(2020) 02 NCLT CK 0084

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

Case No : (IB) No. 702/ND Of 2019

Shally Sati	APPELLANT
Vs	
Karan Motors Private Limited	RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 136, 226
Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency And Bankruptcy Code, 2016 — Section 9

Citation : (2020) 02 NCLT CK 0084

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. "Shally Sati" 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 under Corporate Debtor (Herein referred to as 'CD') on 01.04.2013 as Executive-Marketing. The CD, in last few years, started skipping the salary of the OC for the reason best known to the CD only.

3. The CD chose to withhold the salary and kept on doing this for another 5 months starting May 2014 to September 2014. Thereafter, the OC requested the CD in the month of October 2014 to clear the outstanding salary as she was left

with no money for her livelihood. The CD then started paying salary from October 2014.

4. By adopting the said strategy, the CD skipped the salary of the OC for the period of May 2014 to September 2014. Despite all this the OC continued to foster a harmonious attitude towards the CD Company and kept 5 on working under their employment

5. Again in the year 2017, the CD adopted the same strategy and withheld the salary for a period of 6 months that is, from April 2017 to September 2017.

6. Due to non-payment of salary, OC started facing financial hardships and therefore, stopped going to the CD's Company and finally tendered her resignation on 22.10.2017. The last salary of the OC was Rs. 23,765 per month.

7. Demand notice dated 14.02.2019 was sent to the CD through Speed Post and was duly served on them on 25.02.2019

8. The total outstanding as overdue salary amount is Rs. 2,56,662/- plus interest @18% P.A. from 14.02.2019 till the realisation of outstanding amount is Rs. 1,64,421/-.

III. The CD in its reply to the Applications submits that:

a. The present application U/S 9 of the Code has been authorized by Mr. S.V Rateria claiming to be the authorized person on behalf of the OC but the affidavit in support is not filed by the said counsel but on the contrary is submitted by the OC herself.

b. The OC deliberately did not file the reply dated 22.02.2019 submitted by the CD raising disputes to the claim made by the OC through demand notice dated 14.02.2019 and in the said reply the claim was disputed and hence no proceeding under the Code can be initiated. Even otherwise as per records of the client the salary claim already stands paid and nothing is due and payable.

c. In the reply dated 22.02.2019, the CD vehemently denied liability raised in the Demand Notice and also raised various objects about legality if the demands raised by the OC.

d. The CD states that the alleged demand raised in the demand notice is disputed and neither admitted nor payable by CD. The demand raised is apparently barred under limitation and is not covered under the provisions of the Code.

e. Petitioner was appointed on the representation made by her father who was in-charge of production in the foundry. Petitioner's father falsely represented that the Petitioner was qualified and competent to work as a designer and by using his influence and possession got the Petitioner appointed at a salary and possession which is Petitioner never deserved.

f. Due to Petitioner's father indulging in the activities deliberately and intentionally caused losses suffered by CD with respect quality and loss of business of several lacs decides loss of repetition in international market which is entirely on account of the Petitioner.

g. Petitioner without intimation, had been absent w.e.f. 23.09.2017 due to which the CD intents to take appropriate legal action against the petitioner. There are definite detail available regarding losses and damages which the CD actually incurred and thus the Petitioner was liable to compensate but on request of Petitioner' father to pardon the Petitioner's behaviour, the CD as a good gesture did not take any steps.

h. The Petitioner/OC has filed the present Petition with mala fide intentions by misleading and misrepresenting facts. The OC has deliberately suppressed the material facts before this Hon'ble Tribunal and is thus guilty of SupressioVeri Suggestion Falsi. That on this ground alone the present Application deserves to be rejected out rightly with exemplary costs. The reliance is place on the Para 14 of the Hon'ble Supreme court in the case of Ramjas Foundation v. Union of India, 2 MLJ 162 (SC) where it was held that:

"14. The Principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not Only to the petitions filed under Articles 32, 226 and 136 of the constitution but also to the cases instituted in other Courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by supressing facts which have bearing on adjudication of the issue(s) arising in the case..........................."

i. The OC is not eligible for gratuity as per law. There is no document to prove that the CD is liable to make gratuity payment. There is dispute and the law decided by the Hon'ble Supreme court in the case of Mobilox Innovations (P) Ltd. v. Kirusa Software (P) ltd., (2018) 1 SCC 353 to be followed.

