

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 1833/ND/2020

IN

Company Petition No. (IB)-334(ND)/2018

IN THE MATTER OF:

Ranjit Das & Ors.

... Applicant/Financial Creditor

Versus

M/s. MSX Mall Private Limited

... Respondent

AND IN THE MATTER OF

Mr. Anil Kumar Jain

Resolution Professional:
MSX Mall Private Limited,
255B, IInd Floor, Block-A-1,
Lawrence Road, Keshav Puram,
New Delhi – 110035

... Applicant

VERSUS

Mr. Madhav Saran Agarwal & Mrs. Alka Agarwal

R/o House No. D-88, Sector 26,
Noida, Gautam Buddha Nagar,
Uttar Pradesh

... Respondent/ Ex Directors/ Resolution Applicants

Order Delivered on: 10.11.2023

SECTION: Section 30(6) of IBC 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the RP : Mr. Anil Kumar Jain RP, Adv. Abhishek Anand,
Adv. Mritunjay Kumar

For Respondent/RA : Adv. Abhishek Anand

ORDER





Per : Sh. L. N. Gupta, Member (T)

The present application is filed by Mr. Anil Kumar Jain, RP under Section 30(6) of IBC, 2016 seeking approval of the Resolution Plan submitted by Mr. Madhav Saran Agarwal and Mrs. Alka Agarwal (**hereinafter referred to as Ex-Directors/Respondents/ Resolution Applicants**).

2. To put the facts succinctly, the underlying main Petition CP (IB)-334/ND/2018 was filed by Ranajit Das & Ors. against the Corporate Debtor namely, M/s MSX Mall Private Limited under Section 7 of IBC, 2016, which was admitted vide Order dated 09.07.2018 by this Adjudicating Authority and the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated. The Corporate Debtor, at present, is represented through its RP Mr. Anil Kumar Jain.

3. The RP has stated that the Corporate Debtor is an MSME enterprise, for which the ex-Directors/Promoters have submitted the present Resolution Plan, which is approved by the CoC with 96.3% Votes in the 13th meeting of the CoC of the Corporate Debtor held on 30.01.2020.

4. In support of its contention, the Applicant/RP has annexed the MSME certificate, which is reproduced overleaf:

 भारत सरकार Govt. of India सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES		 सूक्ष्म, लघु और मध्यम उद्यम MICRO, SMALL & MEDIUM ENTERPRISES																	
 उद्योग आधार		 Udyog Aadhaar																	
E		<table border="1"> <tr> <td>Type of Enterprise</td> <td>Micro</td> <td>Small</td> <td>Medium</td> </tr> <tr> <td>Manufacturing</td> <td>A</td> <td>B</td> <td>C</td> </tr> <tr> <td>Services</td> <td>D</td> <td>E</td> <td>F</td> </tr> <tr> <td>UAM No.</td> <td colspan="3">UP28E0029165</td> </tr> </table>		Type of Enterprise	Micro	Small	Medium	Manufacturing	A	B	C	Services	D	E	F	UAM No.	UP28E0029165		
Type of Enterprise	Micro	Small	Medium																
Manufacturing	A	B	C																
Services	D	E	F																
UAM No.	UP28E0029165																		
Udyog Aadhaar Registration Certificate																			
Udyog Aadhaar Number		UP28E0029165																	
Name of Enterprise		MSX MALL PVT. LTD																	
Location of Plant Details																			
SN	Flat/Door/Block No.	Name of Premises/Building Village	Road/Street/Lana	Area/Locality	City	Pin	State	District											
1	B-4	SITE-IV	UPSIDC	SURAJPUR INDUSTRIAL AREA	GREATER NOIDA	201306	UTTAR PRADESH	GAUTAM BUDDHA NAGAR											
Official Address of Enterprise		B-4, SITE-IV, UPSIDC, SURAJPUR INDUSTRIAL AREA, UTTAR PRADESH-201306																	
		District	GAUTAM BUDDHA NAGAR	State	UTTAR PRADESH	PIN	201306												
		Mobile No:	9599916609	Email:	ruksar@abidegroups.com														
Date of commencement		28/03/2011																	
Major Activity		SERVICES																	
Enterprise Type		Small																	
Previous Registration details-if any		::																	
National Industry Classification Code																			
SN	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit Code	Activity Type															
1	B1 - Services to buildings and landscape activities	8110 - Combined facilities support activities	81100 - Combined facilities support activities	Services															
2	B1 - Services to buildings and landscape activities	8130 - Landscape care and maintenance service activities	81300 - Landscape care and maintenance service activities	Services															
Acknowledgement		Date of Filing	24/12/2019	Date of Printing	24/12/2019														
Disclaimer: This is computer generated statement, no signature required. Printed from udyogaadhaar.gov.in																			
MyMsme Mobile App (Beta Version) is available now for download. https://play.google.com/store/apps/details?id=msme.mysmsme																			



5. On perusal of the MSME certificate (ibid), it is observed that the MSME registration certificate was obtained by the Suspended Directors on December 24, 2019, whereas the Corporate Insolvency Resolution Process of the Corporate Debtor commenced vide Order dated July 09, 2018 of this Adjudicating Authority. Evidently, the MSME Certificate of the Corporate Debtor was obtained

on December 24, 2019 by the Suspended Directors, which is subsequent to the date of commencement of CIRP of the Corporate Debtor i.e., on July 9, 2018.

6. Against this backdrop, we consider it appropriate to refer to the Judgement dated 12.01.2021 in the matter of **Harkirat Singh Bedi vs the Oriental Bank of Commerce & Anr. in Company Appeal (AT)(Ins.) No.40 of 2020**, wherein the Hon'ble NCLAT held the following:

*“39. The appellant in its EOI claimed the advantage of section 240A of the code claiming exemptions from applicability of section 29A(c) and 29A(h) in terms of eligibility to be a resolution applicant as a medium level enterprise under MSME Development Act, 2006. On reading the provisions under section 29A along with section 240A of I&B Code. It can be concluded that the exemption is only in respect of clause (c) and (h) of Section 29A of the I&B Code. However, in this case the Appellant is declared ineligible under clause (b) of Section 29A where no exemption has been given to MSME. **Also, the date of registration of the Corporate Debtor as MSME as on record was 5th June, 2019, i.e. after CIRP admission order dated 29th March, 2019. The application for registration of MSME by the Appellant was without authorization, being subsequent to initiation of CIRP and hence was invalid. Therefore, the Appellant is ineligible to take the benefits of section 240A under I&B Code.”***

(Emphasis added)

7. Further, in the matter of “Hari Babu Thota RP of Shree Aashraya Infra-Con Ltd.” the Hon’ble NCLAT at Chennai, in Company Appeal (AT) (CH) (Ins.) No. 110 of 2023 dated 02.06.2023, held the following:

*“In the instant case, the Resolution Applicant registered as an MSME only after the initiation of CIRP. This Tribunal in the case of ‘Digamber Anand Rao Pingle’ Vs. ‘Shrikant Madanlal Zawar & Ors’, wherein the Promoter of the ‘Corporate Debtor’ had filed an Appeal against the ‘Liquidation Order’ passed by the ‘Adjudicating Authority’ claiming that the ‘Corporate Debtor’ was an MSME and that he could file a Resolution Plan, but **this Tribunal observed that as the Application for MSME certificate was made after the commencement of CIRP, such unauthorized Application cannot be considered and cannot tide over ineligibility under Section 29-A.** The ratio of this matter is squarely applicable to the facts of this case and the matters of eligibility under Section 29-A as observed by the Hon’ble Supreme Court in a catena of Judgements, cannot be undermined.”*

(Emphasis added)

8. As already noted in paragraph 5 of this order, in the instant case, the Suspended Management obtained the MSME Certificate post-initiation of CIRP. Therefore, the status of the Corporate Debtor on the date of commencement of CIRP was not that of MSME. Hence, the benefit of Section 240A of IBC, 2016 cannot be availed by the Resolution Applicant/Suspended Board of Directors to

submit the Resolution Plan. Accordingly, in our considered view, the Resolution Applicant herein is barred under Section 29A(c) to submit the Resolution Plan.

9. Even otherwise and moreover, vide a separate order passed in IA-2003 of 2022 dated 10.11.2023, the Ex-Directors of the Corporate Debtor namely, Mr. Madhav Saran Agarwal and Mrs. Alka Agarwal, the Resolution Applicants herein have been found accountable for committing a series of fraudulent transactions under Section 66 of IBC, 2016 and orders have been passed for them to contribute the amounts involved in the fraudulent transactions to the Bank Account of the Corporate Debtor, which makes them ineligible from submitting a Resolution Plan under Section 29A(g) of IBC, 2016 as well and the immunity under Section 240A is not available to them.

10. Since the Resolution Applicant/Ex-Directors have been found ineligible to submit the Resolution Plan under Section 29A(c) as well as under Section 29A(g) of IBC 2016, we have no other option but to reject the IA-1883 of 2020 seeking approval of the Resolution Plan, and accordingly, the Resolution Plan is rejected.

11. Further, since the maximum permissible period of CIRP of 330 days has since lapsed, there is no other option but to order the Liquidation of the Corporate Debtor. Ordered accordingly. Further, in terms of the provisions of Section 34(4)(a) of IBC, 2016, the current Resolution Professional, Mr. Anil Kumar Jain IP, is replaced by Mr. Gautam Singhal IP having registration no.

IBBI/IPA-001/IP-P-01437/2018-2019/12240 (email id: gautam@klfindia.com)

Mobile No. 9811898418 as the Liquidator of the Corporate Debtor with immediate effect, who shall take early steps for Liquidation of the Corporate Debtor in accordance with the law.

12. **A copy of this order be sent by the Registry/Court Officer to IBBI for their record.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)