

**In the National company Law Tribunal**

**Allahabad Bench**

**CP (IB) 60/ALD/2017**

***(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)***

IN THE MATTER OF

**Rohendra Singh s/o Sahdev Singh  
R/O House No. 697/1 Bank Colony  
Railway Station Road, Roorkee,  
District – Haridwar, Uttarakhand – 247667**

**.....Applicant/Operational Creditor**

**Versus**

**M/S Wegilant Net Solutions Pvt. Ltd.  
Office: B 5/2 C Block, Sector 31,  
Noida, Uttar Pradesh- 201301**

**.....Respondent/ Corporate Debtor**

**Judgement/ Order delivered on 28.07.2017**

**Coram:** Shri H.P Chaturvedi, Hon'ble Member (Judicial)

**For the Operational Creditor:** Shri Divendu Tripathi, Advocate along  
with Shri V.K Upadhyay, Advocate

**For the Corporate Debtor:** Shri Avijit Saxena, Advocate

**As per:** Hon'ble H.P Chaturvedi, Member Judicial

**Order**

**CP (IB) 60/ALD/2017: Rohendra Singh vs Wegilant Solutions Private  
Limited**

The present Application is filed under Section 9 read with rule 6 of the  
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016,



by the Operational Creditor Rohendra Singh seeking for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor Company which is reported to have committed default in making payment of its admitted debts to the tune of 9,40,000/- towards payment of salary and other allowances of the Applicant/Operational Creditor.

The Corporate Debtor Company in response to the applicant's demand notice sent a reply admitting the amount of debts due to it and explained such that salary amount could not be paid because of cash crunch, lack of sales in the company, as the company is facing difficulty in raising further funds/investment. Thus, it is evident that Corporate Debtor Company not only have admitted its outstanding dues but expressed its inability to make payment thereof in future.

The facts in brief raising to the present application as stated in the prescribed format of the application as well as in the statutory Demand notice issued to the respondent/Corporate Debtor Company, under the I & B Code, are stated as under.

The operational Creditor /applicant in the petition has made such averment that he was employed in the Corporate Debtor Company as a senior software developer as per the Employment Agreement dated 04.02.2014 executed by him. The same is annexed to the present petition. As per such agreement his salary was fixed for Rs. 80,000/-. Later on 26/06/2015, he was promoted as Vice President engineering in the respondent company e.g. M/S Wegilant Net Solutions Private Limited further he was given raise in his salary by granting increment of INR 95,000 considering his performance as well as his promotion. Thus, his monthly salary became INR 1,75,000 per month, as per his increment & promotion letter dated 26.06.2015 as issued by the Corporate Debtor Company.

Since January, 2016 onwards no amount is received by the Petitioner towards his salary hence, the Corporate Debtor Company M/S Wigilant Net Solutions Private Limited has committed default in making payment of his salary dues. The Split up figures of arrear of his salary are described as under:



January 2016 – INR 87,500

February 2016 – INR 87,500

March, 2016 – INR 1,65,000

April, 2016 – INR 75,000

May, 2016 – INR 175,000


June, 2016- INR 175,000

July, 2016 - INR 175,000

As per the applicant the above mentioned amount still remained outstanding, due to non-payment of his salary. Hence, he was constrained to make resignation from his post and service in the Corporate Debtor Company vide his resignation letter dated, 28/06/2017.

It is also pleaded in the present petition that the Corporate Debtor Company in ~~its~~ reply to the statutory demand notice has already admitted the amount of Rs.9,40,000, payable to the Applicant/Operational Creditor.

It is a matter of record that the Corporate Debtor Company in response to present I & B Petition filed its reply cum objection before this court, wherein in Para 5 to 10 of the same, it admits the applicant's claim for a sum of Rs.9,40,000 as due and payable to him. However, the Respondent Corporate Debtor Company made effort to explain the reasons and circumstances for non-payment inter alia that the company is suffering from liquidity crunch it is now looking for some strategic investor who may purchase the assets of company as going concern or some third party purchaser who may purchase the company technology assets at its market value, thereafter only it could be able to turnaround its status of positive worth. In view of the above stated condition of the company. It has sought some additional time to be granted to complete the above mentioned exercise and thus has prayed for an appropriate order to be passed in the matter. However, the Corporate Debtor Company did not seek any specific date and time





frame to complete such exercise for making payment towards its debts and to fulfil its other contractual obligation.

It is also a matter of record that the Respondent Company in reply to Demand Notice issued by Operational Creditor had earlier sought time in 2016 for making payment of salaries and other dues. But did not categorically state within how much time frame the process of sale of its assets & patents can be materialised in order to make payment of its dues.

The Learned Counsel appearing for Corporate Debtor in response to query being raised by this Tribunal submitted an affidavit on behalf of the company and furnished details about its assets and liabilities. A perusal of the Affidavit shows that the company at present is having outstanding dues of its employees including the Operational Creditor, for a sum of Rs.24 lacs and above. The Corporate Debtor is having further statutory dues to tune of Rs.1,257,822.00/- beside this there are operational expenditure and quick heal dues for Rs.43,779.345/- while the total assets of the company is only around for Rs.6,84,518.00 which means that the Company is not in a position to pay its outstanding liability even time is extended view that.

We considered the above stated factual position of the present case and financial challenges of the Corporate Debtor Company is now facing in the light of the provision of the Section 9 of the I & B Code, and rules applicable, the relevant provision reads as under:

**Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.**

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—



- (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
  - (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
  - (c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and
  - (d) such other information as may be specified.
- (4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.
- (5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—
- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, —
    - (a) the application made under sub-section (2) is complete;
    - (b) there is no repayment of the unpaid operational debt;
    - (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
    - (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
    - (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.
  - (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—
    - (a) the application made under sub-section (2) is incomplete;
    - (b) there has been repayment of the unpaid operational debt;
    - (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
    - (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
    - (e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub clause(a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.


- (6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.



In the light of above discussion, we don't find any valid objection for rejection of the present petition. The present petition is found complete and deserves admission hence, is allowed consequently, the order for declaring the moratorium in respect of the Corporate Debtor if U/s 14 of the I & B Code is hereby issued, with following direction.

- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)
- d. The recovery of any property by an owner or less or where such property is occupied by or in the possession of the Corporate Debtor.
  - i. 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.
  - ii. 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.
  - iii. 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 the Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have



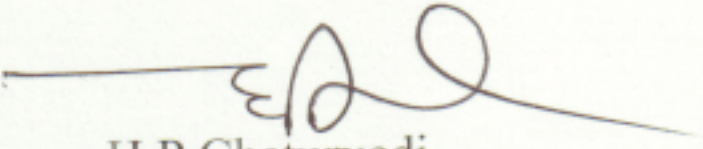


effect from the date of such approval or liquidation order, as the case may be.

Further, as in the present matter, the Operational Creditor did not propose in the application the name of IRP to be appointed. Therefore, a copy of this order along with copy of petition/objection filed by the parties to be forwarded to the Insolvency & Bankruptcy Board of India with request to nominate IRP to be appointed by this Tribunal in the present matter, in respect of Corporate Debtor Company.

Therefore, the public announcement of declaration of moratorium of the Corporate Debtor Company U/s 13 to 15 is deferred till IRP is appointed by this Court, U/s 16 of the I & B Code.

Accordingly, the present petition ~~stands~~<sup>is</sup> allowed and stands disposed of. The further date for receiving the nomination form the I & B an appointment of IRP is fixed on 18<sup>th</sup> August, 2017.

  
H.P Chaturvedi  
(Member Judicial)

**Dated :28.07.2017**