

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**SPECIAL BENCH**  
**COURT - 2**

Item No 208- IA 625 of 2021  
Item No 209- IA 746 of 2023  
In  
CP(IB) 310 of 2020

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Nice Ceramic Pvt Ltd  
V/s  
K-Mark Bizsol Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on 28/08/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

**PRESENT:**

For the Applicant : Mr. Yuvraj Thakore, Adv.  
For the Respondent :

**ORDER**

**IA 746 of 2023 & IA 625 of 2021**

In IA 746 of 2023, learned counsel Mr. Yuvraj Thakore appeared for the RP. None appeared for the respondent. In pursuance of the order dated 20.07.2023, the counsel for the applicant/RP has filed the service report by way of an affidavit which is taken on record.

This is an application filed by the RP under Section 12A of the IBC, 2016 read with Regulation 30A of the IBBI Regulations, 2016 seeking termination/withdrawal of the ongoing CIRP of the corporate debtor on the ground that the counsel for the applicant/RP has apprised that the resolution to this effect has been filed by the CoC on 21.04.2023 with 100% voting in favor of the withdrawal/termination of the ongoing CIRP. We have heard the counsel for the applicant and perused the record.

*“5. That the said IA 625 of 2021 was heard from time to time by this Hon’ble Tribunal and during the hearing dated 21/06/2022, this Hon’ble Tribunal observed that despite notices being issued to the CoC members and suspended management, they are choosing to not appear before this Hon’ble Tribunal. Furthermore, during the CIRP of the Corporate Debtor, the CoC members and suspended management did not cooperate with the Applicant/Resolution Professional. In view of the same, it was instructed to apply for termination of CIRP.”*

In view of the reasons assigned as well as in the resolution, we allow the present application and IA 625 of 2021 being rendered infructuous accordingly. Detailed order will be issued. Accordingly, the main petition CP (IB) 310 of 2020 is disposed off.

-Sd

**DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

-Sd

**SHAMMI KHAN  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD (COURT NO.II)**

**IA No. 625 / NCLT / AHM / 2021,**

**IA No.746 of 2023**

**In**

**CP(IB) No. 310 / NCLT / AHM / 2020**

**MEMO OF PARTIES**

**IA 625 of 2021**

*(Application Under Section 33 r.w Section 34 of the IB Code, 2016)*

**IN THE MATTER BETWEEN**

**Mr. Ashish Shah, RP of**

M/s. K-Mark Bizsol Private Limited  
Having office at: 402 "Shaival Plaza" 4th Floor,  
Gujarat College Road, Beside Hope Hospital,  
Ellisbridge, Ahmedabad - 380006

**... Applicant**

**Versus**

- 1. Mr. Bhagvanjibhai Devjibhai Kasundra,**  
Suspended Board of Directors of  
M/s. K-Mark Bizsol Private Limited Having office at: Office No. 3, First  
Floor, Ceramic Plaza 1,  
Morbi - 363642
- 2. Mr. Upendrabhai Bhagvanjibhai Kasundra**  
Suspended Board of Directors of  
M/s. K-Mark Bizsol Private Limited,  
Having office at: Office No. 3,  
First Floor, Ceramic Plaza 1, Morbi – 363642
- 3. M/s. Nice Ceramics Private Limited,**  
Member of Committee of Creditor of  
M/s. K-Mark Bizsol Private Limited Having office at: S. NO. 13p, Off  
National Highway, Vill. Lalpar,  
Morbi, Rajkot- 363 642
- 4. M/s. Symbosa Granito Private Limited,**  
Member of Committee of Creditor of  
M/s. K-Mark Bizsol Private Limited

Having office at: Survey No. 125p1, 125p2, 126, 1  
31p1, 131p2 & 131p3  
Village: Matel, Taluka:  
Wankaner, Rajkot - 363 621

5. **M/s. Laffans Granito Private Limited,**  
Member of Committee of Creditor of  
M/s. K-Mark Bizsol Private Limited  
Having office at: Survey No. 279/P,  
Nr. Rangpar, Jetpar Road,  
At. Jivapar-Chakampar,  
Jivapar, Rajkot -363630
6. **M/s. Jai Ganesh Vitrified Private Limited,**  
Member of Committee of Creditor of  
M/s. K-Mark Bizsol Private Limited  
Having office at: Survey No. 837, 875 and 876 AT:  
GHUNTU, TAL. MORBI - 363 642

... Respondent

**IA 746 of 2023**

*(Application Under Section 12A of IBC, 2016 r.w 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)*

**IN THE MATTER BETWEEN**

**Mr. Ashish Shah, RP of**  
M/s. K-Mark Bizsol Private Limited  
Having office at: 402 "Shaival Plaza" 4th Floor,  
Gujarat College Road, Beside Hope Hospital,  
Ellisbridge, Ahmedabad - 380006

... Applicant

**Versus**

**Mr. Bhagvanjibhai Devjibhai Kasundra,**  
Suspended Board of Directors of  
M/s. K-Mark Bizsol Private Limited  
Having office at: Office No. 3, First Floor, Ceramic Plaza 1,  
Morbi – 363642

.... Respondent

**Appearance:**

**For Applicant** : Mr. Yuvraj Thakore, Adv.  
**For the Respondent** :

**Order delivered on : 29/08/2023**

**Coram:**

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

**DR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**ORDER**

01. M/s. Nice Ceramic Private Ltd. (for brevity 'Operational Creditor') had filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiating insolvency proceedings against the Corporate Debtor and the Hon'ble Adjudicating Authority vide order dated 15.02.2021 admitted the Corporate Debtor into CIRP.
02. The operational creditor had not proposed the name of the Interim Resolution Professional. The applicant (Mr. Ashish Shah) was appointed as the Insolvency Resolution Professional (IRP) order dated 15.02.2021 under Section 13(1)(c) of the Insolvency and Bankruptcy Code, 2016 by the Hon'ble Tribunal.
03. The applicant had received the certified copy of the CIRP admission order on 20.02.2021. Thereafter, pursuant to the provisions of Section 13 of the Code and Regulation 6 of the IBBI (IRPCP Regulations 2016) the applicant made a public announcement on 20.02.2021 in Times of India, Rajkot (English Edition), Sandesh Saurashtra Split Gujarati Newspaper as contemplated under the provisions of the Insolvency and Bankruptcy Code, 2016 and called for claims from all the creditors of the Corporate Debtor. A copy of public announcement dated 20.02.2021 made by the IRP is annexed with the application.

04. After public announcement, the applicant received no claims from financial creditor (Secured and Unsecured) of the Corporate Debtor. Therefore, as per Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 the Committee of Creditors was formed of the Operational Creditors. A summary of the final claims received from the Operational Creditors is as under :

| Name of Operational Creditor         | Amount Claimed by the Creditors (Amount in Rs.) | Amount Admitted (Amount in Rs.) | % of Claim |
|--------------------------------------|---|---------------------------------|------------|
| Jai Ganesh Vitrified Private Limited | 10,25,164                                       | 10,25,164                       | 2.82       |
| Nice Ceramic Private Limited         | 3,16,91,340                                     | 2,18,58,940*                    | 60.19      |
| Laffans Granito Private Limited      | 43,69,285                                       | 43,69,285*                      | 12.03      |
| Symbosa Granoti Private Limited      | 90,62,270                                       | 90,62,270*                      | 24.95      |
| Total                                | 4,61,48,059                                     | 3,63,15,659                     | 100        |

05. The applicant then conveyed the first CoC meeting on 22.03.2021 where CoC members CoC meeting unanimously resolved to continue the IRP as Resolution Professional (RP'). Subsequent to that Second, Third and Fourth meeting of CoC was convened and held on 20/07/2021, 02/08/2021 and 11/08/2021 respectively. However, except the meeting dated 20/07 / 2021, CoC members were absent in other meetings convened by the Applicant.
06. Pursuant to the provisions of Regulation 27 of the IBBI (CIRP) Regulations, 2016, after following due procedure, Resolution Professional

has appointed valuers within time prescribed under Regulation 40A of the IBBI (CIRP) Regulations, 2016. It is submitted that in the 1st CoC meeting, the applicant RP had issued letters for appointment of the valuers for conducting the Valuation of the Corporate Debtor as per the Regulations of the Insolvency and Bankruptcy Code, 2016. However, the said valuer has resigned and no valuation report has been provided by the Valuer to the applicant.

07. It is submitted that the Applicant conducted the 2nd CoC Meeting on 20.07.2021, wherein amongst other the steps to publish Expression of Interest as per Regulation 36A of the CIRP Regulation and conducting of Transactional as well as Forensic Audit was brought to the notice of the members of the CoC. However, all the members stated that the Corporate Debtor being a trading Company and does not have any assets, the decision to publish EOI be deferred for some time. It is further submitted that the applicant also informed during the said 2nd Co Meeting that the statutory DRAFT auditor of the company has resigned and finalisation of accounts for the FY 2019-20 and till the insolvency commencement date is pending and hence needs to appoint another auditor which require approval of CoC. However, members deferred the said agenda item to the next meeting.
08. The Applicant RP also informed member of the CoC to apply for extension of period of CoC under Section 12(2) of the IBC Code, 2016. However, the members of the CoC did not vote to file any Application for extension of Period of the CIRP as per Section 12(2) of the IBC, 2016. It is also noted did the members of CoC did not attend the 4th CoC meeting convened on 11.08.2021 and inspite of an adjournment to 12.08.2021, and there was absence of members to approve the proposal of the IRP in the meeting convened. The RP after citing an e-mail to the members of the CoC that

the CIRP was expiring on 14.08.2021 had to move an application for liquidation of the corporate debtor as no extension of CIRP has been sought. Thereafter the Resolution Professional/ Applicant filed an application being IA No. 625 of 2021 under Section 33 of the code seeking liquidation and appropriate directions against the CoC and members of the suspended board.

09. The said IA 625 of 2021 was heard from time to time by this Hon'ble Tribunal along with the main petition CP (IB) 310/2020 and during the hearing dated 21/06 / 2022, this Hon'ble Tribunal observed that despite notices being issued to the CoC members and suspended management, they are choosing to not appear before this Hon'ble Tribunal.
10. The said period of CIRP commenced from 15/02/2021 and the 180 days of the CIRP ended on 14/08/2021. Thereafter the Resolution Professional/ Applicant had called for 5th the meeting of the CoC on 21/04/2023 to discuss issues related to the CIRP of the corporate debtor. In the said 5th CoC meeting the members unanimously with 100% majority resolved to file appropriate application to terminate/withdraw the ongoing CIRP of the corporate debtor.
11. After discussion, following resolution was passed under item no. 4 by CoC members on 21/04/2023:

"RESOLVED THAT consent of members of committee of creditors of K-Mark Bizsol Private Limited (presently under CIRP) be and is hereby accorded for the termination/ withdrawal of ongoing CIRP with a right to recovery under prevailing provisions of different laws or any other suitable order looking to the present circumstances"

"RESOLVED THAT Mr. Ashish Shah, Resolution Professional be and is hereby authorised to make an application before the Hon'ble National Company Law Tribunal, Ahmedabad Bench, seeking termination/ withdrawal from CIRP or any other suitable Offer and is thereby also authorised to sign all necessary deeds and documents as may be required for the purpose of filing an application"

"RESOLVED FURTHER THAT an advocate shall be authorised to represent that Corporate Debtor before the National Company Law Tribunal, Ahmedabad Bench, for K-Mark Bizsol Private Limited and fees payable to Advocate shall be considered as CIRP cost"

“RESOLVED FURTHER THAT the Committee of Creditors hereby authorize Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution.”

12. Further, the learned counsel for the applicant appeared before the Hon'ble Tribunal and undertakes to file application for withdrawal of this IA 625 of 2021 and to file another application for termination of CIRP in this case which was approved in the meeting of the CoC on 21.04.2023 and passed unanimously with 100% majority to withdraw/terminate the ongoing CIRP of the corporate debtor.
13. It is submitted that during the CIRP of the corporate debtor, out of the total expenses incurred of Rs. 6,16,235/-, only an amount of Rs. 1,73,277/- was contributed by the members of CoC i.e. respondent nos. 3 to 6 of the application herein till date.
14. It is submitted that as per the provisions of Section 12(A) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 this Hon'ble Tribunal is duly

empowered and has appropriate jurisdiction to terminate ongoing CIRP of the Corporate Debtor.

15. In view of the facts and circumstances mentioned hereinabove, the Applicant herein is seeking termination/withdrawal of the ongoing CIRP of the Corporate Debtor in terms of Section 12(A) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.
16. The Applicant has also envisaged the reasons and grounds for such termination/withdrawal in the present application, also the said reasons and grounds have been duly considered by the CoC.
17. Heard the submissions of the Applicant/RP and perused the material available on record on 28.08.2023. The grounds for submission of the main application CP (IB) No.310 of 2020 under Section 9 of IBC by the applicant to initiate the CIR Process dated 15.02.2021 did not further progress inspite of the necessary steps initiated by the RP as per the provisions of the IBC, 2016. As stated the RP appeared before the Tribunal on 17.05.2023 and sought withdrawal of the interlocutory application number 625 of 2021 and to submit another application for termination of CIRP in terms of the CoC approval in its 5th CoC meeting dated 21.04.2023.
18. As may be observed, the CIRP Process could not proceed in terms of orders passed in the main petition CP (IB) 310 of 2020 admitted on 15.02.2021. The IA 625 of 2021 has been sought to withdraw due to absence of further support to the continuation of the CIRP Process or taking corporate debtor

to liquidation. The IA filed 746 of 2023 dated 07.07.2023 was heard along with the IA 625 of 2021 and accordingly, the prayers to withdraw the IA 625 of 2021 being rendered infructuous (filed by RP without approval of COC) and termination of the CIRP sought under IA 746 of 2023 is deserved to be accepted.

19. Our attention was also drawn to the decision of the NCLT New Delhi Bench-II in IA. 2038/ND/2020 in Company Petition No. (IB)-1742(ND)/2019), wherein the same issue was involved and it was held as under:

*“..21.Now, coming to the prayer of the Applicant, we are of the view that it is not the duty of the IRP to run after the Members of CoC to attend the meeting and pursue the CIR Process. In a similar situation, when the CoC was not interested in pursuing the CIR Process, this Adjudicating Authority has terminated the CIR Process in the matter of M/s. Surendra Steels Sales Vs. M/s. Immortal Buildcon Pvt. Ltd., (IB)- 1152(ND) 2019 dated on 07.01.2020. The relevant extract of the said order is reproduced below:*

*" The IRP has submitted that he has been meeting expenses from his own pocket. Pursuant to the publication, no other claim was received. It is submitted that the first meeting has been held while the second meeting has been postponed a few times, at the instances of the Operational Creditor/ CoC on grounds of a possible settlement with the Corporate Debtor. As such there was no confirmation of the RP further steps take. There was no concession on the fees to be given, much less expenses to be met. No progress has been made in this case. This bench is apprised of the fact that the Operational Creditor has been in talks of settlement with the Corporate Debtor and, is therefore, not interested in taking any step to proceed with the CIR process.*

*Under such circumstances with no other claimant and the sole member of the CoC not being interested in prosecuting the CIR process, it would be expedient to terminate the CIR process. In view of the above, the CIR process is hereby, terminated. The Corporate Debtor is released from the rigors of the moratorium and is permitted to function through its own board. We find that the Operational Creditor has not only failed to reimburse the expenses and fees of the Interim Resolution Professional, but has also wasted the time of this Bench after the Petition was duly admitted. Accordingly, while terminating the CIR process, a cost of Rs. 50,000/- is imposed on the Operational Creditor to be paid to the Prime Minister's Relief Fund...*

*22. In the circumstances, when the Applicant is unable to carry forward the CIR process for want of cooperation/participation from the sole member of CoC, we feel it appropriate to terminate the CIR process of the Corporate Debtor. In view of the above, by exercising our jurisdiction under Section 60(5) of IBC, 2016 along with inherent power under Rule 11 of the NCLT Rules, 2016, we hereby terminate the CIR process of the Corporate Debtor with immediate effect and release the Corporate Debtor from the rigors of the CIRP and moratorium.*

*23. The Application is Allowed in the aforesaid terms.”*

20. In the circumstances, when the operational creditors (whose claims have been admitted) have withdrawn their claims, and neither the operational creditor nor the financial creditors, nor the suspended management of the corporate debtor are responding/interested in the conducting CIRP, and resolution professional is not in a position to continue the process due to non-cooperation but has to abide by the decision of the Committee of Creditors convened on 21.04.2023 to terminate or withdraw the CIRP Process. Further, The operational debtors whose claims have been admitted

and who have statedly attended the 5th CoC meeting on 21.04.2023 and resolved to terminate or withdrawal of the ongoing CIRP with a right to recovery under prevailing provisions of different clause is allowed subject to compliance to such law and regulations. Therefore, we deem it appropriate to terminate the CIRP of the Corporate Debtor.

21. In view of the above, by exercising our jurisdiction under Section 12(A) of IBC, 2016 read with Rule 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 we hereby terminate the CIRP sought under Sec 9 of the Application 310 of 2020 of the Corporate Debtor with immediate effect and release the Corporate Debtor from the rigors of the CIRP without prejudice to initiation of action under any other law and also discharge the RP-Mr. Ashish Shah from his duties of IRP. However, the unpaid liquidation cost incurred by the RP will be paid by the respondents 3 to 6 and the operational creditor within one month from the date of this order. Since, the operational creditor has moved the petition under Section 9 for initiation of IBC, 2016 against the corporate debtor but as is observed from the submissions applicant appears to have not provided the requisite support in conducting the CIRP Proceedings by the RP.
22. The sequence of events narrated in the body of the order show that the intention of the Operational Creditor i.e. M/s. Nice Ceramic Private Ltd. at whose instance the CIR Process was initiated, was not for the resolution of Insolvency. Instead, the Operational Creditor has used this forum for recovery and had initiated the CIR process with malicious intention for purpose other than the resolution of insolvency of the Corporate Debtor, which is not in accordance with the aim of IBC, 2016. As per the Code, if any person initiates the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of the

insolvency, or liquidation, such an act is punishable under Section 65(1) of IBC 2016.

23. Hence, before taking any action under Section 65(1) of IBC 2016, we deem it appropriate to issue a show cause notice, under Rule 59 of the National Company Law Tribunal Rules, 2016 to the Operational Creditor - M/s. Nice Ceramic Private Ltd. through its Directors as to why penalty as stipulated under Section 65(1) of IBC, 2016 should not be imposed on it. Learned Joint Registrar NCLT, Ahmedabad is directed to issue the show cause notice under Section 65(1) of IBC, 2016 read with Rule 59 of the National Company Law Tribunal Rules, 2016 to M/s. Nice Ceramic Private Ltd. through its Directors giving them fifteen days' time to explain and submit in writing as to why the penalty as stipulated under Section 65(1) of IBC, 2016 shall not be imposed on them. The Registry is directed to allot a case No. for the proceedings for which the Show Cause Notice is being issued to the Operational Creditor under Section 65(1) of IBC, 2016. Registry/Court Officer to list this matter on 02.10.2023.
24. The registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, IRP and also to IBBI within two weeks from the date of this order.
25. Accordingly, the application IA 746 of 2023 is allowed and disposed of.
26. Further, the IA No. 625 of 2021 is also disposed off being rendered infructuous.

-Sd-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**