

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.155 of 2019

[Arising out of Order dated 31st December, 2018 passed by National Company Law Tribunal, Bengaluru Bench in CP (IB) No.57/BB/2018 & IA No.120/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Jagan Pampapathy,
24/20 New Temple
Land Hudco,
Hosur,
Krishnagiri District,
Tamil Nadu - 635109

Applicant/
Operational Creditor

Appellant

Versus

Wipro Limited
Doddakannelli,
Sarjapur Road
Bengaluru – 560 035

Respondent/
Corporate Debtor

Respondent

And

Company Appeal (AT) (Ins) No.157 of 2019

[Arising out of Order dated 31st December, 2018 passed by National Company Law Tribunal, Bengaluru Bench in CP (IB) No.40/BB/2017 and IA 103/2018]

And

Company Appeal (AT) (Ins) No.158 of 2019

[Arising out of Order dated 31st December, 2018 passed by National Company Law Tribunal, Bengaluru Bench in CP (IB) No.112/BB/2018 and IA 409/2018]

Cause title in all the Appeals is similar to Company Appeal (AT) (Ins) No.155 of 2019

For Appellant: Shri Jagan Pampapathy, Appellant in person

**For Respondent: Shri L.K. Bhushan and Ms. Aditi Awasthy,
Advocates**

J U D G E M E N T

A.I.S. Cheema, J. :

1. The Appellant was employed with the Respondent Company in Technology Division as 'Senior Domain Consultant'. The Appellant filed one after the other three Applications under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code – in short) against the Respondent Company claiming himself to be Operational Creditor and all the three Applications came to be rejected by the Adjudicating Authority (National Company Law Tribunal, Bengaluru Bench [A.A. – in short]) by different Orders, all three, dated 31st December, 2018 against which Orders, these Appeals have been filed. All these Appeals have been heard together and basically emanate from claims of debt relating to service of the Appellant and his claim of default regarding non-payment of allowances or salaries or deduction of the same, etc.

2. (i) Company Appeal (AT) (Ins) 155 of 2019 is arising out of CP (IB) No.57/BB/2018 & IA No.120/2018,
- (ii) Company Appeal (AT) (Ins) 157 of 2019 is arising out of CP (IB) No.40/BB/2017 and IA 103/2018 and
- (iii) Company Appeal (AT) (Ins) 158 of 2019 is arising out of CP (IB) No.112/BB/2018 and IA 409/2018,

which CPs/Applications were filed before the Adjudicating Authority at Bengaluru.

3. In short:-

A. In CA 155 of 2019, the grievance of the Appellant, in short, is relating to amount of Rs.2,13,252/- which the Appellant claimed was in two components. One component is of Rs.1,31,637/- and pertains to non-payment of car allowance which was due to the Applicant as per the terms of his employment contract for the period 06.10.2016 to 28.02.2017, and the second component is of Rs.81,615/- which it is claimed, is amount deducted ostensibly as car allowance between March, 2017 to May, 2017 despite closure of car lease on 01.03.2017.

The Appellant had issued Section 8 Notice (Page – 54 of the Appeal – i.e. - Company Appeal (AT) (Ins) No.155 of 2019) dated 30th January, 2018 in this regard to the Respondent, but operational debt was not cleared, it is claimed.

B. Company Appeal (AT) (Ins) No.157 of 2019 relates to the grievance made by the Appellant that he has not been paid a part of his salary and contractual dues for the months of September and October, 2016 amounting to Rs.3,81,458/- and the Appellant was entitled to the same with interest @ 12% per annum.

Section 8 Notice dated 25th April, 2017 (Page – 47 of the Appeal No.157/2019) was sent by the Appellant. It is claimed that in spite of the Demand Notice, the operational debt remained unpaid and thus, the Application under Section 9 was filed.

The Appellant in Appeal has stated that he had tendered his resignation to the Respondent on 2nd February, 2016. However, the Respondent requested the Appellant to withdraw his resignation and continue in the employment and as consideration in exchange for Appellant withdrawing his resignation, Respondent offered Appellant an annual salary of 8 Million Japanese Yen and 6 months' investment tagging support for a project to be taken up at Hiroshima, Japan. On commitment from Respondent, Appellant withdrew his resignation on 04.04.2016 and relocated to Hiroshima, Japan on 09.04.016. The Respondent later called back the Appellant before the period of 6 months. The Appellant relied on Notice dated 25.04.2017 sent to Respondent (Page – 89 of the Appeal No.157 of 2019) to claim that several issues connected with the dues relating to repayment of salary amounting to Rs.3,81,458/- including making several allegations regarding breach of Notice period, misrepresentation, forcibly putting the Appellant on leave without pay, deliberately denying him access to benefits he was entitled under the Appointment Letter, etc., were raised.

C. In Company Appeal (AT) (Ins) No.158 of 2019, the grievance of the Appellant relates to the Respondent defaulting in payment of an amount of

Rs.1,37,115/- in respect of part of salary for April, May and June, 2017. The Appellant claimed that the Respondent deducted TDS Rs.71,189/- which showed that Rs.3,19,146/- was due to the Appellant but Respondent deposited only Rs.1,34,929/- and thus there were dues of Rs.1,37,115/-.

The Appellant had sent Section 8 Notice dated 16.01.2018 (Page – 115 of the Paper Book of the Appeal No.158/2019) but in spite of the Notice, the operational dues were not paid.

4. The Respondent Company in all the three Petitions filed Replies and opposed the three Applications filed under Section 9 of the I&B Code. Some part of the defence is common to these three Appeals.

5. The defence of the Respondent is that as per assignment policy of the Respondent, the employees are eligible for basic and Provident Fund as Indian salary in Indian currency. Employees who travel abroad are eligible for full India salary after settlement of Foreign Travel Request (FTR). It is claimed that the Appellant returned from Japan on 05.10.2016 but settled the FTR only on 28.02.2017 although he was supposed to settle FTR within 15 days. Thereafter, Respondent paid the amounts due with March, 2017 payroll.

With reference to CA 155/2019, the defence mentioned that the deductions from every month – 6th October to February, 2017 was in accordance with law. As per the policy of Respondent, on-site assignees have to settle the car lease before leaving India, failing which the car EMI

shall be recovered and paid to the vendor. In the instant case, the Appellant did not settle the car lease payment before leaving for Japan and as such, car EMI amount was required to be recovered from the payroll of the Appellant and the same had been paid to the vendor. The car lease scheme was closed in March, 2017 and the car was transferred to the Appellant. The Respondent denied that the car allowance element of fixed cash was unpaid till date and this was done for the period – October, 2016 to February, 2017 when the car lease was active @ 27,205 per month. According to the Respondent, no amounts were deducted towards car EMI for March to May, 2017.

According to the Respondent, the Appellant had raised dispute before the Ombudsman of Respondent and the said dispute had already been closed. Legal Notice had been issued to the Appellant on 26.09.2017 to return laptop and pay damages and Petition had been filed under Section 43 of Information Technology Act seeking compensation of Rs.50 Lakhs from the Appellant. The Respondent claimed that there was already existence of dispute before the Section 8 Notice dated 30.01.2018 (in CA 155/2019). Respondent relies on the Registered Post AD Notice dated 18th April, 2017 and another Notice dated 25.04.2017 (Page – 167) where the Appellant was asked to appear before Enquiry Officer on 3rd May, 2017 regarding charges made. According to the Respondent, with regard to the service of the Appellant, disputes had arisen as reflected in the Notice and thus, the Appellant was making untenable claims, which are baseless as per service records available.

6. In CA 157/2019, the Respondent put up the defence that the Appellant, who had gone on deputation to Japan, failed to fulfil demands and obligation of the business generation and consequently, he was asked to return back to India from the current assignment vide e-mail dated 01.08.2016 (Page – 169 of the Paper Book of said Appeal No.157/2019), on account of being identified as critically non-billed resources and the Appellant was placed on loss of pay leave for a period of 30 days from 05.09.2016 to 04.10.2016. According to Respondent, Appellant did not return as directed but came back later. The Appellant returned to India but did not report at Bangalore and failed to settle FTR as per Clause 14 of the deputation letter. The FTR was closed on 28.02.2017 and salary of Rs.2,08,761 was credited to his account for 05.10.2016 to 31.03.2017. In this matter also, the Respondent claimed that the Appellant had raised issue with Ombudsman for withholding his salary but the complaint was concluded on 27th February, 2017 upon due enquiry by the Ombudsman as the complaint could not be substantiated by Appellant. In this matter also, the Respondent relied on the Notice issued to the Appellants on 18th April, 2017 and Notice dated 25th April, 2017 (Page 89 of Appeal No.157/2019) with regard to the charges levelled against him and when he was asked to appear before the Enquiry Officer.

7. With regard to the claim made by the Appellant for non-payment of salary from April to June, 2017 although TDS was deducted, the Respondent (in CA 158/2019) relied on the defence taken before the Adjudicating Authority and the Notice dated 25th April, 2017 (Page – 132

of the concerned Appeal) which was sent by e-mail and mentioned that in pursuance to e-mail to the Appellant on 5th April, 2017 and 10th April, 2017 and letter dated 18th April, 2017 by compliance team, the Appellant was advised to share explanation on inconsistencies noticed in his leave and attendance records and unauthorised absence. It is stated that, Appellant was unauthorisedly absent and TDS got deducted was due to automated payroll system assuming that Appellant was working and erroneously authorized a salary credit to account of Appellant. The Respondent laid charges against the Appellant that he had filled efforts in time management system without swiping in and out on 77 instances (as mentioned) and that the Respondent noticed that only on 3 instances, Appellant had swiped in and out for the duration October, 2016 till date. The Notice mentioned that the Appellant was absent since 10th April, 2017 without prior leave approval/e-mail confirmation. The Respondent also relied on Notice dated 18th April, 2017 (Page – 144 of the concerned Paper Book).

8. We have heard the Appellant in person and the learned Counsel for the Respondent. Both of them have also filed brief written submissions in support of the respective Appeals. In the three matters, the Section 8 Notice first in time is in Company Appeal (AT) (Ins) 157 of 2019 which is dated 25th April, 2017. As the record of Company Appeal (AT) (Ins) 158 of 2019 shows, this is the same date of 25th April, 2017 when the Respondent sent e-mail at 12.47 p.m. (see Page – 132 of CA 158/2019) laying charges against the Appellant with regard to his service and asking him to appear before the Enquiry Officer – Mr. Pritam Diwakar Shetty on 3rd May, 2017.

It is apparent that disputes had arisen, before the Appellant could serve Notices on the Respondent. The defence of Respondent is based on documents prior in time. It is not a case of admitted or apparent debt and the Adjudicating Authority is not expected to enter into the disputed questions of facts. In the present matter, the documents being relied on by Respondent show prior existing disputes with regard to the Service of Appellant. The Respondent had raised issue with the Appellant with regard to the services, he was rendering and the dispute was pre-existing and thus, we find that the Adjudicating Authority rightly rejected the three Applications filed by the Appellant under Section 9 of I&B Code.

9. There is no substance in these Appeals. Company Appeal (AT) (Ins) 155 of 2019, Company Appeal (AT) (Ins) 157 of 2019 and Company Appeal (AT) (Ins) 158 of 2019 are dismissed.

No orders as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

06th August, 2019

/rs/gc