
(2018) 10 NCLT CK 0027

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

Case No : Company Application No. (IB)-772/(ND) Of 2018

Simran Kaur

APPELLANT

Vs

M/S International Traceability Systems Ltd.

RESPONDENT

Date of Decision : 05-10-2018

Acts Referred:

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

Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 9(3)(b), 9(3)(c), 9(5), 14(1), 14(2), 14(3), 14(4), 15, 17, 18, 20, 21, 31(1), 33

Citation : (2018) 10 NCLT CK 0027

Hon'ble Judges : Dr. Deepti Mukesh, J

Bench : Single Bench

Advocate : Pawan Dubey, Tarun Khanna, Ateka Khan

Final Decision : Allowed

Judgement

1. The present application has been filed by Mrs. Simran Kaur under Section 9 of Insolvency and Bankruptcy Code, 2016 (â??IBC, 2016â??) read

with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution

Process against M/s International Traceability Systems Limited (for brevity â??the companyâ??).

2. The applicant was appointed as company secretary in the company on 24.08.2009 at monthly salary of Rs.18,000/-. In March 2016 the company

had given increment to the applicant and appointed applicant as Manager- Legal at salary of Rs. 45,000/- per month w.e.f. 01.03.2016.

3. The Company, the Corporate Debtor namely International Traceability Systems Limited is the company incorporated on 17.04.2006 under the

provisions of Companies Act, 1956 with CIN No. U74991DL2006PLC148393.

4. The company is having its registered office at 3rd Floor, Shree Sharda Fortune Tower 198/2/1, Ramesh Market, East of Kailash New Delhi-

110065.

5. The Authorised share capital of the Corporate Debtor is Rs. 2,50,00,000/- divided into Rs. 25,00,000 shares of Rs. 10/-each and Issued, Subscribed

and Paid up share capital of the company is Rs. 1,25,65,000/- divided into Rs. 12,56,500/-shares of Rs. 10/- each.

6. It is the case of the applicant that the applicant, as entitled under provisions of the Maternity Benefit (Amendment) Act, 2017 sought maternity

leave vide application/letter dated 23.02.2017 for eight months w.e.f. 01.05.2017 upto 02.01.2018, which was duly approved and accepted by the

management of the company on 01.03.2017 which is annexed to the application.

7. It is further stated that the applicant curtailed her own leave and visited the company to resume her duty in and around 10.11.2017 and expressed

her desire to join her duty prior to completion of her leave but management of company kept on lingering and delaying her joining on one pretext or the

other.

8. It is the case of the applicant that the managing director of the company told applicant that they have already appointed three company secretary

and asked applicant to resign in an oral discussion with the assurance of full and final settlement of her accounts. Hence, applicant gave her

resignation vide email dated 25.01.2018 which is annexed to the application.

9. It is further stated that the applicant requested the Corporate Debtor to remit payment and clear all the outstanding debts vide email dated

25.01.2018 and 27.02.2018. The Corporate Debtor replied the said letter dated 16.03.2018 and assured the payment.

10. It is the case of the Applicant that the payment of Rs. 5,46,611/- was not made as per the orally agreed terms and assurance of the Managing

director and in spite of various reminder made by the Applicant, no payment was made by Corporate Debtor.

11. It is further the case of applicant that whenever she visited the company premises she was illtreated and disrespected and hence applicant stopped

going to the company. This was a dual tactic adopted by the company to avoid payment of her legitimate dues. On one hand Managing Director kept

on giving oral promises of clearing dues and on other hand applicant was restrained from visiting company's premises.

12. The Applicant from time to time requested the Corporate Debtor to clear the outstanding amount, however, Corporate Debtor neglected and failed

to pay the unpaid debt of the Applicant. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code

was issued on 14.06.2018 to the Corporate Debtor.

13. Despite the demand notice sent u/s 8 of the Code, the Corporate Debtor has failed to pay the amount demanded nor has replied to the demand

notice raising any dispute, hence this application, seeking to unfold the process of CIRP.

14. An affidavit u/s 9(3)(b) is filed by the Applicant to that extent. The applicant has attached the bank statement copy of her Bank account with

HDFC bank. Relying on the order dated 15.12.2017 passed by Hon'ble Supreme Court in the matter of Macquarie Bank Limited Vs. Shilpi Cable

Technologies Ltd the requirement of Section 9(3)(c) can be dispensed.

15. The amount of debt claimed is Rs. 5,46,611/- which is above 1 lakh.

16. The defence adopted by the Company is that the alleged maternity leave, applied for, by the applicant was of 8 months which is in excess of what

has been allowed by the applicable statute as paid maternity leave and the approval on the leave application nowhere states it to be a fully paid leave.

17. It is submitted by the company that it was the sole discretion of the applicant to return before the expiry of leave, about which she informed the

company in November, however, she did not report back to the services on the date so given by her. However, when she failed to return to the

services of company even after expiry of her approved leave period on 01.01.2018, the Managing Director held a meeting with her on 18.01.2018 to

discuss the issue before taking recourse as per Company's policies.

18. It is submitted that the applicant was not forced by the company and it was her own decision to resign, which was conveyed to the company in a

meeting held between her and the Managing Director.

19. It is further submitted that the Company has not denied her any payment which is due to her, as per the law, however, any claim over and above

such amount shall not be entertained by the Company. Acting on the suggestion of this Hon'ble Tribunal and out of its own bona fide intent, the

Company has not denied any lawful payment to the Petitioner and is ready to pay the amount of Rs. 3,72,896/-

20. In the Rejoinder filed by the applicant it is submitted that the she had never taken any undue benefit of her position or long association in any

manner whatsoever from the company. It is further submitted that the applicant is entitled for gratuity and other employee benefits which have been

admitted by the company in the communications and meetings.

21. In the last offer made by the company, though admitted claim of the applicant by the company is Rs.3,72,896/-, the company has offered to make

payment of Rs.2,37,896/- quoting the present financial crunch suffered by the company vide email dated 24.05.2018.

22. It is seen from the above circumstances and pleadings that the application is complete and there is an admission of the claim of debt due to

applicant which is more than 1 lakh. Thus, in the view of settled principles of the code, the application deserves to be admitted.

23. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section

14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or

order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action

under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during

moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows: -

4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan

under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect

from the date of such approval or liquidation order, as the case may be. Based on the above terms, the Application stands admitted in terms of Section

9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date.

24. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoint Mr. Mohd

Nazim Khan having registration no. IBBI/IPA-002/IP-N00076/2017-18/10207 dated 04.10.2018 having email address nazim@mnkassociates.com as

the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections

15,17,18,20 and 21 of the Code.

25. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016

26. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. Further the IRP

above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for

its records.