

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 1174/IB/MB/2020

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 6
of the Insolvency and Bankruptcy
(Application to Adjudication Authority)
Rule 2016)

In the matter of

Mr. Sudhir Chauhan

A-37A, HIG Flats, Green View Apartments,
Sector 99, Noida, Uttar Pradesh

..... Operational Creditor

Vs

Esmart Energy Solutions Limited

Dalal Desai & Kumana, Chartered
Accountants, Union Co. Op. Insurance
Bldg. 2nd Flr. 23, P M Road Fort, Mumbai
400001

..... Corporate Debtor

Order Pronounced On: 27.09.2023

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances

For the Petitioner: Mr. Yogesh Deshpande, Advocate

For the Corporate Debtor: Mr. Nausher Kohli, Advocate

Per: Reeta Kohli, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Mr. Sudhir Chauhan** hereinafter referred to as **Operational Creditor** seeking to initiate

Corporate Insolvency Resolution Process (**CIRP**) against **Esmart Energy Solutions Limited** herein after referred to as **Corporate Debtor** by invoking the provisions of Section 9 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs.2,83,33,333/-

2. The case of the Petitioner is that he was appointed as Executive Director / CEO w.e.f. 1st June, 2017 (**Exhibit B**) vide letter dated 24.05.2017. His case further is that vide letter dated 23.10.2018 (**Exhibit C**), he tendered his resignation from the office of the Director of the Company. Vide email dated 26.10.2018 (**Exhibit D**) the said resignation was accepted by the Corporate Debtor.
3. The arguments advanced by the Petitioner is that his appointment was as Director as well as CEO. He tendered his resignation as Director and hence he is entitled to his dues as CEO as he never tendered his resignation as CEO. To buttress his claim he drew the attention to the 'subject' of the Resignation letter Exhibit C stating:-

"Resignation from the office of Director of the Company".

4. The case of the Petitioner by referring to all these documents is that in view of the fact that he tendered his resignation only as Executive

Director and not as Chief Executive Officer. Hence in terms of the letter of appointment Exhibit B dated 24.05.2017 he deserves to be paid his pending salary etc. as he never tendered his resignation from the post of CEO. Thus the action of the Respondent Corporate Debtor terminating his service from the post of CEO with immediate effect is against the terms of clause 11.1 of the appointment letter dated 24.05.2017 which clearly states as under: -

“The company (eSmart Energy Solutions Private Limited) shall observe the lock-in period of three years with the appointee from the date of appointment of this contract of appointment. Thereafter the clauses 2,3 and 4 as stated below or any other clause/rule touching the clause of termination of this contract shall be applicable. It is hereby clarified that the company in any situation directly or indirectly or otherwise shall not terminate the contract of employment for any reason whatsoever before the expiry of lock-in-period i.e. 3 years”

5. The counsel for the Corporate Debtor on the other hand submitted that the appointment of the Petitioner was as Executive Director cum CEO meaning thereby that he was holding collective charge/ responsibility. The dual nomenclature in the appointment letter can not by any stretch of imagination grant him the liberty of holding two independent posts and also the liberty to tender his resignation from one post and to continue on the other. While referring to the

appointment letter (**Exhibit 'B'**) it was emphasized that the terms of appointment nowhere separately defined the set of responsibilities as Executive Director and/or as CEO. The counsel further submitted that no separate salary was reflected in the appointment letter for the alleged two different posts.

6. The contention of the Corporate Debtor is that in view of the fact that the terms of the employment clearly enumerated that there is a *lock-in-period* of 3 years before terminating his services. But the Operational Creditor resigned out of his own free will unilaterally. Thus the Operational Creditor does not deserve any relief, least of all the relief prayed for. He further referred to the Exhibit E letter dated 26.10.2018 wherein the Corporate Debtor clearly stated as under: -

“Please note that your appointment was as executive director and posted as CEO in Delhi hence upon acceptance of your resignation from Director, your appointment in company has got completely terminated. You are relieved from the company with immediate effect.”

Vide this communication only the Petitioner was conveyed regarding the assets of the Company in his possession to either return the same or set the same adjusted against the dues pending (if any) in case he wishes to buy the assets.

7. In addition, he also made reference to the email dated 08.11.2018 wherein the Operational Creditor had accepted withholding the assets of the Company which have not been returned back till date. The relevant para is reproduced hereunder;

“I hereby remind you that I am in possession of following assets of the Company:

- 1. Vehicle BMW 5 series bearing registration No. PB 65 AN 1369*
- 2. One Laptop make DELL*
- 3. One mobile phone make BLACKBERRY”*

The counsel for the Corporate Debtor submitted that by referring to the above stated items, the Operational Creditor was in fact attempting to blackmail the Corporate Debtor so as to put pressure on the Corporate Debtor to accept the unreasonable demand of the Operational Creditor.

8. After having considered the above stated facts, the documents placed on record and after appreciating the arguments advanced by both the Ld. counsels; we are unable to agree to the contention of the Petitioner stating that he resigned from the post of Executive Director and not from CEO post and thus deserves to be paid the salary of CEO. It is more so because the Petitioner/ Operational Creditor has failed to draw our attention to any document or submission so as to buttress his argument to the effect that he continued to discharge his

responsibility as CEO even after submitting his resignation on 23.10.2018. On the other hand the counsel for the Corporate Debtor had stated that the services of Operational Creditor were terminated with immediate effect in view of the resignation having been tendered by the Operational Creditor. In addition, vide Exhibit E the acceptance of resignation with immediate effect clarifying that appointment as Executive Director and posting as CEO in Delhi being commensurate makes the intention of the Employer/ Corporate Debtor crystal clear and unambiguous. Otherwise too, the Petitioner resigned within one year of his joining out of his own free will whereas as per the appointment letter the Lock in period was for 3 years for the Corporate Debtor to adhere to. Thus, in view of the above stated factual position the argument advanced by the Petitioner deserves to be rejected.

9. Thus in view of the above, we are of the considered opinion that Unilateral decision on the part of the Petitioner to tender his resignation from the post of Executive Director and not that of CEO, Acceptance of his the resignation and relieving him from company with immediate effect does not leave the Petitioner to claim his dues as CEO. The Petition further deserves to be dismissed as it does not lie in the mouth of the Petitioner to state that he only tendered his

resignation as Executive Director and not as CEO particularly when the offer of appointment nowhere refers different set of responsibilities as Executive Director and that of as CEO. Reference of two terms does not make his appointment as holding two separate posts by any plausible reasoning. Be that as it may the case of the Petitioner/ Operational Creditor himself is that he resigned within one year out of his own free will and the same having been accepted immediately further dilutes the claim of the Petitioner.

10. In view of the observations made above present Petition deserves to be dismissed.

Sd/-
Madhu Sinha
Member (Technical)

Sd/-
Reeta Kohli
Member (Judicial)