(2021) 04 NCLT CK 0025

In the National Company Law Tribunal

Case No : Miscellaneous Application No. 761 Of 2019 In TCP/413/IB Of 2017

P.S. Venkataraman And Anr. APPELLANT

Vs

M/s. Titanium Tantalum Products Limited RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 42, 52, 60(5)

Citation : (2021) 04 NCLT CK 0025

Hon'ble Judges : R. Varadharajan, J;Anil Kumar B, Member (Technical)

Bench : Division Bench

Advocate : Abdul Rahman, Nathan, K. Moorthy

Final Decision : Disposed Of

Judgement

1. MA/761/2019 is an Application filed by the Applicant, under Section 42 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

(i) To direct the Liquidator to release the payment of salary deducted for the month of January 2018 uptp March 2018 to the Applicants;

(ii) To direct the Liquidator to pay the Leave encashment as on June 2018 and the amount deducted for Mediclaim policy for the month of April to June 2018

(ii) Pass such other order / directions as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. FACTS OF THE CASE

2.1. The Corporate Debtor was admitted into CIRP on 27.11.2019 and the 2nd Respondent herein was appointed as IRP on 13.12.2017. Subsequently the Liquidation of the Corporate Debtor was ordered on 12.06.2018 and the Respondent was appointed as the Liquidator.

2.2 The Applicants have submitted their claim before the Liquidator vide FORM D of CIRP Regulations to the IRP/RP and subsequently FORM E of Liquidation Process Regulations to the Liquidator. The applicants state that the salary for the month of December 2017 was paid in full but with regard to the salary for the months of January-March 2018, they have been paid only 50% of their salary.

2.3. It is seen that inspite of submitting a request letter to the Liquidator on 18.06.2018, the Applicants were not paid their entire salary for the months of April-May 2018. Subsequently, the Applicants filed an application to the Tribunal vide MA/210/IB/2018 praying for the release of salaries for the months of April-May 2018 and this Tribunal vide its order dated 31.08.2018 has passed the following order;

"Counsel for the Applicant present. Counsel for the Liquidator present and filed a memo wherein it has been mentioned that no funds are available to pay salary to the employees for th months of April and May 2018 and the same may be treated as Insolvency Resolution Process Cost towards the cost incurred during the insolvency period. The Liquidator is at liberty to record that the same is treated as the cost of CIRP. In view of the memo filed by the Liquidator, the Applicant stands disposed of."

Thereafter, it is seen that the applicants have been paid the salary for the months of April-May 2018 by the Liquidator.

The present Application is filed by the Applicants for the payments for the remaining salaries for the months of January-March 2018 along with the leave encashment due as on June 2018 and the amount deducted towards Mediclaim policy for the months April-June 2018.

3 COUNTER FILED BY THE LIQUIDATOR;

3.1. The Liquidator has filed counter and has stated that the First Applicant was holding the designation of VP Finance of the Corporate Debtor and was not of any use nor contributed to the CIRP. Further, it was stated in the counter that except for a couple of receivables, most of them are not receivables and are overstated in the books of the Corporate Debtor without any recoverability and as a VP of the Finance of the Corporate Debtor, the first applicant has not taken any steps to clean up the Balance Sheet. Further, it was submitted that the Applicant did not contribute during the CIRP process and hence decide to limit his salary to 50%.

3.2. It is stated in the counter that the second applicant was holding the designation of VP - Works and since there were not much operations in the Corporate Debtor Company except for some repair jobs, his contribution was also limited.

3.3. Further it is stated that the for the month of January & February 2018, due to less cash flows of the Corporate Debtor, the Respondent had decided to reduce the salary to various categories as follows;

i. Category 1: <50k - 100% salary paid

ii. Category 2: >Rs.50k - 75% salary paid

iii. Category 3: 3 top executives 50% salary paid

iv. Category 4: 1 top executive 100% salary cut.

3.3. It is stated that the above decision of the RP was informed to the CoC in its 2nd Meeting held on 28.02.2018 and in the 3rd Meeting of the CoC, held on 26.03.2018, it was suggested by the CoC as follows;

Employees drawing Gross pay

Percentage of pay

Less than Rs.50,000/-

100%

Rs.50,000/- to Rs.1,00,000/-

75%

Above Rs.1,00,000/-

50% or 40%

3.4. It is stated that the RP has to keep the Corporate Debtor as a going concern within the available cash flows of the Corporate Debtor and also requested the CoC members to provide and support to create a Corpus fund for financing the CIRP costs which will to some extent reduce the financial burden of the Corporate Debtor.

3.5. It is stated in the counter that as on the CIRP end date the balance available in the bank accounts of the Corporate Debtor was Rs.10,15,913/- and as on the Liquidation commencement date a sum of Rs.23,99,873/- was the balance avaible in the banks accounts of the Corporate Debtor and after considering the pecuniary situation of the workers and employees, the Liquidator has paid the June 2018 salary to the workers and employees which has become due after the Liquidation commencement date amounting to Rs.27,77,727/- and the total wage and salary due for the month of April and May 2018 was Rs.59,14,968/- and subsequently, the Liquidator on realising some money from the receivables has paid the wages and salary dues for the month of April and May 2018 which was treated as the CIRP cost.

4. After hearing the counsel for the parties, it is seen from this Tribunal order dated 19.02.2020 that the Learned Counsel for the Liquidator has submitted that the sole Financial Creditor viz. State Bank of India (SBI) is standing outside the liquidation and also sought time to file an additional affidavit to bring to the notice about the financial position of the liquidation estate as of date.

5. The Liquidator has filed additional counter and states as follows;

5.1. SBI, one of the major Financial Creditors of the Corporate Debtor stood outside the Liquidation process and all the assets and receivables were hypothecated to the said Financial Creditor. The Liquidator handed over the keys of the Corporate Debtor to SBI on 19.07.2019.

5.2. It is stated that the amount realized out of the Liquidation Estate i.e. sale of vehicles, redemption of mutual fund to the tune of Rs.16,83,067/- was spent on CIRP costs and Liquidation costs and not even a single creditor / stakeholder is paid from the funds.

5.3. It is stated that there is no fund in the Liquidation estate and the funds available with the Liquidator in the bank account to the tune of Rs.1,05,29,516/- are that of SBI which is staying away from Liquidation process and the Liquidator is holding the same under trust.

5.4. It is stated that SBI was not able to sell the assets of the Corporate Debtor which are mortgaged to them and the said assets are not forming part of the Liquidation estate. Unless the said assets are sold by SBI, the Liquidation process cannot be closed.

6. Heard the submissions made by the Learned Counsel for both the parties and perused the file including the pleadings placed on record. It is seen that the Applicant is the Employer of the Corporate Debtor and has rendered his service during the period in which moratorium was imposed in relation to the Corporate Debtor. The Applicants at para 5 (i) of the Application has tabulated the salary amount which is due and payable to them and the same is extracted hereunder;

First Applicant:

Name: P.S. Venkataramanan

MONTH

AMOUNT DUE

(Rs.)

January 2018

59,790

February 2018

59,970

March 2018

34,750

Total

1,54,330

Leave encashment dues as on June 2018

24,922

Amount deducted for mediclaim policy April- June 2018

1,875

Grand Total

1,81,127

Second Applicant:

Name: Gaddee Venkata Rao

MONTH

AMOUNT DUE

(Rs.)

January 2018

66,466

February 2018

66,466

March 2018

50,901

Total

1,83,833

7. It is seen that by virtue of the order passed by this Tribunal in MA/210/IB/2018 on 03.04.2019, the Respondent has paid a salary to the Applicants for the month of April - May 2018. Thus, it is not in dispute that the said sum which is payable to the Applicant forms part of the CIRP costs, since the Applicant has rendered service to the Corporate Debtor during the moratorium period to keep the Corporate Debtor as a going concern and keeping the said fact in mind, the Respondent has also paid two month salary dues of the Applicant. Further, the Liquidator in his counter also has not denied that the said sum is due and payable to the Applicant, however has stated that the said CIRP cost was not approved by the CoC. It is also seen that the Liquidator in his additional affidavit has categorically stated that there is no funds in the Liquidation estate and that the sole Financial Creditor viz. SBI is standing outside the Liquidation Estate. Further, it is averred in para 3 of the Additional affidavit that the amount realized out of the Liquidation Estate i.e. sale of vehicles, redemption of mutual fund to

the tune of Rs.16,83,067/- was spent on CIRP costs and Liquidation costs and not even a single creditor / stakeholder is paid from the funds. All the assets are hypothecated to SBI along with all other assets and SBI not participating in the Liquidation proceedings under Section 52 of IBC and all the amount collected from customers / receivables / book debts should be paid to SBI, after adjusting their share of CIRP cost.

8. Thus, the amount due to the Applicant forms part of the CIRP cost, and once the share of State Bank of India in relation to the CIRP cost is being paid to the Liquidator, we hereby direct the Liquidator to pay to the Applicants the balance amount which is due and payable to the Applicant, in accordance with his service rendered to the Corporate Debtor during the period of moratorium. With the above directions, this application stands disposed of.