV, NCLT, Mumbai vide an order dated 30.11.2022 dismissed the Company Petition on the ground that the claim of each Petitioner was below the threshold limit as per the Notification having No. (F. No. 30/9/2020-Insolvency) dated 24.03.2020. Thereafter, an Appeal was preferred before the Hon'ble NCLAT vide Company Appeal (AT) (Insolvency) No. 218 of 2023 dated 07.03.2023 whereby the Hon'ble NCLAT upheld the decision of NCLT, Mumbai Bench and dismissed the Appeal. Thereafter, the Appellants moved an appeal before the Hon'ble Supreme Court of India vide Civil Appeal No. 3220 of 2023 in the case of Sadashiv Nomaya Nayak & Ors. Vs. Gammon Engineers and Contractors Private Limited wherein the Hon'ble Supreme Court of India had dismissed the said Appeal, vide an order dated 15.05.2023.

12. The facts of the case are identical to Sadashiv Nomaya Nayak & Ors., therefore, we are of the considered opinion that there is no merit in the present Company Petition. This Bench has no hesitation in holding that the claims of the Operational Creditor if considered individually in the above Company Petition do not meet the threshold limit and the Company Petition deserves to be dismissed on this ground alone.

13. I.A. No. 1035 of 2022 is filed by the Corporate Debtor challenging the maintainability of the present Company Petition.

14. In view of the above discussion, the I.A. No. 1035 of 2022 raising the objection of maintainability is allowed and consequently Company Petition No. 1141/IB/MB/2021 under Section 9 of the Code is dismissed.