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(2023) 11 NCLT CK 0002

National Company Law Tribunal, Mumbai Bench, Court - V

Case No: CP(IB) 206 MB 2021

Brajesh Mishra and Others		APPELLANT
	Vs	
M/s Dolphin Offshore Shipping Ltd		RESPONDENT

Date of Decision: Nov. 2, 2023

Acts Referred:

- Insolvency and Bankruptcy Code, 2016 - Section 4, 9

Hon'ble Judges: Kuldip Kumar Kareer, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench: Division Bench

Advocate: Sachin Kadam, Amey Hadwale

Final Decision: Dismissed

Judgement

Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by Mr. Brajesh Mishra and Others (hereinafter called "the Petitioner") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s Dolphin Offshore Shipping Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code, 2016 (hereinafter called "Code") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 2,86,11,281/-.

The submissions by the Operational Creditor: -

2. The Operational Creditors are the employees of M/s Dolphin Offshore Shipping Ltd. and some of them are still serving the company. However, some of them have already resigned from their jobs. The Corporate Debtors have not payed the legal dues of the Operational Creditor and therefore, the Corporate Debtor is liable to pay all the

outstanding salary and other dues to all the Operational Creditors as per their respective dues.

3. The Corporate Debtor was expressing inability to clear the dues of the Operational Creditors and kept on putting off the matter on one pretext or the other. However, they have not paid the same till date and, therefore, total outstanding dues of all Operational Creditors are of Rs. 2,86,11,281/- in the form of liquidated debt payable by the Corporate Debtor to all the Operational Creditor jointly.

4. In view of the unequivocal, undisputed debt confirmation and acknowledgment from the Corporate Debtor and in the circumstance, whereby the Corporate Debtor has failed to pay the admitted debt. Hence, the Petition.

Reply filed by the Corporate Debtor:-

5. The Corporate Debtor denies, and all the allegations, contentions and statements made in the present Company Petition. The Respondent does not admit and shall not in any manner be deemed to have admitted the same.

6. The Corporate Debtor has, inter alia, pleaded that a joint Application under Section 9 of the Code by one or more Operational Creditor is not maintainable, the individual claim of each of the Operational Creditor is less than the minimum threshold limit of Rs. 1 crore and therefore, ex-facie, the Petition is not maintainable and is liable to be dismissed on this ground alone. There is no default whatsoever, as alleged or at all. The Applicants have filed to demonstrate any default on the part of the Respondent and the Petition is not maintainable either in law or in fact is not conformity with the mandate requirements of the Code.

7. Accordingly, without prejudice to the foregoing, the Applicants are disentitled from any relief and Petition deserves to be dismissed with exemplary costs.

Findings:-

8. We have heard the Counsel for the parties and gone through the records.

9. This Petition has been filed u/s 9 of the Code, 2016 jointly by as many as 23 Petitioners through their authorized representative Mr. Brijesh Mishra. Perusal of the record reveals that the total claimed amount in respect of all the Operational Creditors is Rs. 2,86,11,281/-. The perusal of the records further reveals that the none of the Petitioners individually has a claim of more than Rs. 1 crore. Therefore, individually, none of the Applicants meets/fulfills the threshold requirement of Rs. 1 crore as per Section 4 of the Code, 2016. Now the question arises as to whether a joint Petition u/s 9 by more than one individual can be maintained if individually they do not fulfill the threshold limit of Rs. 1 crore.

10. In this context a reference can, be made to the law laid down in Sadashiv Nomaya Nayak and Others. Vs. Gammon India and Contractors Private Limited 2023 ibclaw.in 455 NCLAT whereby it has been held that if an individual claim of each of the Operational Creditor, the amount of debt is less than rupees one lakh (as the threshold limit was at that time), it can be rejected being not maintainable.

11. In the light of the above brief discussion and the law laid down on the above cited cases, it has to be held that the present Petition is not maintainable as the individual claim of each of the joint Petitioners do not meet the threshold limit of Rs. 1 crore.

12. Resultantly, the present Company Petition is dismissed with no order as to costs.