(2020) 07 NCLT CK 0097

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 551 Of 2019, 325 Of 2020 In Company Petition (IB) No. 49/7/HDB Of 2017

S. Hari Prasad And Ors — APPELLANT

Vs

Maharashtra Seamless Limited And Ors — RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:
Insolvency And Bankruptcy Code, 2016 — Section 60(5)

Citation : (2020) 07 NCLT CK 0097

Hon'ble Judges : Ratakonda Murali, J;Veera Brahma Rao Arekapudi, Member (Technical)

Bench : Division Bench

Advocate : Santhosh Jadhav, Challa Gunaranjan, T. Sujan Kumar Reddy

Final Decision : Disposed Of

Judgement

Veera Brahma Rao Arekapudi, Member (T)

1. The present application is filed, within limitation, by former Executive in Accounts Department and former Company Secretary of the Corporate Debtor, who are authorized to represent all other employees listed in Annexure-I to this application.

2. Respondent no.l herein is the successful Resolution Applicant having management over the Corporate Debtor/ company. Respondent no.2 herein is the Resolution Professional appointed by the Corporate Debtor. Respondent no.3 is the Corporate Debtor.

3. BRIEF FACTS :

3.1 The Tribunal vide its order dated 21.01.2019 approved Resolution Plan submitted by the Resolution Applicant/ respondent no.l herein, pursuant to which, on 24.01.2019, the successful Resolution Applicant has changed the Board Member by appointing their representative Directors on the Board of the

Corporate Debtor. Some of the employees of the Corporate Debtor, listed in Annexure-I, have resigned on 28.02.2019 from the Corporate Debtor -company, which have been accepted by the then Director.

3.2 It is averred that having submitted resignations, the resigned employees presented themselves at the office, but it was closed. Salaries and other statutory payments due for the months of February and March 2019 have not been paid to said resigned employees. List of employees and the details of dues are at ANNEXURE-I.

3.3 It is averred in para 6 of the application that the Resolution Applicant/ the new owner of Corporate Debtor has not issued Service Certificate and Relieving Letter in favour of the resigned employees due to which the employees could not join any other organization for the next several months.

3.4 It is averred in para 7 of the application that the Ex-Company Secretary has addressed e-mail communications dated 18.03.2019, 02.04.2019, 11.04.2019 and 10.05.2019 (ANNEXURE-2) to the Resolution Professional and Directors of the Corporate Debtor, who are nominees of Resolution Applicant on the Board of Corporate Debtor, requesting them to clear the outstanding dues of the resigned employees. However, no reply is given.

3.5 It is averred in paras 8 to 10 of the application that even one year after acceptance of resignations, even though the resigned employees have fully coordinated with the representatives of the Resolution Applicant for accessing the information and made available the relevant records, and though the employees visited thei Corporate Office, after judgment of the Hon'ble Apex Court dated 22.01.2020, the statutory dues are not cleared and Service Certificate, etc. are not issued.

3.6 It is averred in para 11 of the application that one of the resigned employees, Shri M. Ratnakar suffered cardiac attack in March 2019 and incurred more than Rs.2.5 lacs towards hospital expenses by raising loans. The financial crisis suffered by him has been informed to the Resolution Professional, but in vain.

3.7 It is averred in para 9, on page 5 of the application that the Resolution Professional/ respondent no.3 has filed Affidavit dated 30.09.2019 (ANNEXURE-3) in IA No.551 of 2019 furnishing details of employees resigned on 28.02.2019 and outstanding dues.

3.8 It is averred in para 10, on page 5 of the application that by order dated 10.02.2020 (ANNEXURE-4) this Tribunal has directed the new management to clear the dues of the employees and other expenses of the Corporate Debtor.

4. PRELIMINARY COUNTER AFFIDAVIT DATED 17.06.2020 FILED ON BEHALF OF RESPONDENTS No. 1 & 3.

4.1 It is averred in para 5 of the Counter that the present application is filed as an intervention/ interim application in IA No.551 of 2019, whereas the present application has no bearing on IA No.551 of 2019. Such attempt on the part of the applicants is mala fide and intended to mislead the Tribunal.

4.2 It is averred in para 6 of the Counter that through this application the applicants sought to raise pending statutory1 dues over payment of salaries, issuance of Service Certificate/ Relieving Letter, etc. which relate to/ arising after passing of order dated 21.01.2019, approving Resolution Plan submitted by the Resolution Applicant/ respondent no.l herein.

4.3 It is averred in para 7 of the Counter that the allegations levelled in the application pertain to employee- employer disputes, which are beyond the jurisdiction of this Tribunal.

4.4 It is averred in para 8 of the Counter that the CIRP of respondent no.3 under I&B Code, 2016 has attained finality with order dated 22.01.2020 passed by the Hon'ble Supreme Court in the case of MAHARASHTRA SEAMLESS Vs. PADMANABHAN VENKATESH, Civil Appeal No.4242 of 2019.

4.5 It is averred in paras 9 and 10 of the Counter that the applicants have resigned from respondent no.3/ company after Resolution Plan approved by the Tribunal vide order dated 21.01.20,19. Such resignations are voluntary in nature and they were not, in any way, related to CIRP of the Corporate Debtor. Therefore, the present application is not maintainable.

4.6 It is averred in paras 11 and 12 of the Counter that the issues raised in this application have no relation to insolvency resolution of the Corporate Debtor and they apparently relate to employment disputes occurring after completion of CIRP of respondent no.3. Further, respondent no.3 no longer remains a Corporate Debtor under I&B Code as CIRP of respondent no.3 under the I&B Code has been successfully completed by virtue of order of the Hon'ble Supreme Court. It is further averred that allowing such applications purported to have been filed under section 60(5) of the Code after successful resolution through CIRP and it has been taken over by successful Resolution Applicant, would lead to volley of applications against former Corporate Debtor burdening the Resolution Applicant as well as this Tribunal.

4.7 It is averred in paras 16 and 17 of the Counter that the resignations tendered by some of the employees were accepted by the then Director without prejudice as respondent no.3 was neither in possession of the Corporate Debtor and nor any documents relating to employees/ letters of appointment. It is disclosed by the deponent that they are still not in possession of employment records of the applicants. They are not even in possession of the office as possession of the office was not handed over to the respondents.

4.8 It is averred in paras 18 and 19 of the Counter that terms of employment of the applicants were not known to the respondents. The issue being raised in this application being employment disputes, the applicants ought to have approached appropriate Judicial Forum seeking necessary reliefs. It is further averred that claims of pending dues were made without any documentary evidence.

4.9 In para 21 the respondents plead ignorance about the medical I condition of one of the employees who suffered heart attack or about the medical expenditure allegedly incurred by him.

4.10 It is averred in para 23 of the Counter that the affidavit filed by the Resolution Professional is not corroborated by documentary evidence and the Resolution Professional or the applicants have not provided any documentary evidence regarding terms of employment.

4.11 It is averred in para 24 of the Counter that this Tribunal has no jurisdiction to deal with employment matters after approval of Resolution Plan and as such the Tribunal has not passed any orders qua the applicants herein who have resigned voluntarily after approval of Resolution Plan. The contention of the applicants that the respondents have completely ignored the dues of the applicants in spite of orders of the Tribunal is not sustainable.

5. WRITTEN SUBMISSIONS FILED BY THE APPLICANTS.

5.1 It is averred in paras 2 and 3 of the Written Submissions that the resignations tendered by the employees were accepted by representative of the Corporate Debtor, Shri Ashok Soni vide e-mail dated 01.03.2019 (copy of e-mail is at page-12/ Annexure-2 in IA No.551 of 2019) asking the employees to extend all cooperation to the Corporate Debtor in view of NCLT, Hyderabad order. However, though 15 months elapsed the dues of the resigned employees were not paid by the Corporate Debtor.

5.2 It is averred in paras 4 and 5 of the Written Submissions that the applicants filed IA No.551 of 2019 for payment of outstanding dues to the employees. The Corporate Debtor dodged making payment of dues on untenable grounds like pendency of appeal before the Hon'ble Supreme Court and Resolution Applicant having filed an application for withdrawal of Resolution Plan. It was only when this Tribunal expressed disappointment, the amounts have been verified and confirmed by the RP in his Affidavit dated 28.09.2019 (Annexure-4 to this application).

5.3 It is averred in paras 6 and 7 of the Written Submissions that the Corporate Debtor has deposited PF dues in respect of resigned employees this year. Such deposit of PF amount is an acknowledgement of liability of the Corporate Debtor to pay outstanding dues to the resigned employees.

5.4 In paras 8 and 9 of the Written Submissions the applicants relied on judgement of the Hon'ble Supreme Court in Civil Appeals No.4967- 4978 of 2019, wherein it is stated that,

"Above all, ultimately, the interests of all stakeholders are looked cifter as the corporate debtor itself becomes a beneficiary of the resolution scheme- workers are paid, the creditors in the long run will be repaid in full, and shareholders/ investors are able to maximise their investment. "

and contended that the objective of the I&B Code is to balance the interests of all the stakeholders including the workers, who need to be paid. Any Resolution Plan not adhering to the I&B Code is against the interest of all the stakeholders.

FINDINGS

6. We have gone through the whole case record, the counter filed by the Corporate Debtor as well as the Written Submissions filed by the applicants. We have taken into consideration the record and order dated 10.02.2020 passed by this Tribunal and based on the judgment of the Hon'ble Apex Court, this Tribunal has directed vide order dated 10.02.2020 to clear the pending salaries of the employees including the dues of the erstwhile security by 17.02.2020.

7. Some of the employees, who resigned from the Corporate Debtor -company had appeared on 02.03.2020 and claimed that they are entitled to receive arrears of salary from the Resolution Applicant. They have stated to have resigned after approval of the Resolution Plan. They are, therefore, entitled to salaries payable by the Resolution Applicant till their resignation from the Company. On the same day this Tribunal had advised employees, who have resigned to move a separate application seeking whatever reliefs they need against the Resolution Applicant. Accordingly the employees who resigned have filed the present IA seeking payment of pending salaries for the month of February 2019 and one month salary towards notice period, viz. March 2019 along with interest at the rate of 16% for the default period, and also to clear the statutory dues, viz. statutory payments towards PF and gratuity accrued to the eligible resigned employees for their completed years of service. They have also requested direction for issuance of Service Certificate and Relieving Letter in favour of resigned employees. The respondents herein have taken a stand! that the allegations levelled against the applicants in this IA pertain to employee-employer dispute, which are beyond the jurisdiction of this Tribunal. Further they also claimed that the CIRP of the Corporate Debtor under the I&B Code, 2016 attained finality with order dated 22.01.2020 passed by the Hon'ble Supreme Court in the case of MAHARASHTRA SEAMLESS LIMITED Vs. PADMANABHAN VENKATESH & OTHERS, Civil Appeal No.4242 of 2019 WITH Civil Appeals No.4967-4968 of 2019. They also averred that the applicants have resigned from the Corporate Debtor / Company after Resolution Plan approved by the Tribunal vide order dated 21.01.2019. Such resignations are voluntary in nature and were in no way related to CIRP of the Corporate Debtor. Therefore, the present application is not maintainable. Based on the above contentions the respondents have prayed for dismissal of this IA. In light of the contention of the respondents we have gone through the judgment of the Hon'ble Apex Court in Civil Appeals No.4967-4978 of 2019, filed by respondent no.l herein. In para 19 of the judgment the Hon'ble Apex Court has very affirmatively referred to the preamble of the Code and on page 25 of the judgment it is stated that:

"Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme- workers are paid, the creditors in the long run will be repaid in full, and shareholders/ investors are able to maximise their investment. "

8. From the above judgment and the preamble of the Code it is very clear that the primary object of the I&B Code is to balance the interests of all the stakeholders including the workers, who need to be paid. Any Resolution Plan not adhering to the I&B Code, 2016 is against the interest of all the stakeholders and would defeat the spirit of the I&B Code. In light of the above, as well as taking into consideration the primary objectives of the I&B Code, 2016 as well as the judgment of the Hon'ble Apex Court, we are not inclined to accept the contention of the new management of the Corporate Debtor that the issue pertains employee-employer dispute and that this Tribunal does not have jurisdiction. We also do not agree with the contention of the respondents that the matter attained finality with the judgment of the Hon'ble Apex Court as the applicants in this IA were on the rolls of the Corporate Debtor / company at the time when Resolution Plan was approved by this Tribunal on 21.01.2019. Subsequently the new management was inducted into the Board of Directors of the Corporate Debtor. The applicants, who resigned on 28.02.2019 from the Corporate Debtor-company with one month notice were the employees of the Corporate Debtor when new management was inducted in the Board of the Directors of the Corporate Debtor. Therefore, we are of the view that the successful Resolution Applicant cannot escape the responsibility by hiding behind the wheel of the employee-employer dispute. We, therefore, taking cue from the judgment of the Hon'ble Apex Court, viz. to protect the interests of all the stakeholders, which is the basic objective of the I&B Code, 2016, we are of the view that these employees who resigned after the Resolution Plan is approved are also an integral part of the stakeholders of the Corporate Debtor.

9. Accordingly, we pass the following order.

(a) We direct the Resolution Applicant/new management of the Corporate Debtor / Company to clear all pending salaries for the month of February 2019 and one month salary for the notice period, viz. for the month of March 2019 of the resigned employees shown in Annexure-I of the application within one month hereafter.

(b) We direct the Corporate Debtor to clear the statutory dues, viz. statutory payments towards Provident Fund and Gratuity accrued to the eligible resigned employees for their completed years of service.

(c) We direct the new management of the Corporate Debtor/ company to issue Service Certificate and Relieving Letter in favour of the resigned employees.

10. Accordingly this IA is disposed of.

