

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2



ITEM No302
IA/338(AHM)2023
in
CP(IB) 838 of 2019

Order under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Manish Kumar Bhagat IRP For Pankaj Events and
Celebrations Pvt. Ltd.

.....Applicant

.....Respondent

Order delivered on 09/08/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet

-SD-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT NO. II)

IA NO. 338 OF 2023

IN

CP (IB) 838 of 2019

[Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016]

In the matter of:

Manish Kumar Bhagat,
Interim Resolution Professional
Pankaj Events and Celebrations Private Limited
Having its office at :
103-104, Panchdeep Complex,
Mithakali Six Road, Navrangpura,
Ahmedabad- 380009

... Applicant

MEMO OF PARTIES

M/s. Sumiran Foods Private Limited

Having its registered office at:
Sumiran House, Behind Katariya Automobiles
Near Pragati School, Khokhra

... Applicant/Operational Creditor

Versus

Pankaj Events & Celebrations Private Limited

Having its registered office at:
Survey No. 331 & 332
Ognaj, Nr. S.P. Ring Road
Ahmedabad 380 060
GUJARAT STATE

... Respondent/Corporate Debtor

Order pronounced on : 09.08.2023

CORAM:

**MR. SHAMMI KHAN
MEMBER(JUDICIAL)**

**MR. AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**Appearance:**

For Applicant : Mr. Arjun Sheth, Adv. a/w. Mr. Rajiv Chawla, Adv.
For the Respondent :

ORDER

1. M/s. Sumiran Foods Pvt. 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 31.03.2021 admitted the Corporate Debtor into CIRP.
2. The applicant (Mr. Manish Kumar Bhagat) was appointed as the Insolvency Resolution Professional (IRP) under Section 13(1)(c) of the Insolvency and Bankruptcy Code, 2016 by the Hon'ble Tribunal, as the operational creditor had not proposed any name of IRP in Section 9 application preferred by it.
3. The applicant had received the certified copy of the CIRP admission order on 05.04.2021. Thereafter, the applicant made a public announcement on 06.04.2021 in Financial Express (English and Gujarati-Ahmedabad Edition), Business Standard (English) and Sandesh (Gujarati) dated 08.04.2021 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 06.04.2021 and 08.04.2021 made by the IRP is annexed with the application.
4. After public announcement, the applicant had received two claims of which, one was a financial creditor and other was an operational creditor and after receiving and collating the claims of the various creditors/claimants, the




applicant duly constituted the Committee of Creditors. Thereafter, the report of the same was submitted to the Adjudicating Authority vide report dated 24.04.2021 as per Regulation 17(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, certifying the constitution of the Committee of Creditors.

5. The Applicant thereafter in order to perform its functions as per the provisions of the Insolvency and Bankruptcy Code, 2016 issued letters to Axis Bank, Indusind Bank, Punjab and Sind Bank to de freeze the account of the Corporate Debtor. Further, letter intimating initiation of CIRP of the Corporate Debtor to Deutsche Bank, Edelweiss and Indiabulls Ventures was also issued by the Applicant IRP. The Applicant also issued letter to Sumiran Foods Pvt. Ltd., requesting them to pay IRP fees, and expenses of public announcement as application under Section 9 of IBC, 2016 against the CD was filed by them.
6. The Applicant, thereafter, sent notice for conducting the first meeting of Committee of Creditors vide its email dated 24.04.2021. The first meeting of Committee of Creditors came to be convened on 30.04.2021 through video conference. The applicant submits that various agendas were discussed during the said meeting such as discussion pertaining to list of creditors who have submitted their claims, status of verification of such claims, opening of new account of CIRP, remuneration to be paid to IRP along with other relevant agendas.
7. The applicant shared the copy of the minutes of the first Committee of Creditors meeting dated 30.04.2021 vide email dated 01.05.2021. The applicant further requested the Committee of Creditors to ratify the fees of



IRP so that the applicant can conduct voting for ratifying the agendas discussed in the first meeting of Committee of Creditors.

8. The Applicant further vide its email dated 07.05.2021 requested the Committee of Creditors to let the applicant know the status of appointment of Resolution Professional, fixation of remuneration of Resolution Professional and reimbursement of IP fees in order to enable him to perform his duties as envisaged in the Insolvency and Bankruptcy Code, 2016. However, even after multiple follow ups by the Applicant with the CoC, the CoC did not take any decision for either continuing with current IRP, or suggesting new name for RP for replacement.
9. The Applicant also submitted a Revised Report dated 27.05.2021, constituting the Committee of Creditors along with the list of creditors under Regulation 17(1) and 13(2)(d) of the IBBI (Resolution Process for Corporate Persons) Regulation, 2016 on 27.05.2021. As on 27.05.2021, and stated that there were two financial creditors, two operational creditors and one other creditor.
10. The applicant received an email dated 28.05.2021 from the advocate of financial creditor Hinduja Leyland Finance Ltd. which stated that it wanted to withdraw the claim submitted since the Corporate Debtor was devoid of any assets. The Applicant on the same day informed that there is no provision in the Insolvency and the Bankruptcy Code, 2016 for the withdrawal of claims.
11. That the applicant had sent a notice for conducting the second Committee of Creditors meeting through video conference on 04.06.2021 vide its email dated 01.06.2021. It is further submitted that the second financial creditor i.e., Prakshal Infotech Pvt. Ltd., vide its email dated 02.06.2021 also informed



that it is withdrawing its claim filed with the applicant as there appears to be no assets of the Corporate Debtor.

12. In view of the same, the Applicant cancelled the second CoC meeting as both the financial creditors had withdrawn their claims. The Applicant submits that the CoC was not interested in carrying out the CIRP.
13. The Applicant submits that he had informed to the CoC members that there are no provisions in IBC and CIRP Regulations for the withdrawal of the claims by the creditors.
14. The Applicant had learnt that the Corporate Debtor was carrying out operations from leased premises of which Mr. Govind Desai was the property owner. However, it was learnt that such agreement had been terminated on account of rent default on the part of the Corporate Debtor. The Applicant has made attempts to ascertain the assets of the Corporate Debtor. The Corporate Debtor was engaged in the business of event management and owns no realizable assets. That the Corporate Debtor has made expenditure/ invested on leased out property like putting tiles in lobby, bathroom renovation, boundary wall, waterproofing, etc.
15. Further, the movable properties of the Corporate Debtor are some poles, decoration material, lawn improvement, grassing, plantation, etc. and material which is used in carrying out events. Thereafter, the Applicant filed an interlocutory application bearing IA No. 104 of 2022 seeking liquidation of the CD on the ground of withdrawal of claims by the CoC members and other facts and grounds as laid down in the said Application. Copy of the memo of IA No. 104 of 2022 filed by the Applicant before this Hon'ble Adjudicating Authority is annexed in this application.



16. The Applicant submits that this Hon' be Adjudicating Authority vide order dated 25.08.2022 passed in IA No. 104 of 2022 rejected the said IA filed by the Applicant seeking liquidation of the CD and directed the Applicant to take appropriate action as per the provisions of the Code against the Financial Creditors, to form CoC or to form CoC of the operational creditors at relevant period and to explore further possibility of resolution. Copy of the order dated 25.08.2022 passed in IA No. 104 of 2022 is annexed in the application.
17. The Applicant states and submits that in compliance of the order dated 25.08.2022 passed by this Hon'ble Adjudicating Authority in IA No. 104 of 2022, the Applicant IRP called for the meeting of the CoC comprised of the financial creditors to be held on 09.09.2022. However, the financial creditors namely Hinduja Leland Finance Limited and Prakshal Infotech Pvt. Ltd. sent an e-mail along with their board resolution to withdraw their claim.
18. That, as both the CoC members withdrew their claims, the Applicant vide email dated 09.09.2022 cancelled the 3rd CoC meeting which was going to be held on 09.09.2022.
19. The Applicant states and submits that further, in compliance of the order dated 25.08.2022 passed by this Adjudicating Authority in IA No. 104 of 2022, the Applicant filed a report certifying the constitution of committee of creditors which comprised of only operational creditors, and in compliance with the Regulation 13(2)(d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a list of creditors along with the amount claimed, claims admitted and security interest in respect of claims was also submitted by the Applicant with the said Report.



20. Accordingly, the following were to be the members of the CoC:

Sr. No.	Name	Type of Creditor	Claim Amount	Admitted Amount	Voting Share	Security Interest
1	Food Solutions (India) Limited	Operational	31,15,416/-	31,15,416/-	80.05%	Nil
2	Sumiran Foods Private Limited	Operational	7,76,095/-	7,76,095/-	19.95%	Nil

21. That the Applicant had filed the revised report constituting the Committee of Creditors along with the list of Creditors dated 10.09.2022 with the Adjudicating Authority on 14.09.2022 and had also filed an IA seeking to take the same on record. The Applicant issued notice dated 12.09.2022 to the CoC members for conducting the 4th CoC meeting to be held on 17.09.2022. The CoC member Food Solution India Limited withdrew their claim as operational creditors vide email dated 16.09.2022 and CoC member, Sumiran Foods Pvt. Ltd., also withdrew from the CoC vide email dated 19.09.2022.

22. The CIRP period of the Corporate Debtor got expired on 27.09.2021 and the application filed by the Applicant seeking liquidation of the Corporate Debtor also got rejected on 25.08.2022.

23. As both the financial creditors had withdrawn their claims, the Applicant had cancelled the second CoC meeting vide email dated 03.06.2021 and the liquidation application filed by the applicant came to be rejected vide order dated 25.08.2022. Therefore, the Applicant had filed an application bearing IA No. 1012 of 2022 seeking exclusion of the period from 03.06.2021 (the day on which the Applicant had issued an email to the CoC for cancelling the



2nd CoC meeting as, the Financial Creditors had withdrawn their claim through emails) to 25.08.2022 (the day on which the liquidation application filed by the Applicant was rejected) from the CIRP period of the Corporate Debtor. Copy of memo of IA No. 1012 of 2022 is annexed in the application. The IA No. 1012 of 2022 was listed on 21.11.2022 and notice was issued to the original operational creditor. In compliance of the order dated 21.11.2022 in IA No. 1012 of 2022, the notice was served upon the original operational creditor, however, no one appeared for the operational creditor.

24. The said IA No. 1012 of 2022 was listed on 25.01.2023 and the Hon'ble Adjudicating Authority was of the view that since the Financial and Operational Creditors have withdrawn their claims and the Application seeking exclusion is redundant and will not serve any purpose even if granted as neither the original applicant nor CoC nor the Corporate Debtor are responding and the process for resolution or liquidation cannot be conducted. In view of the same, the said IA No. 1012 of 2022 was dismissed vide order dated 25.01.2023 and liberty was given to the RP to file appropriate application seeking closure/termination of the CIRP.

25. Hence, following prayers are made by the applicant: -

- (i) May be pleased to allow the present application;
- (ii) May be pleased to pass appropriate orders to close/terminate the CIRP initiated against the Corporate Debtor and pass other and further consequential orders including in relation to the discharge of the applicant as Interim Resolution Professional;
- (iii) May be pleased to grant any other relief(s) as may deem fit in the interest of justice.



26. Heard the submissions and perused the material available on record. It is noted that the Corporate Debtor was admitted in CIRP vide order dated 31.03.2021 and appointed Mr. Manish Kumar Bhagat as IRP. The IRP published Form-A on 06.04.2021 and constituted the CoC on 24.04.2021. Accordingly, the IRP filed the report of the constitution of CoC before this Adjudicating Authority. Thereafter, the IRP filed the revised report of the constitution of CoC on 27.05.2021. The CoC was comprised of two financial creditors, two operational creditors and one other creditor. It is further noted that both the financial creditors have withdrawn their claims vide email dated 01.06.2021 and 02.06.2021. It is also noted that the corporate debtor was engaged in the business of event management and owns no realizable assets. After withdrawing the claims from financial creditors, the IRP filed an application for liquidation of the corporate debtor on the ground of withdrawal of claims by the CoC members and the same was rejected by this Adjudicating Authority vide order dated 25.08.2022 and directed the applicant to take appropriate action as per the provisions of the Code against the financial creditors, to form CoC or to form CoC of the operational creditors and to explore further possibility of resolution. The applicant in compliance of the order dated 25.08.2022 passed by this Adjudicating Authority, filed a revised report on 14.09.2022 certifying the constitution of CoC comprising of two operational creditors. Thereafter, both the operational creditors vide emails dated 16.09.2022 and 19.09.2022 withdrew their claims.
27. 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.”

28. In the circumstances, when the financial and operational creditors have withdrawn their claims, neither the operational creditor nor the financial creditors, nor the corporate debtor are responding/interested in the conducting CIRP and there being no realizable assets with the corporate debtor, we deem it appropriate to terminate the CIRP 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 CIRP of the Corporate Debtor with immediate effect and release the Corporate Debtor from the rigors of the CIRP and also discharge the IRP-Mr. Manish Kumar Bhagat from his duties of IRP.

29. The sequence of events narrated in the body of the order show that the intention of the Operational Creditor i.e. M/s. Sumiran Foods Pvt. 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. 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. Sumiran Foods Pvt. 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. Sumiran Foods Pvt. 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 01.10.2023.

30. 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.
31. Accordingly, the application is allowed and disposed of.

-Sd-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Mehul Steno/ Rahul Singh/LR.A