

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.301 - IA/1668(AHM)2024 in
C.P.(IB) & Pre-Packaged)/1(AHM)2023

**Order under Section 54-O r.w. Sec, 60(5) IBC, 2016 r/w Regulation 49(4) IBBI
Reg, 2016**

IN THE MATTER OF:

Vikash Gautamchand Jain RP of Kethos Tiles Pvt. Ltd

.....Applicant

Order delivered on 12/10/2024

Coram:

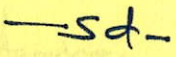
Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sameer Kakar, Hon'ble Member (T)

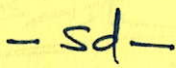
PRESENT:

For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.


SAMEER KAKAR
MEMBER (TECHNICAL)


SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-1, AHMEDABAD**

**INTERLOCUTORY APPLICATION No. 1668 of 2024
IN
CP (IB) & PRE-PACKAGED/1(AHM)2023**

(An application under Section 54-O read with Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 49(4) of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021)

*In the matter of **M/s. Kethos Tiles Private Limited;***

Vikash G. Jain

**Resolution Professional of
Kethos Tiles Private Limited**

Having IBBI Regn. No. IBBI/IPA-001/IP-P00354/2017-18/10612

Having address at:

204, Wall Street -1, Opp. Orient Club,
Nr. Gujarat College, Ellisbridge,
Ahmedabad, Gujarat – 380006.

...Applicant

Order Pronounced on 12.11.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Nipun Singhvi, Advocate, a/w.
Ms. Pragati Tiwari, Advocate



ORDER
[Per: Bench]

1. This application is filed by the Resolution Professional of M/s. Kethos Tiles Private Limited seeking the following prayers:-

- a. *YOUR LORDSHIP MAY BE PLEASED to allow the present application;*
- b. *YOUR LORDSHIP MAY BE PLEASED to pass an appropriate order under Section 54-0 read with Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 49(4) of IBBI (PPIRP) Regulations, 2016 and Rule 11 of NCLT Rules, 2016 for terminating the Pre-packaged Insolvency Resolution Process of Kethos Tiles Private Limited and initiate CIRP of Kethos Tiles Private Limited in pursuant to resolution passed in 6th COC Meeting dated 13.09.2024;*
- c. *YOUR LORDSHIP MAY BE PLEASED to appoint Applicant Mr. Vikash G Jain having IBBI Regn. No. IBBI/IPA-001/IP-P00354/2017-18/1061 as Resolution Professional in CIRP of Kethos Tiles Private Limited;*
- d. *YOUR LORDSHIP MAY BE PLEASED to take Form P13 attached at Annexure L (Colly) on record of this Hon'ble Adjudicating Authority for termination of the Pre-Packaged Insolvency Resolution Professional of Kethos Tiles Private Limited;*
- e. *YOUR LORDSHIP MAY BE PLEASED to grant any other relief or relief as may deem fit in the interest of justice:*



2. Brief submissions made by the Applicant are as under:

- (i) This Adjudicating Authority admitted the Company Petition being C.P. (IB) & Pre-Packaged/1/(AHM)2023 filed by M/s. Kethos Tiles Private Limited (“Corporate Debtor”) under Section 54C of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 vide order dated 04.01.2024.
- (ii) The Applicant / RP has invited claims by publishing Form-G in two newspapers viz. Business Standard (All Gujarat Edition) & Sandesh (All Gujarat Edition) on 06.01.2024.
- (iii) The Committee of Creditors (“CoC”) was constituted as per Section 18 of IBC, 2016 on 11.01.2024 and thereafter the resolution process progressed further.
- (iv) It is seen that the Applicant has held 06 CoC meetings in the matter. The last CoC meeting was held on 13.09.2024 and the voting has ended on 10.10.2024 pursuant to which the RP has affirmed



the present application on 19.10.2024 and the physical filing was done on 23.10.2024 under Diary No. E-2779.

- (v) It is stated that the RP/Applicant filed an application bearing IA No. 769/2024 seeking extension of Pre-Packaged Insolvency Resolution Process ("PPIRP") of the Corporate Debtor for further 60 days. In view of deliberation and pending approval of resolution plan, this Adjudicating Authority vide its order dated 06.06.2024 rejected the extension application and terminated the process.
- (vi) Being, aggrieved by the order of this Tribunal, the RP and the Promoters of the Corporate Debtor preferred an appeal before the Hon'ble NCLAT being Company Appeal (AT) (Ins) No. 1173/2024 and Company Appeal (AT) (Ins) No. 1323/2024. The Hon'ble NCLAT vide a common order dated 20.08.2024 has set aside the order of this Tribunal dated 06.06.2024 passed in IA-769/2024 and extended the PPIRP period for a



period of 60 days from the date of order. Thus, extended period of PPIRP ended on 19.10.2024.

- (vii) In the 6th CoC meeting held on 13.09.2024, the RP informed the members on the actions taken by the RP since 5th CoC meeting. The applicant apprised the CoC members that updated resolution plan (which dilutes the control of existing management with new management) dated 30.08.2024 has been submitted by the Corporate Debtor and was presented to CoC. Upon discussion, CoC members decided to put the updated resolution plan dated 30.08.2024 on e-voting. It is submitted that the Applicant received e-mail from CoC to extend the voting timelines from 30.09.2024 till 10.10.2024 for review and deliberation of higher authorities of bank for approval of plan or rejection of plan, which was extended till 10.10.2024. The Applicant has attached the copy of e-mail at Annexure – J of the application.
- (viii) It is stated that the CoC resolved with 100% voting rights to reject the resolution plan submitted by the



Corporate Debtor and the CoC unanimously resolved with 100% majority voting rights to initiate Corporate Resolution Insolvency Process ("CIRP") and terminate the PPIRP of the Corporate Debtor in accordance with Section 54 – O of the IBC, 2016 read with Regulation 49(4) of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. The copies of the minutes of the 6th CoC meeting are annexed as Annexure – K to the application.

- (ix) Pursuant to the 6th CoC meeting, the Applicant has prepared and placed along with present application Form-P13 under the said Regulations, which is dated 18.10.2024.
- (x) The Applicant has also placed the Form-2 giving his consent for being appointed as the Resolution Professional in CIRP of the Corporate Debtor.
- (xi) It is submitted that the resolution plan of the Corporate Debtor has been rejected and the CoC has resolved to terminate PPIRP of Corporate Debtor and



to initiate CIRP with the unanimous voting in the 6th CoC meeting dated 13.09.2024.

- (xii) The applicant thereafter has reproduced the Section 54 – O of the IBC, 2016, which reads as under:

“54-O. Initiation of corporate insolvency resolution process.

(1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under sub-section (4) or sub-section (12), as the case may be of section 54K, by a vote of not less than sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II

(2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to—

(a) terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;

(b) appoint the resolution professional referred to in clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicating Authority in such form as may be specified; and



- (c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor
- (3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.
- (4) Where the Adjudicating Authority passes an order under sub-section (2)—
- (a) such order shall be deemed to be an order of admission of an application under section 7 and shall have the same effect;
- (b) the corporate insolvency resolution process shall commence from the date of such order;
- (c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;
- (d) for the purposes of sections 43, 46 and 50, references to "insolvency commencement date" shall mean "pre-packaged insolvency commencement date"; and
- (e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50."



3. Ld. Resolution Professional was present during the hearing held on 08.11.2024 and stated that the entire CIRP cost has since been received by him. He further pleaded to admit the present application and reiterated the prayers.
4. The Applicant/RP has placed the voting results at Page-143 of the application. The relevant resolutions passed are as under:

“RESOLVED THAT an application for initiation of corporate insolvency resolution process u/s 54-0 of the IBC, 2016 in respect of the corporate debtor is to be filed with the Hon'ble Adjudicating Authority and the same is hereby approved.

RESOLVED FURTHER THAT CA Vikash Gautamchand Jain having IBBI Registration Number: IBBI/IPA-001/IP-P00354/2017-18/10612 be and hereby proposed as the Interim Resolution Professional for the purpose of carrying out corporate insolvency resolution process under the provisions of the IBC, 2016.

RESOLVED FURTHER THAT the Resolution Professional is authorized to file said application with the help of legal consultant with the Hon'ble Adjudicating Authority and is also authorized to do all such act as required for the purpose of filing the said application.

RESOLVED FURTHER THAT the cost of drafting, filing, hearing and handling application for initiation of corporate insolvency resolution process as per Section 540 (1) of the



*Insolvency and Bankruptcy Code, 2016 is hereby approved
and the said cost shall form part of PPIRP Cost."*

5. It is seen that the above resolutions were approved by the CoC of the Corporate Debtor with 100% majority.
6. The Applicant/RP has placed Form-P13 at Page-149 of the present application being Report of Termination of Pre-Packaged Insolvency Resolution Process.
7. We have heard the Ld. Counsel for the Applicant and also the Ld. RP in person.
8. It is seen that the PPIRP process had commenced on 04.01.2024 and the Applicant herein was appointed as the Resolution Professional in the matter.
9. Claims were invited and the CoC was formed. Pursuant to which the total 06 meetings of the CoC have taken place. In the 6th CoC meeting, the CoC of the Corporate Debtor decided to terminate PPIRP process and further resolved to convert the process into CIRP with 100% majority. The Applicant has placed on record relevant resolutions of the CoC and also Form-P13.



10. The Hon'ble Supreme Court in the matter of K. Shashidhar vs. Indian Overseas Bank reported in (2019) 12 SCC 150 has held as under:

"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.



58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."

(emphasis supplied)

11. Thus, it emerges that commercial wisdom of CoC is non-justiciable and cannot be questioned by this Adjudicating Authority.
12. As the CoC of the Corporate Debtor has unanimously resolved to reject the plan given by the existing management of the Corporate Debtor and as they have resolved to convert the process into a full-fledged CIRP process, we are left with no other choice but to order for commencement of Corporate Insolvency Resolution Process against the Corporate Debtor M/s. Kethos Tiles Private Limited.



13. It is seen that the CoC has recommended appointment of the Applicant herein as the Resolution Professional for CIRP process of the Corporate Debtor. However, in line with the Circular of IBBI (July, 2023), the same RP cannot be appointed.
14. We are of the view that another Resolution Professional needs to be appointed as the Resolution Professional of the Corporate Debtor. Accordingly, we hereby order to appoint **Mr. Jigar Tarunkumar Bhatt** to be appointed as the Interim Resolution Professional in the matter.
15. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under: -
- (i) The **Corporate Debtor M/s. Kethos Tiles Private Limited** is admitted in Corporate Insolvency Resolution Process under Section 54O of the Code.
 - (ii) As a consequence, thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.



- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
 - e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order



till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under subsection (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) We hereby appoint **Mr. Jigar Tarumkumar Bhatt, Registered Insolvency Professional having Reg. No. IBBI/IPA-001/IP-P-01917/2019-2020/13005, email:- jigarb.jigarb@gmail.com** under Section 13(1)(c) of the Code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.



- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by Section 20 of the Code. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of



necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xi) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

16. Accordingly, this application **IA/1668(AHM)2024 in CP(IB) & Pre-Packaged/1(AHM)2023** is hereby admitted.

17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

SP