IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-101
IB-681/ND/2020

IN THE MATTER OF:
Sanjeev Sharma ....Applicant
Vs
Kreate LIghts Pvt. Ltd. ....Respondent

SECTION
U/s 9 IBC code 2016 **Order delivered on 11.03.2020**
CORAM:
SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the Applicant : Adv. Aakarshan Aditya, Adv. Vibhu Tiwari, Adv. Gaurav Dhwaj
For the Respondent :

ORDER

As per Mr. Abni Ranjan Kumar Sinha, Hon'ble Member (J)

The present application has been filed on behalf of Operational Creditor/petitioner in which Operational Creditor had been appointed as an Executive Director by Corporate Debtor through a letter of Appointment with effect from 09.05.2016 and was appointed as a Director of the company through a resolution passed in the AGM of the Corporate Debtor dated 23.09.2019 and praying therein to initiate a CIR Process against the Corporate Debtor namely ***Kerate Lights Private Limited.***

We have heard the Ld. Counsel for petitioner and perused the averment made in the application as well as document enclosed with the application.

Ld. Counsel for petitioner submitted that petitioner was employee of the Corporate Debtor and he was appointed as an Executive Director by Corporate Debtor through a letter of Appointment with effect from *09.05.2016* and he

further submitted that he has tendered his resignation through e-mail dated 23.10.2017 and in that e-mail he mentioned about 3 months' notice as required under Clause 14 of the LoA. He further submitted that thereafter, he delivered the demand notice upon the respondent who gave the reply to the demand notice which is at page 87 of the main application. He further submitted that by sending the reply to the demand notice, Corporate Debtor has raised the dispute regarding his absence during notice period, Corporate Debtor has adjusted claimed amount to the loan which the petitioner has taken from the sister company of the Corporate Debtor. He further submitted that since petitioner claimed the salary of the notice period which he has not received from the Corporate Debtor and the claimed amount is more than Rs. 1 lakh, so, CIR Process may be initiated against the Corporate Debtor.

Considering the submissions made by the petitioner, when we have gone through the reply filed by the respondent, we find that in para 3 (a) of the reply at page 88, respondent admit that petitioner was employee of the Corporate Debtor and had been appointed as an Executive Director by Corporate Debtor through a letter of Appointment with effect from 09.05.2016 and thereafter he tendered his resignation on 23.10.2019 by e-mail. It was also mentioned that during the notice, the petitioner is required to be present on his duty but he has not attended the duty and that is the reason, dispute has been raised by the respondent. We further find that in para 3 (i) it is mentioned that petitioner has taken a loan of Rs. 45 lacs which is still outstanding and in this regard *Civil Suit No. 385/2019* is pending before the Patiala House Courts, New Delhi in which petitioner did not appear.

In the light of the submissions, we have gone through the claim made by the petitioner, then we find that the respondent has raised disputes.

Therefore, at this juncture, we would like to refer Section 8 & Section 9 of the IBC and the same are quoted below:-

'8. (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor— (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; (b) the repayment of unpaid operational debt— (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

9. (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 thefinancial 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 subclause (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.'

From the perusal of the aforesaid sections, we find that Corporate Debtor within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor— (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; (b) the repayment of unpaid operational debt. In this case, we find that the Corporate Debtor has raised the existence of dispute

regarding the payment of the amount and civil suit has also pending before the Patiala House Courts, New Delhi. Therefore, in view of Section 9(5)(ii), if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility in that case adjudicating authority has no option but to reject the application. **Accordingly, before issuance of notice, we hereby reject the prayer of the application to initiate the CIR Process under Section 9 of the IBC, 2016. Hence, main application stands dismissed.**

Sd/-

(K.K. VOHRA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

(Chirag)