

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 708 of 2018**

[Arising out of order dated 9<sup>th</sup> October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in C. P. No. 587/I&BP/2018]

**IN THE MATTER OF:**

**Mr. Satyendra Singh**

M/s Sixth Dimension Project Solutions Ltd.,  
269, Sihora,  
Mathura – 281 305  
Uttar Pradesh.

**....Appellant**

**Vs**

**1. Ms. Rama Subramanian,**

B-501, Vasundhara CHS Ltd.  
Krishna Vatika, Gokhuldhham,  
Goregaon (East)  
Mumbai – 400 088.

**2. M/s Sixth Dimension Project Solutions Ltd.**

**Through Mr. S. Gopalakrishnan,  
Interim Resolution Professional,**

CIN U74900MH1998PLC116838

Having its Registered office at  
Shop No.9, Ground Floor,  
Shree Anant Bhuvan CHS Ltd.,  
Veer Savarkar Road, Near Teen Petrol Pump,  
Thane – 400 601,  
Maharashtra.

**....Respondents**

**Present:**

**For Appellant:** Mr. Mohit Jolly and Mr. Vikas Malhotra, Advocates.

**For Respondents:** Ms. Rama Subramanian, party in person.  
Mr. Udit Singh, Advocate for IRP (R-2).

## **J U D G M E N T**

### **BANSI LAL BHAT, J.**

This appeal has been preferred by 'Mr. Satyendra Singh', Director of Respondent No.2 – 'M/s Sixth Dimension Project Solutions Ltd.' (Corporate Debtor) assailing the order dated 9<sup>th</sup> October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, whereby and whereunder the application of Respondent No. 1 – 'Ms. Rama Subramanian' under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') seeking initiation of Corporate Insolvency Resolution Process has been admitted, Interim Resolution Professional appointed and moratorium slapped on the Corporate Debtor. The impugned order is assailed on the grounds of non-conformity with the provisions of Section 8 and 9 of I&B Code and failure on the part of Respondent No. 1 (Operational Creditor) to substantiate her claim.

2. The factual matrix, in so far as the same is relevant for deciding this appeal, may briefly be noticed. Corporate Debtor - 'M/s Sixth Dimension Project Solutions Ltd.' – a company incorporated on 13<sup>th</sup> October, 1998, is stated to be a leading provider of project management consultancy services. Respondent No. 1 was appointed by the Corporate Debtor as Assistant General Manager (Legal) on annual salary of Rs.10 Lakhs with other benefits

in terms of offer letter dated 10<sup>th</sup> January, 2014. Respondent No. 1 claimed to have worked till 31<sup>st</sup> December, 2016. She tendered her resignation in terms of her letter dated 23<sup>rd</sup> December, 2016 with a request letter for release of her outstanding dues of Rs.24,07,880/-. Since the Corporate Debtor failed to clear her outstanding dues, Respondent No. 1 served demand notice dated 15<sup>th</sup> March, 2018 on the Corporate Debtor demanding payment of salary dues of Rs.24,07,880/-. According to Respondent No. 1 there was no response to the demand notice from the Corporate Debtor and the demand in respect of outstanding salary dues not being complied with and the claim remaining unsatisfied, Respondent No. 1 filed application under Section 9 of I&B Code before the Adjudicating Authority seeking commencement of Insolvency Resolution Process. The Adjudicating Authority after putting the Corporate Debtor on notice and according consideration to the mutually exclusive versions put forth by the parties qua the material aspects bearing upon initiation of Corporate Insolvency Resolution Process admitted the application seeking triggering of Corporate Insolvency Resolution Process at the instance of Respondent No. 1. The Adjudicating Authority found that the defence set up by the Corporate Debtor was spurious designed to avoid Corporate Insolvency Resolution Process and that such disputes were never raised prior to issuance of demand notice by the Respondent No.1. In arriving at such finding learned Adjudicating Authority appears to have been influenced by the admission in the letter dated 27<sup>th</sup> December, 2016 written by the Director of the

Corporate Debtor to Respondent No. 1 in response to her request for release of outstanding salary dues. Since this letter emanating from the Corporate Debtor has been written within four days of tendering of resignation by Respondent No. 1 and making request for payment of outstanding salary dues of Rs.24,07,659/- and forms the immediate response to claim of Respondent No.1, same is relevant to determine whether the defence set up before the Adjudicating Authority is probable or spurious. The letter is extracted herein below:-

*“December 27<sup>th</sup>, 2016*

*Dear Ms. Rama Subramanian,*

*I am in receipt of your letter, requesting for immediate release of your outstanding salary dues. Being familiar with all the legal cases, we face as of date, I hope that you will be in a better position to gauge our financial situation, without any explanation. I know you had put in your heart and soul to discharge your duties. Though I desire to release your dues immediately, our financial position does not permit me to do so. I can only promise at this juncture that your claim towards unpaid salary, as claimed in your letter dated 23.12.2016 will be settled in due course of time, in any case, within one year.”*

3. Learned counsel for Appellant submits that pursuant to the offer letter dated 10<sup>th</sup> January, 2014 in terms whereof Respondent No. 2 offered Respondent No. 1 the position of Assistant General Manager (Legal), Respondent No. 1 was required to fulfil specific conditions set out in the offer letter but since Respondent No. 1 did not comply with such conditions, no formal employment letter was issued in her favour. However, as an alternative to full time employment, Respondent No. 1 was engaged as a Retainer/ Legal Consultant and paid on an adhoc basis from time to time for the matters in which she was engaged. Subsequently, in July, 2015, several deficiencies were noticed in performance of Respondent No. 1. Same were communicated to her during various meetings and discussions. It is submitted that in a meeting held in September, 2015 concerns of Respondent No. 1 over unpaid arrears were addressed and the Corporate Debtor paid an amount of Rs.3 Lakhs to Respondent No. 1 in terms of the agreement arrived at between them. It is further submitted that since Respondent No. 1 failed to make any improvement in performance, it was decided to terminate her services. Respondent No. 1 accepted termination of her services w.e.f. November, 2015 but strangely she shot two letters in December, 2016, one in regard to tendering of resignation and the other claiming the outstanding salary dues. Admitting that Respondent No. 1 has served the statutory demand notice dated 15<sup>th</sup> March, 2018 upon Corporate Debtor, it is contended that in response to the demand notice the Corporate Debtor has raised the dispute in regard to the alleged outstanding salary

dues. It is contended that Respondent No. 1 initiated the Corporate Insolvency Resolution Process seeking payment of alleged Operational Debt despite existence of dispute with regard to the alleged Operational Debt. The impugned order is assailed on the grounds of non-conformity with the provisions of Section 8 and 9 of I&B Code and failure on the part of Respondent No. 1 (Operational Creditor) to substantiate her claim.

4. Per contra, it is submitted on behalf of Respondent No. 1 that Respondent No. 1 had been appointed in terms of the Offer Letter at a gross annual salary of Rs.10 Lakhs and she worked as AGM (Legal) till 31<sup>st</sup> December, 2016. Since her salaries were not paid, she tendered resignation on 23<sup>rd</sup> December, 2016 and also claimed her outstanding salary dues of Rs.24,07,880/- for the period spanning August, 2014 to December, 2016. Refuting the arguments of Appellant that she worked only as a Retainer and was paid on adhoc basis for the work assigned, Respondent No. 1 submitted that the Corporate Debtor through its Director assured to arrange payment of her outstanding salary dues within a year as the Corporate Debtor was facing financial crunch but the Corporate Debtor failed to honour its commitment. Respondent No. 1 further submitted that the application under Section 9 of I&B Code was filed as there was non-compliance with the demand notice and no notice of dispute was received by the Respondent No.1. It is submitted that the reply to the demand notice posted on 9<sup>th</sup> April, 2018 was received by her on 12<sup>th</sup> April, 2018 whereas application

under Section 9 was filed on 6<sup>th</sup> April, 2018. Thus the demand notice was not responded to by the Corporate Debtor and no notice of dispute was served upon the Respondent No.1 within the statutory period. Lastly it is submitted that the defense raised is a mere eyewash designed to defeat the Corporate Insolvency Resolution Process and the spurious defense raised by the Corporate Debtor has rightly been frowned upon and rejected by the Adjudicating Authority.

5. Heard learned counsel for the parties and fathomed through the depths of the factual matrix as emerging from record.

6. Initiation of Corporate Insolvency Resolution Process at the instance of an Operational Creditor is provided for under the provision engrafted in Section 9 of the I&B Code, whereunder an 'Operational Creditor' may file an application before the Adjudicating Authority for initiating a Corporate Insolvency Resolution Process after complying with the statutory requirements of Section 8. Dwelling on the scope of this provision in "***Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407***", the Hon'ble Apex Court observed as under:

*"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the*

*manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”*

In a later judgment titled in “**Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.**, (2018) 1 SCC 353”, the Hon’ble Apex Court further observed as under:-

**51.** *It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration*

*proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

7. Adverting to the facts of the case in hand be it seen that the factum of Respondent No. 1 being appointed by Corporate Debtor as Assistant General Manager (Legal) on mutually agreed terms on a gross annual salary of Rs.10 Lakhs in terms of Letter of Offer dated 10<sup>th</sup> January, 2014 is an admitted position in the case. Respondent No. 1 was required to join within seven days and letter of employment was to be issued subsequent to her joining. Though no such letter of employment required to be issued by the Corporate

Debtor is on record, it is the admitted position that Respondent No. 1 joined the organization viz. Corporate Debtor and rendered meritorious services in her capacity as AGM (Legal). This factual position emerges from letter dated 27<sup>th</sup> December, 2016, written by Shri R. Subramaniam, Director of Corporate Debtor marked 'Exhibit J' at page No. 97 of the paper book, which eloquently speaks of the qualitative performance of Respondent No. 1. Appellant has not placed on record any documentary proof of cancellation of the offer letter with regard to appointment of Respondent No. 1 as AGM (Legal) and her engagement as Retainer. No proof has also been adduced to substantiate the contention that she was paid on an adhoc basis from time to time for the matters in which she was engaged and that such engagement was terminated w.e.f. November, 2015. In absence of proof of recall of letter of offer of employment to Respondent No. 1, and subsequent engagement as Retainer, the contention raised by the Appellant on this score deserves to be outrightly dismissed as a pure concoction, more so as the documents on record in general and the Letter dated 27<sup>th</sup> December, 2016 emanating from the Director of Corporate Debtor referred to hereinabove stares in the face of the Corporate Debtor. It is shocking that in the face of Director of Corporate Debtor eulogizing the role of Respondent No. 1 in regard to discharge of her duties, the Appellant raised the bogey of deficiency in performance of Respondent No. 1, which is a brazen faced attempt to demonize Respondent No.1 and deny her legitimate claim. It is apt to notice that aforesaid letter, apart from appreciating the role of Respondent No.1 for putting in her 'heart

and soul to discharge duties' is in reference to the claim for outstanding salary dues in terms of letter dated 23<sup>rd</sup> December, 2016 served by Respondent No.1 upon Corporate Debtor together with her resignation letter. The aforesaid letter nowhere disputes the claim of Respondent No.1 having discharged duties as AGM (Legal) in terms of Letter of Offer nor refutes her claim for deficiency of performance. It only expresses the inability of Corporate Debtor to immediately satisfy the claim of Respondent No. 1 qua the outstanding salary dues of Rs.24,07,659/- on account of financial hardship faced by the Corporate Debtor and seeks to satisfy such claim within one year while acknowledging and admitting such claim. Appellant or Corporate Debtor has not disputed genuineness of this letter. The defence raised by the Corporate Debtor before the Adjudicating Authority and the version put forth by the Appellant qua the claim of Respondent No.1, viewed in the light of foregoing discussion, can be termed only as an attempt to wriggle out of the liability to deny the legitimate and legally payable claim of Respondent No. 1 and frustrate the Corporate Insolvency Resolution Process commenced at the instance of Respondent No. 1 on fabricated and concocted grounds.

8. Viewed in the context of the conclusions reached and finding arrived at in the foregoing paras, the impugned order cannot be held to be suffering from any legal infirmity. The Adjudicating Authority has appreciated the defense put forth by the Corporate Debtor properly and recorded findings

which are perfectly justified on legal and factual basis. We are convinced that this appeal is frivolous and the Appellant should be saddled with costs. The appeal is accordingly dismissed. Costs to the tune of Rs.50,000/- (Rupees Fifty Thousand Only) are imposed upon the Appellant, which shall be deposited with Registrar, NCLAT within 30 days. Interim direction, if any, shall stand vacated.

9. A copy of this order be sent to the Adjudicating Authority for information and further necessary action.

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

**NEW DELHI**

**10<sup>th</sup> April, 2019**

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