NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

I.A. NO. 1059 OF 2020

Filed by

JEE Adornment Pvt. Ltd.

A company duly incorporated under the Provisions of Companies Act, 1956 having its registered Office located at A-202, Brahma Complex, Manvelpada, Palghar, Virar East, Thane-401305

In the matter of

C.P. (IB) No. 215 OF 2018

Soorajmull Baijnath Pvt. Ltd.

21/22, Lodha Building, P. D'Mello Road, Mumbai – 400001

versus

Pingle Builders Pvt. Ltd.

Office: F-1/5, Zilla Parishad Complex, Mahatma Gandhi Marg, Nashik – 422 001

...Operational Creditor

Order Pronounced on: 11.12.2020

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Shyam Babu Gautam (Member Technical)

Appearance:

For the Applicant: Adv. Pritesh Burad

For the Original Petitioner: Adv. Amir Arsiwala

For the Resolution Applicant: Adv. Prachi Wazalwar

For the ex-promoters: Adv. Arshil Shah

Per: Hon'ble Shyam Babu Gautam, Member

ORDER

1. This is an application filed by one JEE Adornment Pvt. Ltd. (hereinafter called as "the applicant") who is a company duly registered under the provisions of Companies Act, 1956 and is

engaged in the business of supplying materials for Building of complete constructions or parts thereof which includes civil engineering and the works allotted on back to back/Lock & Key Basis i.e. Internal and External Plaster, all Door Frames including Shutters/Doors, Fabrication work of Staircase, Fire Alarm Systems etc.

2. This application has been filed seeking the following prayers:
   i. To modify or clarify the order dated 19.07.2018 passed by this Hon'ble Tribunal in Company Petition No. 215/I&B/2018 suitably.
   ii. To direct the RP Mr. Shrikant Madanlal Zawar to abide the terms and conditions of the 4 Work Orders, all dated 06.02.2020; and
   iii. To direct the RP Mr. Shrikant M. Zawar to not take charge or control of the current Account Bearing No. 122110100000179 in the said bank having operated by the Applicant and in alternatively, this Hon'ble Tribunal be pleased to direct the RP Mr. Zawar to transfer the amount to the bank account of the applicant maintained with any other bank to the extent of 93.50% of the invoice value, in view of the amount having received or to be received from MES in the said bank account or any other bank account of the Respondent towards the work assigned by the Respondent.

3. The counsel for the applicant mentioned that this Company Petition bearing No. 215 of 2018 was admitted by this Tribunal vide an order dated 19.07.2018. Later, on 06.02.2019, the Respondent has issued four separate Work Orders in favour of the Applicant for four projects. On 06.05.2019, the respondent passed a Board Resolution in its board meeting with a view to authorize the applicant to transact in respect of the Bank Account No. 122110100000179. He mentioned that the work progressed and the applicant has raised various invoices from time to time.

4. The applicant has stated that Doctrine of indoor management is an exception to the Doctrine of Constructive Notice and the same is applicable to the applicant as a third person, who has no notice to any irregularity or want of authority, need to be protected under

this rule. Further, the applicant submitted that it has taken efforts and done the proper enquiry to discover the regularity of the Corporate Debtor by requesting the Corporate Debtor to annex the Master data, which was signed and annexed by the Corporate Debtor along with the work orders dated 06.02.2019 which are issued in favour of the Applicant as referred hereinabove vide the para no. 02.

5. The counsel for the applicant mentioned that as per these Work Orders issued by the Corporate Debtor, the applicant had started executing the work immediately and the Respondent had opened the bank account with the Bassein Catholic Co-operative Bank Ltd. Nashik Branch on 06.05.2019. The counsel mentioned that the transactions in the said Bank account started to fail and the applicant was not able to understand the reason why, and therefore, the applicant immediately enquired with the said Bank vide a letter dated 17.05.2019 to which the bank replied on 05.06.2019 by which the applicant got to know that this Tribunal has appointed a Resolution Professional Mr. Shrikant M. Zawar to conduct the CIRP of the Corporate Debtor.

6. The counsel for the applicant mentioned that the applicant company is innocent and had no knowledge that the CIRP was initiated against the Corporate Debtor company. He further mentioned that the applicant came into contact with the Corporate Debtor and agreed to undertake the work as assigned by it. The applicant has executed the same after procuring the material through various vendors, engaging of the large numbers of labours/employees wherein a sizeable amount has been involved/invested towards payment to the vendors, payment towards wages, the payment of statutory dues and applicable taxes and at last the profit out of the said transactions is also involved.

7. The counsel for the Resolution Professional on the other hand has denied all the contentions of the applicant in toto. He mentioned that he had informed this Tribunal about the conduct of the Suspended Board of Directors and this Bench vide an order dated 17.12.2019 have taken the fact into consideration that the

Directors have opened the fraudulent bank accounts and threatened the RP.

8. Further, the counsel for the RP mentioned that the work order had been assigned to the applicant on 06.02.2019 during which the provisions of the IBC had been levied on the Corporate Debtor and they have no right to assign the same since the Board stood suspended due to the moratorium being levied. He said that it is pertinent to note that in the said situation, it would be the RP and not the Suspended Directors to assign any Work Order to the applicant as the powers get transferred to the RP as soon as he is appointed by this Tribunal. Therefore, the Board Resolution also which was passed by the Directors as on 06.05.2019 also becomes illegal, void and against the provisions of the IBC. Also, it was clearly decided in the 2nd CoC meeting held on 25.09.2018 that to execute all the recurring expenses and receipt of income, Vijaya Bank Current account has to be used. He stated that the said act of the Applicant jointly carried out with the directors is absolutely frivolous and against the law.

9. The counsel for the RP has also denied the contentions that he was aware of the fact that the applicant has been assigned the work orders by the Suspended Directors. He stated that had he known the fact, he would have brought this to the notice of the CoC and he himself would have assigned the work orders to the applicant and also would have managed the Vijaya Bank Current Account. Now that the bank accounts are opened by the director and the applicant fraudulently and without the knowledge of the RP, it is the applicant who has to pay back the funds received from the MES to Vijaya Bank.

10. Further the counsel for the RP stated that he had made public announcement as well as expression of Interest was published in two newspapers namely Times of India and Maharashtra Times on 04.10.2018. Also, the orders passed by this Adjudicating Authority are in public domain and could have been easily accessed by the applicant. Therefore, the excuse that it was unaware of the CIRP initiated and ongoing against the Corporate Debtor cannot be

believed by the applicant. Also, the counsel for the RP stated that the fact that applicant along with the Directors, that too without knowledge of the RP did all these activities, clearly shows a case of fraud and misrepresentation on the part of the applicant and hence all the contentions raised by the applicant are false and vexatious.

FINDINGS

We have heard all the parties concerned and gone through the documents submitted by them and accordingly, the following observations have been made:

i. Prayer i. cannot be allowed as the modification the applicant is seeking is regarding the admission order of this Company Petition which in our view is proper and needs no modifications. Even otherwise such a prayer is legally impermissible.

ii. Also, prayer ii. cannot be allowed because all the four work orders assigned by the Directors of the Corporate Debtor to the applicants are void ab initio as they were assigned after the admission of this Company Petition by which CIRP of the Corporate Debtor was set into motion. Therefore, no direction can be granted to the RP for abiding by the Terms and Conditions of these Work Orders.

iii. Prayer iii. can also not be allowed because the directors of the Corporate Debtor along with the applicant with or without their knowledge had jointly opened the account in Vijaya Bank and started working according to the work orders and now the applicant claim that various invoices were raised from time to time. This is in a way fraud committed by the applicant along with the Directors by keeping the RP, the CoC and this Tribunal in dark regarding the work orders and the work carried on pursuant to them. As the work orders, the invoices raised by the applicant and the work carried on in pursuant to them are void ab initio, no amount can be transferred to the applicant by the RP.

iv. The contention of the applicant that it was unaware of the initiation of the CIRP against the Corporate Debtor cannot be believed because the RP had very well done his part by publishing the same in the newspapers which is a public notice.

Therefore, it is impossible to accept the above application at this advanced stage of the CIRP where liquidation is already ordered by this Tribunal today in MA No. 1506 of 2019 and a liquidator is appointed. Stating this, we would also like to mention that any right of the applicant to approach any other forum for the losses incurred by them is not forfeited by this order.

I.A. 1059 of 2020 cannot be allowed and is accordingly dismissed. This application bearing I.A. No. 1059 of 2020 is hereby disposed of.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**H.V. SUBBA RAO**
Member (Technical)	**Member (Judicial)**

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

I. A. No. 1506/2019
Under Section 33 of Insolvency & Bankruptcy Code, 2016
Filed by

Mr. Shrikant Madanlal Zawar
252, The Summit, Business Bay, Near Western Express Metro Station, Andheri (E), Mumbai – 400093

…Applicant/Resolution Professional

In the matter of

C.P. (IB) No. 215 OF 2018

Soorajmull Baijnath Pvt. Ltd.

21/22, Lodha Building, P. D'Mello Road, Mumbai – 400001

versus

Pingle Builders Pvt. Ltd.
Office: F-1/5, Zilla Parishad Complex, Mahatma Gandhi Marg, Nashik – 422 001

…Operational Creditor

Order delivered on: 11.12.2020

Coram:

Member (Judicial): Hon'ble Shri H. V. Subba Rao
Member (Technical): Hon'ble Shri Shyam Babu Gautam

Appearance (through video conferencing):
For the RP: Adv. Sonal Mishra
Resolution Professional: Mr. Shrikant M. Zawar

Per: Shri Shyam Babu Gautam, Member

ORDER

1. It is an application filed by the Resolution professional Mr. Shrikant M. Zawar seeking liquidation of the Pingle Builders Pvt. Ltd. (hereinafter called as "Corporate Debtor") on the ground that no resolution plan has been approved and the Committee of Creditors (CoC) has unanimously decided to initiate liquidation proceedings

of the Corporate Debtor. Hence this application under Section 33 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying following reliefs:

a. *"To approve the liquidation of the Corporate Debtor in terms of Section 33(2) of the Insolvency and Bankruptcy Code, 2016;*
b. *Such other or further orders, as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

2. The Adjudicating Authority vide its order dated 19.07.2018 on a Petition filed by the Operational Creditor under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Shrikant M. Zawar as the Interim Resolution Professional (IRP) who was later confirmed as the Resolution Professional (RP).

3. The counsel for the RP mentioned that 180 days of the CIRP period got over on 14.01.2019 and on the instructions of the CoC, the RP moved an application before this Tribunal for extension of CIRP Period by 90 days starting from 14.01.2019 which was allowed by this Tribunal vide an order dated 24.01.2019 extending the period till 14.04.2019.

4. The counsel for the RP also mentioned that there were discussions for withdrawal of the petition under Section 12A of the Code because the Corporate Debtor had agreed to pay an upfront amount of 10% of the dues to the Operational Creditor and the Financial Creditor i.e. the State Bank of India which controlled upto 88% voting share in the CoC. Accordingly, a payment of Rs. 25,00,000/- was made by the Corporate Debtor to State Bank of India in accordance with the One Time Settlement proposal but the pre-condition for the Section 12A application was to make a payment to applicant operational creditor to the extent of 10% upfront payment of the outstanding which the Corporate Debtor failed to make till 14.07.2019 i.e. the date of expiry of 270 days of the CIRP. Therefore,

the counsel mentioned that the RP was left with no option but to file this Liquidation application.

5. Today the CIRP is at this stage that not only 270 days of CIRP have expired but also a huge period beyond 330 days has lapsed. Therefore, the following order is passed:

ORDER

We have heard all the parties concerned and perused all the documents submitted by them. We hereby allow this Miscellaneous Application bearing Number M.A. 1506 of 2019 with the following observations and directions:

a. Ms. Vandana Garg, having Registration No. IBBI/IPA-001/IP-P00025/2016-2017/10058 is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
d. The Liquidator appointed under section 34(1) of the Code. Will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter

ceased to exist. All these powers henceforth vest with the Liquidator.

g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority.

i. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

This application i.e. M.A. No. 1506 of 2019 is hereby allowed and disposed of.

We would like to mention here that there is another M.A. bearing No. 3020 of 2019 which was filed in this matter by the Resolution Professional Mr. Shrikant Zawar for the fraudulent transactions against the ex-promoters and directors. As we have allowed this liquidation application, we are not passing any orders in M.A. No. 3020 of 2019 with a direction to the RP to hand over the relevant documents to the liquidator Ms. Vandana Garg who is appointed by this order. The liquidator shall pursue this application bearing No. 3020 of 2019 and therefore, is at this juncture kept pending and will be decided and disposed of later on.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**H. V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

M.A. 2261 of 2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Filed by:

Mr. Digambar Pingle

Office: F-1/5, Zilla Parishad Complex, Mahatma Gandhi Marg, Nashik – 422 001

versus

Mr. Shrikant Madanlal Zawar

252, The Summit, Business Bay, Near Western Express Metro Station, Andheri (E), Mumbai – 400093

…Respondent No. 01

Soorajmull Baijnath Pvt. Ltd.

21/22, Lodha Bhavan, P. D'Mello Road,

Mumbai – 400001

…Respondent No. 02

State Bank of India

Stressed Asset Recovery Branch,

Kerom Building, 1st Floor, Plot No. A-112,

Next to Wagale Industrial Estate,

Thane (W)-400604

…Respondent No. 03

Vijaya Bank

M.G. Road Branch, Nashik

…Respondent No. 04

And

I.A. NO. 1156 OF 2020

Under Section 30 a/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Filed by

Mr. Digambar Pingle

Office: F-1/5, Zilla Parishad Complex, Mahatma Gandhi Marg, Nashik – 422 001

versus

Mr. Shrikant Madanlal Zawar

252, The Summit, Business Bay, Near Western Express Metro Station, Andheri (E), Mumbai – 400093

…Respondent No. 01

State Bank of India
Stressed Asset Recovery Branch,
Kerom Building, 1st Floor, Plot No. A-112,
Next to Wagale Industrial Estate,
Thane (W)-400604
...Respondent No. 02

In the matter of

C.P. (IB) No. 215 OF 2018

Soorajmull Baijnath Pvt. Ltd.

21/22, Lodha Building, P. D'Mello
Road, Mumbai – 400001

versus

Pingle Builders Pvt. Ltd.
Office: F-1/5, Zilla Parishad
Complex, Mahatma Gandhi Marg,
Nashik – 422 001

...Operational Creditor

Order delivered on: 11.12.2020

Coram:

Member (Judicial): Hon'ble Shri H. V. Subba Rao
Member (Technical): Hon'ble Shri Shyam Babu Gautam

Appearance: (through video conferencing)
For the Original Petitioner: Adv. Amir Arsiwala
For the Resolution Applicant: Adv. Prachi Wazalwar
For the RP: Adv. Sonal Mishra
Resolution Professional: Mr. Shrikant M. Zawar

Per: H.V. Subba Rao, Member (Judicial)

ORDER

1. These two applications bearing numbers MA. 2261 of 2019 and I.A. 1156 of 2020 are having similar prayers for considering the resolution plan filed by the ex-promoter of the Corporate Debtor. As we are dealing with the liquidation application herewith, we believe it is important to decide the fate of these two applications also. Therefore,

we are dealing with them here itself. The applicant in both the applications is one of the Resolution Applicants named Mr. Digambar Pingle who is also the ex-promoter of Pingle Builders Pvt. Ltd.

2. M.A. 2261 of 2019 is filed under Section 60(5) of the Code praying thereby to withhold the liquidation of the Corporate Debtor and extend the period of CIRP for consideration of resolution/settlement plan by CoC whereas I.A. 1156 of 2020 is filed under Section 30 r/w Section 60 of the Code seeking *interalia* that the RP be directed to hold a CoC meeting for final approval of the resolution plan by the CoC and direct him to file an application for approval of the resolution plan, to direct the RP to carry the affairs of the Corporate Debtor on a going concern basis, to exclude the time period from the contract of Defence for the time the RP was not performing, to take necessary actions against the RP and to grant approval of the resolution plan under Section 30 of the Code.

3. The applicant in MA. 2261 of 2019 and I.A. 1156 of 2020 have filed these applications seeking prayer to extend the time and direct the CoC to consider the Resolution Plan submitted by him. In regard to these applications, we believe that a huge period beyond 330 has already been expired and therefore, these two applications cannot be allowed.

4. Again, there are several allegations against the ex-promoter who is also the resolution applicant herein regarding the fraudulent transactions etc. Also, on earlier occasions, he has promised to pay and later failed to pay the amount and thus this attempt by him appears merely to stall the proceeding and buy time. Also, the applicant in these two M.A.s is the ex-promoter of the Corporate Debtor against whom an application for preferential transactions was filed by the RP. Here, it is to be noted that the applicant gets hit by Section 29A of the Code and is therefore, restrained from filing the resolution plan. For ready reference, we would like to reproduce Section 29A hereunder:

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

(d) has been convicted for any offence punishable with imprisonment for two years or more;

(e) is disqualified to act as a director under the Companies Act, 2013;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation.— *For the purposes of this clause, the expression "connected person" means—*

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this Explanation shall apply to—

(A) a scheduled bank; or

(B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India.".

5. Keeping the above facts and circumstances in mind and relying upon this settled position of law, we believe that the matter is unnecessarily being dragged by the ex-promoters and is merely an attempt to stall the proceeding. This Tribunal has therefore allowed the application filed by the Resolution Professional for liquidation of the Corporate Debtor. As an order has been passed by this Bench in M.A. No. 1506 of 2019 today itself allowing liquidation of the corporate debtor company, these two Interlocutory Applications bearing numbers I.A.1156 of 2020 and M.A. 2261 of 2019 wherein prayers have been sought by the ex-directors for directing the CoC to consider the resolution plan submitted by them, are hereby disposed of as dismissed.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**H. V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**