IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

T.C.P. No. 371/I&BP/2017

Under section 9 of the IBC, 2016

In the matter of
Tibbu Thankachan Varghese
.... Petitioner

v/s.

Winsel Aquas Private Ltd.
....Corporate Debtor

Order delivered on : 06.11.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner   : Mr. K.T. Thomas, Adv.

For the Respondent : Mr. Nikunj Mehta, Adv. a/w Mr. Rushad Irani, Adv.
i/b Purazar P. Fouzdar

Per V. Nallasenapathy, Member (Technical)

ORDER

One Mr. Tibbu Thankachan Varghese (hereinafter referred as "Petitioner") filed a petition against Winsel Aquas Pvt. Ltd. (hereinafter referred as "Corporate Debtor") on the file with Hon'ble High Court, Bombay and the same was transferred to this Adjudicating Authority due to jurisdictional change on the advent of Insolvency Resolution & Bankruptcy Code (hereinafter referred as "Code") and the same is numbered as TCP 321/2017, for initiation of Corporate Insolvency Resolution Process for the default of the Corporate Debtor in paying salary and the dues to the extent of Rs. 6,52,983/-, the breakup being principal Rs. 5,26,599/- and interest @ 24% p.a. from 28.06.2015 to 27.06.2016.

2.   The Petitioner says that he had taken up employment with the Corporate Debtor as Sales Head for institutional and retail division on 20.02.2013 but whereas the salary slip enclosed at page 52 (Exhibit C) shows

that the employer is Winsel Marketing (P) Ltd. and not Winsel Aquas (P) Ltd., the Corporate Debtor herein. The said salary slip shows that the Petitioner is entitled for Basic, H.R.A., CCA, Conveyance Allowance and incentive. The copy of appointment letter at page 49 (Exhibit E), issued by Winsel Marketing Pvt. Ltd. discloses the salary component as specified in the above said salary slip.

3.   The Petitioner enclosed the salary slips for the months of February, March, April and May 2015, which shows that he had joined with Corporate Debtor on 01.04.2013 and salary component includes Basic, HRA, CCA and Conveyance Allowance. The 'Incentive' component is missing in this salary slip whereas the same was reflected in the salary slip of 'Winsel Marketing Pvt. Ltd.', The Petitioner enclosed the salary slips issued by the Corporate Debtor but failed to enclose the appointment letter of the Corporate Debtor.

4.   The Petitioner in the subsequent hearing, with the prior permission of this Bench produced an original confirmation letter dated 15.05.2014 issued by the Corporate Debtor wherein the salary consists of Basic salary, HRA, Sales Incentive, CCA and Conveyance Allowance.   There is no explanation from the Petitioner why this Confirmation Letter dated 15.05.2014 was not enclosed to the winding up petition filed on 17.06.2016. Further, the first page of the letter is signed by one person and whereas the remaining two pages are looking as signed by another person.

5.   It is a fact that Winsel Marketing Pvt. Ltd. and the Corporate Debtor are group companies, it is also admitted by the Corporate Debtor that the Petitioner initially worked for some time with Winsel Marketing Pvt. Ltd., thereafter worked with the Corporate Debtor for some time. The issue in dispute is as to whether the incentive part is present or not in the appointment letter issued to the Petitioner by Corporate Debtor, hence that factual issue could not be resolved with the material available on record.

6.   In view of the facts presented before this Bench, we are of the view that it is in dispute as to whether the incentive has been incorporated while employing the Petitioner with the Corporate Debtor company, or not, therefore, in the backdrop of these facts, this Petition is hereby **dismissed** with liberty to the Petitioner to proceed in accordance with law.

Sd/-   Sd/-

V. NALLASENAPATHY   **B. S.V. PRAKASH KUMAR**
Member (Technical)   Member (Judicial)