

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.304

C.P.(IB) & Pre-Packaged/1(AHM)2023

Proceedings under Section 54C IBC

IN THE MATTER OF:

Kethos Tiles Pvt Ltd

.....Applicant

Order delivered on: 04/01/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD**

C.P(IB & Pre-Packaged)/ 1(AHM)2023

*[An application under Section 54C of the Insolvency and Bankruptcy Code, 2016
r.w. Rule 4 of the Insolvency and Bankruptcy (Pre-Packaged Insolvency
Resolution Process) Rules, 2021]*

In the matter of **M/s. Kethos Tiles Pvt. Ltd.**

Kethos Tiles Private Limited

Having its address at:

Survey No. 111, 112, 119(P)

At-Gulab Ni Muvadi

Ahmedabad-Modasa Highway,

Nr. Salatpur Chokadi,

Talod Sabar Kantha-383215.

**... Corporate Applicant/
Corporate Debtor**

Order Pronounced On: 04.01.2024

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Rashesh Sanjanwala, Ld. Sr.
Adv. a.w. Mr. Vishwas V Shah, Ld.
Adv. & Mr. Jaimin R Dave, Ld. Adv.

For the Respondent : Mr. Sunil Bhavsar, Ld. Adv. for Mr.
Ritesh D Patadia, Ld. Adv., Mr. Ravi
Pahwa, Ld. Adv.

ORDER

[Per: Bench]

1. This application is filed on 18.04.2023 by M/s. Kethos Tiles Private Limited (**“the Corporate Debtor”**) under Section 54C of the Insolvency and Bankruptcy Code, 2016 (**“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 with prayer to initiate Pre-Packaged Insolvency Resolution Process (**“PPIRP”**) of the Corporate Debtor.

2. From Part-I of the application, it is seen that the Corporate Debtor - M/s. Kethos Tiles Private Limited having CIN: U26933GJ2015PTC084080 was incorporated on 05.08.2015 and its registered office is situated at Survey No. 111, 112, 119(P), Gulab Ni Muvadi, Ahmedabad-Modasa Highway, Nr. Salatpur Chokadi, Talod Sabar Kantha-383215.

3. It is stated that the Corporate Debtor being a Micro, Small & Medium Enterprises (**“MSME”**) is eligible to file this application. The certificate of Udyam Registration, MSME is annexed at Annexure-B at page 41 of the application.

4. This application has been affirmed by one Mr. Kirtishkumar Ishvarbhai Patel in his capacity as Director of the Company who has been authorised vide special resolution passed in Extra-Ordinary General Meeting (“**EOGM**”) dated 27.02.2023 as Authorized Signatory. A copy of EOGM is attached as Annexure-D at page 44.
5. Part-II of the application reveals that the Corporate Debtor has named one Mr. Vinod Tarachand Agrawal, having Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090 to act as Resolution Professional (“**RP**”).
6. From Part-IV of the application, it is seen that there are 14 (fourteen) Financial Creditors, not being related parties of the Corporate Debtor. The total debt due to the Financial Creditors, not being related parties of the Corporate Debtor is Rs.93,80,22,961/-. Out of 14 (fourteen) Financial Creditors, 12 (twelve) Financial Creditors approved the proposal and 2 (two) Creditors abstained from voting. The proposal is passed with 67.20% of voting. Copy of minutes of meeting with Financial Creditor dated 13.03.2023 along with copy of

resolution and voting results to initiate PPIRP is annexed as Annexure-E at page no. 45-56.

7. The declaration given by the majority of the Directors of the Corporate Debtor as per Section 54A(2)(f) of the IBC, 2016 in Form P6 is annexed as Annexure-L at page no. 191 to 193.
8. A Special Resolution by the members of the Corporate Debtor to initiate the PPIRP under Section 54A(2)(g) of the IBC, 2016 was passed and the same is annexed as Annexure-D at page 44.
9. The Financial Creditors approved the decision of the Directors to file this application as contemplated under Section 54A(3) of the IBC, 2016 and the approval in Form P4 is annexed as Annexure-K at page no. 188-189.
10. The approval of terms of appointment of the Resolution Professional, Mr. Vinod Tarachand Agrawal, having registration no. IBBI-IPA-001/IP-P00641/2017-18/11090 is annexed as Annexure-J at page 184-187 thereby complying

with the provisions of Section 54A(2)(e) of the IBC, 2016 r.w. Regulation 14(5) of the IBBI (Pre-Packaged IRP) Regulations, 2021. As per Section 54C(3)(b) of the IBC, 2016 the Corporate Applicant has proposed the above-named Insolvency Professional to be appointed as Resolution Professional (“**RP**”). The consent of the proposed RP is placed at page no. 180 as Annexure-I.

11. The Resolution Professional’s report under Section 54B(1)(a) of the IBC, 2016 in Form P8 is annexed as Annexure-N at page no. 195.
12. The declaration regarding the existence of avoidance of transactions relating to the company and its directors as per Section 54C(3)(c) of the IBC, 2016 r.w. Regulation 16(2) of IBBI (Pre-Packaged IRP) Regulations, 2021 in Form P7 is annexed as Annexure-M at page 194.
13. The affidavit of the Corporate Debtor regarding its eligibility under Section 29A of the IBC, 2016 to submit Resolution Plan has been filed which is at page no. 196-197. Thus, the

provisions of Section 54A(2)(d) of the IBC, 2016 are complied with.

14. The Applicant has also produced the Audited Financial statements of the company for the F.Y. 2020-21 and 2021-22 at page no. 198-268 as Annexure-P. Thus, the Corporate Applicant has complied with the provisions of Section 54C(3)(d) of the IBC, 2016. List of Financial Creditors and Operational Creditors of the Corporate Debtor with the amount due to each of them as on 25.03.2022, list of assets and liabilities of the Corporate Debtor are also produced at page no. 272-281 and 282-283 as Annexure-R and Annexure-S respectively.
15. The Corporate Debtor has produced all the required documents and materials in order to comply with all the provisions.
16. In compliance of the order dated 26.06.2023 wherein this Adjudicating Authority had directed the Applicant to provide a copy of application to Respondent No. 2 (Indian Bank) and

issue notice to Respondent No. 3 (SBI), a Compliance Affidavit under Inward Diary No. D2800 dated 26.07.2023 was filed.

17. Preliminary Objection/Affidavit in Reply of Respondent No. 2 – Indian Bank was filed under Inward Diary No. D3568 by Mr. Bhoopendra Singh, the Chief Manager and Authorized Officer. The objections raised by R-2 are summarised as under:-

- I. The Application filed by the Applicant is absolutely premature, smacks of malafides and is filed with an intention to grab the huge stake of Rs.30 Crore and more, which is public money.
- II. The intention of the Applicant is to exert pressure on Respondent No. 2 - Indian Bank to settle its dues, and Respondent No. 2 shall be dethroned from its entitled dues of more than Rs.30.00 Crore (approx.) and the promoters shall saddle themselves into the management of the Applicant through the medium of Insolvency Resolution Professional.
- III. The instant application suffers from *suppressio veri* and *suggestio falsias*, the Applicant has suppressed many material facts and stated many things false to mislead

this Tribunal. The Applicant has not come before this Tribunal with clean hands.

- IV. The averments and contentions as pleaded in the said application have lost all significance in view of the suppression of all the vital and material facts.
- V. The application has been filed having hands in gloves with other Respondents to grab the public money at large. Since the Applicant approached this Tribunal with malicious intention and without clean hands and concealed much vital facts, the present Pre-Packaged Insolvency Application itself becomes infructuous and on this ground alone, the application is required to be dismissed.
- VI. In the event if the aforesaid application is entertained and admitted by this Tribunal, it would be detrimental to the interests of the R-2 and its shareholders. The Applicant moved this application in great haste with its malafide intention.
- VII. The application is required to be dismissed as this application has been initiated without complying with the statutory provisions of the IBC, 2016. This Tribunal

has jurisdiction to grant time to the objectors to show that the application has not been filed in compliance with the provisions of Section 54A of IBC, 2016.

- VIII. No intimation was given to the Indian Bank regarding convening the meeting of unrelated Financial Creditors held on 13.03.2023. In fact no proof of service of any such notice to the R-2 has been placed on record or produced before this Tribunal and not even pleaded in the entire pleadings.
- IX. Since no intimation was ever served to R-2, the question does not arise for any knowledge of R-2, hence, the alleged meeting could not be attended by R-2.
- X. The Applicant failed to comply with the statutory regulations laid down in the IBC, 2016, i.e., at least a five days notice to the Stakeholders or the Financial Creditor, is required to be served. Hence, the alleged meeting held on 13.03.2023 for obtaining approval of unrelated Financial Creditors was not convened to R-2. In accordance with the law and *ab initio* it is *null* and *void*. The whole process was adopted in haste to defeat

the rights of R-2, having its highest stake of Rs.30.00 Crore (approx.), which is ultimately public money.

- XI. The Applicant has violated Regulations 14(2) and 14(3) of IBBI (Pre-Packaged) Regulations, 2021 as it has not served the notice of the meeting under sub-regulation (1), which shall be served to the Financial Creditors, who are not related parties of the Corporate Debtor, at least five days before the date of the meeting unless a shorter time is agreed to by all of them. Nor the notice of the meeting under regulation shall indicate the date, time, and venue of the meeting and enclose a list of creditors along with the amount due to them in Form P2.
- XII. Nowhere in the application, has the Applicant enclosed Form P2.
- XIII. All the Financial Creditors except Respondent No. 2- Indian Bank, Respondent No. 3- State Bank of India, and Respondent No. 1-Mehsana Urban Co-Op. Bank Ltd., who have been treated as unrelated are actually related and fabricated Financial Creditors, and hence, they were not entitled to vote, despite that, in order to

reach and comply with the threshold limiting voting, as contemplated under Section 54A(3) of the IBC, 2016.

XIV. The Applicant has not complied with Sections 54(3), 54(4) and 54C of IBC, 2016.

XV. The Resolution Professional is not appointed by the unrelated Financial Creditors as mandatorily required in law.

18. Rejoinder under Inward Diary No. D4268 dated 27.10.2023 was filed by Mr. Kirtishkumar Ishvarbhai Patel, Director of M/s. Kethos Tiles Private Limited. In the rejoinder, it is stated that:-

- I. The present application has been filed after necessary approvals from creditors with the required majority. The Applicant is MSME and eligible under Section 29A of the IBC, 2016 to submit the Base Resolution Plan (“**BRP**”).
- II. As regards to non-compliance of Section 54A, Form P2 is not filed, BRP is not placed and Mehsana Urban Co-Op. Bank Ltd., is related party, the Applicant has filed details of compliance of Section 54A of IBC, 2016. The list was e-filed on 23.06.2023.

- III. The Respondent No.2 i.e., Indian Bank transferred the loan account from Large Corporate Branch, Ahmedabad to Stressed Assets Management (“**SAM**”) Branch at Ahmedabad on 12.08.2022. Hence, all communications were made with SAM Branch of Indian Bank. A copy of email dated 12.08.2022 is placed at Annexure-B of this rejoinder.
- IV. The meeting of unrelated Financial Creditors was called on 13.03.2023 after complying the provisions of law and notice of meeting was shared with the R-2 vide email dated 07.03.2023 and attached notice of meeting, list of creditors, Board Resolution, Form P6, Form P3 and Base Resolution Plan. A copy of email dated 07.03.2023 is placed and marked as Annexure-C of this rejoinder.
- V. Further, minutes of the meeting of creditors held on 13.03.2023 was shared with the Respondent vide email dated 14.03.2023 along with Base Resolution Plan and the same is annexed at Annexure-D.
- VI. Voting was conducted on the resolutions placed before meeting of creditors held on 13.03.2023 and post e-voting

minutes was shared with R-2 through email on 21.03.2023 and the said is annexed at Annexure-E.

19. Affidavit in reply on behalf of Mehsana Urban Cooperative Bank Limited and other 11 creditors was filed under Inward Diary No. D2922 dated 02.08.2023 stating that they have no objection for the initiation of PPIRP. It is submitted that the total voting share of the persons who are executing this affidavit is 67.25% and prayed to allow the present petition.
20. On 27.09.2023 last opportunity was given to Respondent No. 3 (SBI) to file reply/objection by this Adjudicating Authority.
21. During the hearing on 30.10.2023, Ld. Sr. Counsel appearing on behalf of the Applicant has stated that they are ready to consider the name of IRP suggested by the Financial Creditor - Indian Bank/consortium. Accordingly, this Adjudicating Authority has directed to file an additional affidavit within three days so as to the appointment of the Interim Resolution Professional ("IRP").

22. An additional affidavit under Inward Diary No. D4427 dated 06.11.2023 was filed by Respondent No. 2 stating that a Joint Lenders Meeting between Mehsana Urban Co-Op Bank Ltd., and Indian Bank was held on 26.10.2023 wherein they jointly decided to file Section 7 IBC application and proposed to appoint Mr. Vikas Jain as IRP.
23. In compliance of the order dated 30.10.2023, a Compliance Affidavit under Inward Diary No. D4401 dated 06.11.2023 was filed stating that the Applicant has no objection if this Tribunal appoints **Mr. Vikas Gautamchand Jain, having Reg. No. IBBI/IPA-001/IP-P00354/2017-18/10612** as IRP. Copy of minutes of meeting of consortium meeting dated 26.10.2023 along with the consent of Mr. Vikash Gautamchand Jain is annexed as Annexure-B.
24. In compliance of the order dated 07.11.2023 wherein this Adjudicating Authority has directed to place on record the notice issued under Section 13(2) of SARFAESI Act, 2002, an additional affidavit under Inward Diary No. D4648 dated 24.11.2023 was filed by R-2 stating that after classifying the

account of the Applicant as NPA on 31.03.2023 a demand notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 12.06.2023.

25. We have heard the counsels for both sides. During the course of the final hearing on 29.11.2023, it was brought to the notice of this Adjudicating Authority that a demand notice under Section 13(2) of the SARFAESI Act, 2002 was issued by the Indian Bank. However, it is confirmed by the parties that no Section 7 application has been filed by either of the Financial Creditors i.e., Indian Bank or State Bank of India in the present matter. On perusal of proceedings, we find that the Corporate Debtor has produced all the required documents and materials in order to comply with the provisions. The application is complete. As regards to the objections from Indian Bank, we have seen:-

- a) Form P4 which supersedes Form P2.
- b) The majority of lenders have given their consent.
- c) Resolution for initiation of PPIRP was approved with 67.20% voting share.
- d) Indian Bank wants to file a Section 7 application but did not file it.

- e) The Applicant has no objection for appointment of Mr. Vikash Gautamchand Jain as RP.
- f) Bold allegations were made in pleadings by R-2 that the majority Financial Creditors are related parties and they have joined hands to defeat recovery proceedings initiated by the Indian Bank, no material was placed on record to substantiate the allegation.

Hence, all the objections of R-2 are addressed.

26. In the case of **Sambhaji & Ors. Vs. Gangabai & Ors.** in Civil Appeal No. 6731 of 2008 (Arising out of SLP (C) No. 14562 of 2006), the Hon'ble Supreme Court held that ***"all procedures are the handmaids of justice"***.

27. Accordingly, the application is complete in all respects and meets all requirements of law. Hence, we admit the application and hereby pass the following order:-

- I. The application for Pre-Packaged Insolvency Resolution Process of **M/s. Kethos Tiles Private Limited** stands admitted under Section 54C of the IBC, 2016.

II. In view of the commencement of the PPIRP, the moratorium is declared under Section 14 of IBC, 2016 for prohibiting all of the following terms of Section 14(1) of the IBC, 2016.

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

III. The RP as proposed by the Indian Bank and agreed by the Corporate Applicant, namely, **Mr. Vikash Gautamchand Jain, having Reg. No. IBBI/IPA-001/IP-**

P00354/2017-18/10612 is appointed as Resolution Professional (“RP”) to conduct Pre-Packaged Insolvency Resolution Process as per provisions of Chapter III A of the Insolvency Regulations. Further, the RP shall also perform his duties and functions as per the provisions given under Section 54F of the IBC, 2016.

IV. This Adjudicating Authority directs the RP to make a public announcement of Pre-Packaged Insolvency Resolution Process of the Corporate Debtor as per Section 54A of the IBC, 2016.

V. As mentioned under Section 54F(5) of the IBC, 2016, the personnel of the Corporate Debtor shall extend all assistance and cooperation to RP. In case of non-cooperation, the RP can approach this Adjudicating Authority under Section 19(2) of the IBC, 2016. The management of the Corporate Debtor shall remain vested with the Board of Directors of the Corporate Debtor as per the provisions of Section 54H of the IBC, 2016 subject to action under Section 54J of the IBC, 2016, if any. The Board of Directors shall discharge their duties as

specified under Section 54H(b) and Section 54(H)(c) of the IBC, 2016.

- VI. We direct the RP to file an interim report within 30 (thirty) days to this Adjudicating Authority by way of IA.
- VII. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Resolution Professional and the concerned Registrar of Companies & IBBI.
- VIII. Accordingly, C.P.(IB) & Pre-Packaged/1(AHM)2023 is allowed and disposed of in terms indicated above.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev Kr. Sen/P.S