

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

I.A./2539/2021 In CP(IB)/3546/(MB)/2018

Application filed under section 12A of Insolvency and Bankruptcy Code, 2016 r/w Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Nitin Om Kothari

(IRP of Meta Arch Private Limited)

...Applicant

I.A./2836/2021 In I.A./2539/2021

In

CP(IB)/3546/(MB)/2018

Application filed under section 60(5) of Insolvency and Bankruptcy Code, 2016.

Ramesh Bhagwandas Chhabria

...Applicant

V/s

Nitin Kothari

(IRP of Meta Arch Private Limited)

... Respondent

I.A./1891/2021 In IA/2539/2021

In

IA/2836/2021 In CP(IB)/3546/(MB)/2018

Application filed under section(s) 2(b) and 14 of the Contempt of Courts Act, 1971 and Section 425 of the Companies Act, 2013 and Rule 11 of the National Company Law Tribunal Rules, 2016.

Ramesh Bhagwandas Chhabria

...Applicant

V/s

Nitin Kothari

(IRP of Meta Arch Private Limited)

... Respondent

I.A./2539/2022 In IA/2539/2021

In

CP(IB)/3546/(MB)/2018

Application filed under section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

Kotak Mahindra Bank

...Applicant

V/s

Nitin Kothari

(IRP of Meta Arch Private Limited)

... Respondent

I.A./3244/2022 In IA/2836/2021

In

IA/2539/2021 In CP(IB)/3546/(MB)/2018

*Application filed under section 60(5) of Insolvency
and Bankruptcy Code, 2016.*

Prasad Joshi

...Applicant

V/s

Nitin Kothari

(IRP of Meta Arch Private Limited)

... Respondent

In the matter of

Ardex Endura (India) Private Limited

...Financial Creditor

V/s

Trend Electronics Limited

...Corporate Debtor

Order Pronounced on: 03.03.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kuldip Kumar Kareer

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)

For the Resolution Professional/

the Applicant in IA/2539/2021: Adv. Prakhar Tandon i/b Adv. Agam H Maloo

For the Applicant in IA/2836/2021;

IA/1891/2022 & IA/3244/2022 : Adv. Aman Kacheria

i/b Adv. Rishabh Dhanuka

For the Applicant in IA/2539/2022: Adv. Indrajeet Hingane

For the Promotor/Director of Corporate Debtor: Adv. Avinash R. Khanolkar

ORDER

Per- Coram

1. It is an IA/2539/2021 filed by Mr. Nitin Om Kothari, Interim Resolution Professional under section 12A of Insolvency and Bankruptcy Code, 2016 read with Regulation 30 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for withdrawal of the CIRP initiated against the Meta Arch Private Limited (hereinafter referred to as “Corporate Debtor”) and to discharge the Applicant from his duties.

Simultaneously, Mr. Ramesh Bhagwandas Chhabria has filed an IA/2858/2021 under Section 60 (5) of the IBC, 2016, seeking intervention in IA/2539/2021 and further prayed to reject the IA/2539/2021. Moreover, Mr. Ramesh Bhagwandas Chhabria has filed another IA/1891/2022 under sections 2(b) and 14 of the Contempt of Courts Act, 1971 and Section 425 of the Companies Act, 2013 and Rule 11 of the National Company Law Tribunals Rules,

2016, seeking to punish the IRP for wilful disobedience and breach of the Order dated 18.04.2022 passed by this Tribunal in IA/2539/2021.

Meanwhile, the Kotak Mahindra Bank has filed an IA/2539/2022 under section 60(5) of the Insolvency and bankruptcy Code, 2016, seeking directions to decide section 12 A application on urgent basis and also prayed to intervene and challenge the genuineness and veracity of the IA/2539/2021. Further, Mr. Prasad Jhosi, who is the member of Committee of Creditors holding 14.02% voting share, filed an IA/3244/2022 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, for the dismissal of IA/2539/2021 and to appoint a new Resolution Professional to conduct the CIRP of the Corporate Debtor.

2. On perusal of all the above mentioned IAs, it is revealed that the CIRP was initiated against the Corporate Debtor by this Tribunal vide order dated 08.10.2018 and Mr. Nitin Om Kothari was appointed as the Interim Resolution Professional of the Corporate Debtor. However, the order could not be made available either on official website or through E-mail by the Registry to the concerned parties till 22.10.2021. Meanwhile, on 18.10.2021, the member of the Corporate Debtor paid an amount of Rs. 16,23,808/- through the RTGS to the Ardex Endura (India) Private Limited (hereinafter referred to as "Original Petitioner/Operational Creditor"). Further, the Original Petitioner has sent Form FA (Application for withdrawal of the CIRP),

as per the provisions of the Regulation 30A(1)(a) of the Insolvency and Bankruptcy Board of India (*Corporate Insolvency Resolution Process for Corporate Persons*) Regulations, 2016, to IRP through an E-mail dated 25.10.2021. Fees have been paid to the IRP. Accordingly, the IRP has filed an application for withdrawal of CIRP process initiated against the Corporate Debtor.

Meanwhile, on 25.10.2021, the IRP has made a public announcement inviting claims. In response to this, Mr. Ramesh Bhagwandas Chhabria filed their claim amounting to Rs. 23,25,80,664/- in Form C before the IRP and has submitted that he has made available its fixed deposits maintained with Indian Bank, Deccan Gymkhana Branch, Pune, aggregating to an amount of Rs. 14,50,00,000/- to the Corporate Debtor. The Corporate Debtor has availed an overdraft facility in or around Rs. 13,01,25,000/- against the same and has later on failed to pay the interest dues. The Indian Bank has forfeited the Fixed Deposits on 26.11.2018. The aforesaid claim was rejected by IRP and has given enough reason to do so. The RP has replied to the claim filed in Form C, being reproduced hereinbelow:

“Dear Sir,

we are in receipt of your application dated 08.11.2021. We have found lot of discrepancies in your application. You have concealed important facts in your said application.

You have signed and executed a Contract of Construction of IT Park building with Meta Arch Pvt. Ltd. On 16.05.2018 for Rs. 154 Crore plus applicable taxes. Meta Arch Pvt. Ltd. Has initiated and advance with the project and had raised invoice against which you have paid the amount. Accordingly,

Ramesh Chhabria sole proprietor Apus Realities is a DEBTOR and not a LENDER.

As per the audited accounts of Meta Arch Pvt. Ltd. Of FY 2019-2020, an amount of Rs. 7.96 Crore is due from Ramesh Chhabria sole proprietor Apus Realities.

Further Meta Arch Pvt. Ltd. has initiated a recovery proceeding and has filed case US 9 of Arbitration and reconciliation act with Pune District Court (CNR No: MHPU01-002887-2020) and US 11 of Arbitration & Reconciliation act in Mumbai High Court (Case no: APP/95495/2020) for recovery of the said amount.

We request you to pay us the pending amount of Rs. 7.96 Crore along with interest @18% P.A. at the earliest, failing which we shall be bound to take action as per the provisions of the IBC Act.

Kindly find the ledger account statement in the books of Meta Arch Pvt. Ltd.

We are further scrutinizing your application and statements submitted. Please note that if the said claim is found false then appropriate legal action shall be taken against you.

Yours faithfully,

Nitin Om Kothari

Insolvency Professional

Interim Resolution Professional of META ARCH PVT. LTD.

Reg. No: IBBI-IPA-001-IP-P02310-2020-2021-13477”

In such circumstances, Mr. Ramesh Bhagwandas Chhabria has filed IA/2836/2021 seeking for intervention in IA/2539/2021 and to reject the same.

3. Mr. Ramesh Bhagwandas Chhabria has filed another IA/1891/2022 seeking to punish the IRP for wilful disobedience and breach of the Order dated 18.04.2022 passed by this Tribunal in IA/2539/2021. In addition to this, Mr. Ramesh Bhagwandas Chhabaria has submitted that by order dated 10.11.2021, this tribunal directed the IRP not to constitute the Corporate Debtor's Committee of Creditors till further orders. Further, this Tribunal modified the order dated 10.11.2021, and directed the Respondent to constitute the Corporate Debtor's Committee of Creditors. The promoter appealed against the order dated 18.04.2022, wherein Hon'ble NCLAT has decided that:

“We are of the view that this Appeal itself deserves to be disposed of directing the Adjudicating Authority to first decide the Application under Section 12A. The effect and operation of the order dated 18.04.2022 shall remain stayed till the Application under Section 12A is decided by the Adjudicating Authority.”

Further submitted that the IRP ostensibly did so with the ulterior motive to surreptitiously obtain an order from the NCLAT without the Applicant being heard. The Respondent sought to do so despite the order dated 18.04.2022 having been passed in consideration of the Applicant's Advocates submissions, in the Intervention Application. The Respondent dishonestly sought to assail the order dated 18.04.2022 before the NCLAT on the technicality that it had been passed in 2 (two) applications pending before this Hon'ble Tribunal, being the Intervention Application and

the Subject Application, thereby affording the Respondent an opportunity to assail the same only qua the Subject Application. Further submitted that the aforesaid, order dated 05.05.2022 has been passed without adhering to the basic principles of natural justice, that require and demand that the Applicant remain present and be heard in any Appeal filed against the order dated 18.04.2022.

In response to this, IRP has filed a detailed reply and has submitted that since the Hon'ble Appellate Tribunal vide its order dated 05.05.2022, stayed the operation of the order dated 18.04.2022 passed by this Hon'ble Tribunal, until the Section 12A Application (IA No. 2539 of 2021) was decided, the Respondent had no other option but to comply with the said order. Further, the IRP has submitted that the Applicant has filed the present Application under the wrong foundation, assuming that the order of the Hon'ble Appellate Tribunal dated 05.05.2022 was only applicable to IA. No. 2539 of 2021 and not for the Intervention IA filed by the Applicant. It would be an incorrect interpretation of the order of the Hon'ble Appellate Tribunal, since, vide the said order the Hon'ble Appellate Tribunal has essentially stayed the entire CIRP until IA. No. 2539 of 2021 filed for withdrawal is decided. The IA/1891/2022 also alleges that the Respondent approached the Hon'ble Appellate Tribunal by concealing facts, which is not the case because (a) the said Appeal was filed by the promoter of the Corporate Debtor Mr. Milind Rode; and (b) the Appellant had disclosed about the Intervention Application filed by the Applicant before the Appellate Tribunal and the same was even recorded in the said order.

4. After hearing all the parties and on perusal of all the concerned IA's including other available material on record, we are of the view that one of the members of the Corporate Debtor has paid an amount of Rs. 16,23,808/- through the RTGS to the Ardex Endura (India) Private Limited ("Original Petitioner/Operational Creditor"). Further, the Original Petitioner has also sent Form FA (Application for withdrawal of the CIRP), as per the provisions of the Regulation 30A(1)(a) of the Insolvency and Bankruptcy Board of India (*Corporate Insolvency Resolution Process for Corporate Persons*) Regulations, 2016, to IRP through an E-mail dated 25.10.2021. Moreover, the fees and the CIRP cost have been paid to the IRP. In addition to this, the Hon'ble Appellate Tribunal vide its order dated 05.05.2022, stayed the operation of the order dated 18.04.2022 passed by this Tribunal, until the Section 12A Application (IA No. 2539 of 2021) is decided. In view of the same, we are of the opinion that the application filed for withdrawal is to be allowed. Hence, **IA/2539/2021** is **allowed** and **CP(IB)/3546(MB)2018** is **closed**.

Further, Mr. Ramesh Bhagwandas Chhabria has filed IA/2858/2021 seeking for intervention in IA/2539/2021 and to reject the IA/2539/2021 and IA/1891/2021 to punish the IRP for wilful disobedience and breach of the Order dated 18.04.2022 passed by this Tribunal in IA/2539/2021. The claim filed by him was rejected by IRP but he never prayed to be admitted as creditor or his claim to be admitted. In view of the same, he is not even a Creditor in respect of the Corporate Debtor and, a complete third-party to the proceedings before this Tribunal and has no *locus standi* to question

the withdrawal of CIRP against the Corporate Debtor. For the aforesaid reasons, we hereby **dismiss** the **IA/2836/2021** and **IA/1891/2021** with no cost.

Since the IA/2539/2021 for withdrawal is allowed and CP(IB)/3546(MB)2018 is closed, therefore **IA/2539/2022** and **IA/3244/2022** are **dismissed as infructuous**.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)