

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 321 of 2019

IN THE MATTER OF:

Shweta Uppal

...Appellant

Vs

Shansco Packaging Pvt. Ltd.

....Respondent

Present:

For Appellant: Ms. Puja Dewan Seth, Advocate.

For Respondent:

ORDER

01.04.2019: Heard learned counsel for the Appellant. It appears that the Appellant (Operational Creditor) was appointed in the Respondent (Corporate Debtor) as Vice President – Marketing and Business Development for generating business for the Company on 13.04.2018. The Appellant claims that while she was so functioning, her services were terminated by email dated 16.07.2018 and when her services were terminated she was entitled to salary for the month of June and July, 2018 (upto 16th July) and also she was entitled to one month salary in lieu of notice and reimbursement of TA charges for work at Chennai. She calculated the total dues at Rs.3,89,427/-. The Appellant claimed the amount vide Section 8 Notice under I&B Code sent on 12.09.2018 from the Respondent but it was not paid and she filed proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' in short) before the Adjudicating Authority (National Company Law Tribunal), Division Bench Chennai but the same has been dismissed.

2. It is argued that the Respondent filed a suit disputing her claims after she has issued notice under Section 8 and after receipt of the copy of the petition under Section 9 which had been filed.

3. Counsel for the Appellant states that the subsequent offer made in the proceeding in the City Civil Court, Madras by the Respondent by depositing of

the above amount will be of no consequence and the Adjudicating Authority should have initiated insolvency proceeding against the Respondent Company.

4. We have gone through the record and perused the impugned order. The Section 8 notice was sent on 12th September, 2018 (Annexure - A11), where unpaid salary and salary in lieu of termination was claimed. However, before such notice was sent, record shows that there was two emails. One is dated 16th July, 2018 (Annexure – A8). Vide Annexure – A8 itself Respondent raised various disputes regarding the service of Appellant and terminated her employment. In other e-mail dated 28th July, 2018 inter alia it is stated that :-

“Our organization has suffered heavily on time and money, on account of your breach of employment and inefficiency. Having committed a breach it is not open to you to invoke clause 18 of the said agreement and seek one month salary as compensation in lieu of termination.”

5. It is apparent from the email that the Respondent alleged breach of employment against the Appellant and stated that she could not claim for salary as compensation. Apparently, there is a pre-existing dispute.

6. We do not find any reason to interfere with the impugned order. Appeal is accordingly dismissed on admission stage. No costs.

[Justice A. I. S. Cheema]
Member (Judicial)

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc

Company Appeal (AT) (Insolvency) No. 321 of 2019