

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

MA No. 130/2019
IN
C.P. (IB)-3863/MB/2018
Pravin Blaggan

... Applicant

In the matter of:

Goa Auto Accessories,
Mezzanine Floor, C/o EDC
Limited, EDC House, Panaji,
Goa - 403001

.... Petitioner

AND

Mr. Suresh Saluja
Plot No. 23, Jaripatka,
Nagpur - 440014

...Interim Resolution Professional

Order delivered on: 20.08.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Applicant: Mr. Nirav Parmar, Advocate, K Ashar & Co

For the Respondent: Mr. Rahul Dev, Advocate for Resolution
Professional

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Miscellaneous Application is filed by Pravin Blaggan (hereinafter called "Applicant") in view of the order passed by

this Tribunal dated 11.12.2018 in the matter of *Goa Auto Accessories Limited (CP IB - 3863 (MB) 2018)*. Goa Auto Accessories Limited (hereinafter called "Corporate Applicant") filed an under Section 10 of Insolvency and Bankruptcy Code 2016 ("the Code") read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, for initiation of Corporate Insolvency Resolution process.

2. Therefore, this court had vide its order dated 11.12.2018 admitted the Petition filed by the Corporate Applicant under Section 10 of the Code declaration moratorium. As a consequential direction this bench also appointed Mr. Suresh Saluja as the Interim Resolution Professional (hereinafter called "IRP").
3. According to the Applicant, on 21.12.2018 he received a letter from the IRP, who informed him about the above Company petition. Vide his letter the IRP further stated that the Applicant herein is allegedly in illegal occupation of a Shed owned by the Petitioner viz. Shed bearing No. D3-3 at Honda Industrial Estate, Goa, and called upon the Applicant to handover possession of the said Shed to the IRP by removing Applicant's movables from the said Shed. Applicant was called upon to comply with direction of the IRP within 24 hours of the receipt of the said letter.
4. The Applicant submits that he is not in illegal occupation of the said Shed and has been occupying the same under an Agreement dated 28th January, 1997 entered into the between the Petitioner and Applicant. It is further contended that the

Applicant is an erstwhile employee of the Petitioner who was engaged in the business of manufacturing spare parts of automobiles. Applicant was an employee of the Petitioner from 1982 to January 1993, after which he started his own proprietary concern by the name of Siyaram Engineering Industry and carried on business from the Shed of job work assigned by the Petitioner in respect of Components of spare parts of Auto mobiles.

5. It is also submitted by the Applicant that during 2006/2007 certain disputes with regards to payment of rent arose between the Petitioner and the Applicant, which further escalated resulting into filing of Special Civil Suit No. 23 of 2009 by the Applicant against the Petitioner before the Court of Civil Judge Senior Division, Goa in March 2009.
6. It is pointed out by the Applicant that wherein the Special Suit which deals with the issue of possession, occupation of the Shed by the Applicant is *sub judice* before the Court of Civil Judge Senior Division, Goa. Applicant also submits that he has replied to the IRP's letter dated 21.12.2018 vide his letter dated 29.12.2018.
7. The Applicant further submits that in interest of justice and equity the Applicant has sought intervening from this Tribunal, seeking an opportunity to make submissions and be heard in the matter of Shed. It is also prayed by the Applicant that the Tribunal may order the IRP, refraining him from acting in furtherance of its letter dated 21.12.2018.

8. The Resolution Professional has also filed a reply to the Miscellaneous Application. Vide this reply the Resolution Professional submitted that the Petitioner had given the right to use the aforementioned Shed to the Applicant for setting up a welding, fabrication, milling, drilling and deburring unit for carrying out job work for the Petitioner.
9. Further it is submitted by the Resolution Professional that as per Clause 7 of the Agreement, Petitioner was entitled to ask the Applicant to vacate the said Shed within one month of such notice. As per the Resolution Professional certain disputes arose between the Petitioner and the Applicant. Since the Applicant had committed breach of certain conditions of the Agreement and called upon the Applicant to vacate the Shed invoking Clause of the Agreement vide his Notice dated 22.08.2008.
10. The Resolution Professional points out that even after the Petitioner sent him the abovementioned notice, the Applicant did not vacate the said Shed, and instead a reply to this notice dated 03.11.2008 was sent by the Applicant. After which a Special Civil suit was also instituted by the Applicant in Goa.
11. The Resolution Professional further argues that since he has been appointed as the Interim Resolution Professional by this court, it is his duty to take control and custody of any asset over which the Corporate Debtor has an ownership right including assets which may or may not be in the possession of the Corporate Debtor.

12. The Resolution Professional also argues right of the Applicant claiming lien on the Shed is pending before Civil Court and there is no interim order therein. Therefore, as per the Resolution Professional the same cannot prejudice the right of Resolution Professional under the provisions of the code, and has further prayed that he may be allowed to take possession of the said Shed.

Findings:

13. At the outset it is important that we understand relevant portion of the Section 18 of the code which refers to the Interim Resolution Professional, which is as follows:-

“18. Duties of interim resolution professional. –

(1) The interim resolution professional shall perform the following duties, namely: -

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years; (iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional

is appointed by the committee of creditors; (e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board. ***Explanation. – For the purposes of this 1 [section], the term “assets” shall not include the following, namely: -***

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator”

(Emphasis Supplied)

A plain reading of the Section above makes it clear that the Code empowers the Resolution Professional to take control and custody of any property which the Corporate Debtor has the complete ownership of, this power of the Resolution Professional extends to properties which are a party of the court proceedings.

14. Herein, it is important to note that the suit filed by the Applicant is merely to decide possession and seeking mesne profits. The Applicant has not disputed the ownership neither in his application nor in the notice sent by him as mentioned above.

15. Therefore, in accordance with the code, since the Corporate Debtor has been authorised and empowered to take possession of the said Shed, the same must be granted to the Resolution Professional. Although, we would like to make it clear that this in manner would affect the merits of the Special suit which is still pending before the Special Civil Judge Goa.

16. It is pertinent to note here that, the moot point behind the Resolution Professional seeking possession of the Shed is to help the company. Therefore, if the arguments of the Applicant are given any weightage, and the Shed is not given in the possession of the Resolution Professional the same

would cause heavy prejudice to the Petitioner and defeat the purpose of the Code.

17. Although, herein we would like to make it clear that the argument of the Resolution Professional that the Shed is illegal possession of the Applicant cannot be taken into account as a valid one, because, it is not within the jurisdiction of this court to decide the legality of the possession.
18. It is also brought to our notice that the time period of moratorium is now over and no result has come out of it. Thereafter, a Miscellaneous Petition was filed by the Petitioner for liquidation. Therefore, subject to admission of the abovesaid MA, the possession of the said Shed will pass on to the Liquidator once he/she is appointed as per the orders of the court.
19. Henceforth, it is directed that the Resolution Professional should be allowed to take possession of the Shed from the Applicant.
20. Accordingly, this Application is disposed off as allowed.

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)

MA No. 130/2019

IN

C.P. (IB)-3863/MB/2018

Pravin Blaggan

... Applicant

In the matter of:

Goa Auto Accessories,

Mezzanine Floor, C/o EDC

Limited, EDC House, Panaji,

Goa - 403001

.... Petitioner

AND

Mr. Suresh Saluja

Plot No. 23, Jaripatka,

Nagpur - 440014

...Interim Resolution Professional

Per V. Nallasenapathy

I have gone through the order of my Ld. Brother and I disagree with the decision that the RP would be allowed to take possession of the said shed for the following reasons-:

- a) Section 18 (1) (f) (vi) provides that IRP is duty bound to take control and custody of assets subject to the determination of Court or Authority. The taking control of IRP here means only taking symbolic possession and not physical possession especially when the same is *sub judice* before a Civil Court. The IRP is not empowered to dispossess any person, hence in this case the Applicant

cannot be dispossessed from the Shed even though the property belongs to the Corporate Debtor. IRP can take possession of the property only by due process of the law, by getting orders from the concerned civil court.

- b) Hon'ble Supreme Court in the case of *Swiss Ribbon* while upholding the Constitution validity of the code held that IRP/RP cannot decide the claim of the creditors and that being the position the request of the IRP to dispossess the applicant especially when a civil suit is pending, cannot be entertained by this tribunal and allowing of this application will render the civil suit infructuous.
- c) Further, CIRP period of 270 days is already over and hence the office of IRP becomes *functus officio*. Therefore this application is in fact infructuous and has to be dismissed.
- d) Apart from that, the RP has filed an Application for liquidating this company under section 31 of the code in view of the fact that no resolution plan is received by him. Hence this bench has to necessarily allow that Application and a liquidation order has to be passed. Now, the liquidator has to act in accordance to the provision of section 35 (k) and defend the suit before the Civil Court filed by the Applicant herein.
- e) In my view, the object of 18 (1) (f) (6) is to see that the property under dispute is included in the Information memorandum, so that the prospective Resolution

Applicants will take a call after taking into consideration the property under litigation and considering this fact he will submit the Resolution Plan. Object of this provision is never to dispossess anyone who is in occupation of the property belonging to the Corporate Debtor. It is beneficial to refer section 29 of the Code here where it is stipulated that the RP shall prepare an Information Memorandum which should contain relevant information pertaining to the Corporate Debtor. The explanation to section 29 provides that :

"Explanation. —For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified."

The above explanation categorically says that information relating to by or against the Corporate Debtor and any other matter pertaining to the Corporate Debtor as may be specified by the board shall be included in the relevant information. Hence, the object of section 18 (1) (f) (vi) enables the IRP/RP to include the disputed properties in the Information Memorandum and does not envisages any power to the IRP to dispossess somebody who is in occupation of property belonging to the Corporate Debtor.

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Hence in view of the above stated position this application is dismissed.

Therefore, this matter is referred to the Hon'ble President, NCLT, New Delhi raising a legal question as to whether an IRP can dispossess any person in possession of a property owned by the Corporate Debtor when the said property is subject to litigation before a civil court.

Sd/-
V. Nallasenapathy
Member (Technical)
(Prakhar Tandon)

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

MA 1971/2019

In

C.P. 3863 of 2018

Under Section 33 of Insolvency &
Bankruptcy Code, 2016

In the matter of:

Goa Auto Accessories Limited

... Corporate Applicant

M.A. No.1971/2019

Suresh Saluja,

Resolution Professional

... Applicant

Order delivered on 20.08.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Rahul Dev, Advocate

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an order dated 11.12.2018 of this Adjudicating Authority on a section 10 Petition filed by the Corporate Applicant, Goa Auto Accessories Limited, wherein Mr. Suresh Saluja, was appointed as Insolvency Resolution Professional and thereafter confirmed by the Committee of Creditors (CoC) as Resolution Professional (RP).

2. The RP submits that the public announcement for inviting claims from Creditors was issued on 14.12.2018 (published on 17.12.2018). Pursuant to the said announcement, the Applicant received claims from 2 Secured Financial Creditors. The applicant duly verified the claims and subsequently admitted said claims.

3. In 2nd CoC meeting held on 25.02.2019, the Expression of Interest (EOI) and eligibility criteria for Potential Resolution Applicants (PRA) were finalised and the last date for submission was fixed by CoC. In response to the said advertisement, the applicant received initial response from 1 interested party. The timeline for submission was not accepted and EOI submitted by Mr. Satish Shinde was rejected as it was after the last date for submission of EOI. Since, there was no eligible PRA, who had submitted the EOI, the CoC members decided that the RP should not issue the provisional list and do further compliances in relation to this process. As no Resolution Plan was received by RP even after extending the date of submission of RP upto 30.04.2019. Therefore, the RP states that the only option left is to liquidate the Corporate Applicant.

4. The Resolution Professional submits that in the sixth CoC meeting held on 23.05.2018, the Indian Overseas Bank, members of CoC having 100% voting rights passed a resolution for liquidating the company in view of the fact that no Resolution Plan was received. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

5. On hearing the submissions of the Applicant and on reading the Application and the documents enclosed therein, for the RP has

complied with the procedure laid under the Code read with Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), for the valuation report filed by the valuer showing nil value has not been disputed by the CoC, on verification, we are of the view that this case is fit to pass liquidation order under sub-section 2 of section 33 of the Code as no resolution plan has been submitted before the Adjudicating Authority by the Resolution Professional, and accordingly, this Bench orders;

- a. 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.
- b. that the Resolution Professional herein is hereby appointed as Liquidator as provided under Section 34(1) of the Code.
- c. 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.
- d. 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.
- e. that the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- f. that on having liquidation process initiated, subject to section 52 of the Code, no suit or other legal proceeding

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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.

- g. This liquidation order shall be a deemed to be 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.

6. Accordingly, this Misc. Application is hereby allowed directing 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.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)