

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

ITEM No.48

IA/201(AHM)2021 in CP(IB) 535 of 2018

Proceedings under Section 65 r.w 11 & 60(5) IBC

IN THE MATTER OF:

Pawan Kishanchand Tulsiani

.....Applicant

V/s

Ace Resorts & Infrastructure Pvt Ltd & Anr

.....Respondent

Order delivered on ..01/07/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh, 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-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

MADAN B GOSAVI
MEMBER (JUDICIAL)



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

**IA No. 201 of 2021 in
CP (IB) No. 535 of 2018**

IA No. 201 of 2021

[An application under Section 65 read with Section 11 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016]

Pawan Kishanchand Tulsiani,

Having office at,
ID-1/138-139-140, GIDC Sachin,
Surat-394230

....Applicant

Versus

Ace Resorts & Infrastructure Private Limited

Having registered office at,
SY-104, PL-559/B, BL-1 to 6,
U. Gr. Fl. Shop No. 011,
West Field Shopping Centre, Ghod Dod Road, Surat – 395007

Naresh Ghanshyamchandra Bheda,

Interim Resolution Professional of,
Aakash Polyfilms Limited,
Having registered office at,
B-604, Fair Deal House,
Nr. Swastik Cross Road,
Navrangpura, Ahmedabad - 380009

....Respondents



In the matter of:

CP (IB) 535 of 2018

[An application under section 9 of Insolvency and Bankruptcy Code, 2016]

Ace Resorts & Infrastructure Private Limited

[CIN: U63040GJ2006PTC047733]

Having registered office at:

SY-104, PL-559/B, BL-1 to 6,

U. Gr. Fl. Shop No. 011,

West Field Shopping Centre, Ghod Dod Road, Surat – 395007

...Applicant / Operational Creditor

Versus

Aakash Polyfilms Limited

[CIN: U17119GJ1994PLC022937]

Having registered office at:

ID-1/138-139-140,

GIDC Sachin, Surat, 394520

... Respondent/Corporate Debtor

Order reserved on 10.05.2022

Order pronounced on 1.07.2022

Coram: MADAN B. GOSAVI, MEMBER (J)

KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

Learned Senior Counsel Mr. Rashesh Sanjanwala a.w. learned Counsel Atul Sharma appeared for the Applicant.

Learned Counsel Harmish K. Shah appeared for the Interim Resolution Professional



ORDER

1. This application is filed by the Applicant under sections 65 & 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking issuance of necessary order(s) and directions(s) against Respondent No.1, Operational Creditor i.e. Ace Resorts and Infrastructure Private Limited and Respondent No.2, Interim Resolution Professional (IRP) of Aakash Polyfilms Ltd.
2. It is submitted by the Applicant who is a Director and Promoter of Aakash Polyfilms Ltd i.e. Corporate Debtor in C.P. (IB) 535 of 2018 that this Tribunal vide order dated 10.03.2021 directed initiation of Corporate Insolvency Resolution Process (CIRP) of Aakash Polyfilms Limited and further appointed Respondent No.2 as the IRP of the Corporate Debtor.
3. It is further submitted by the Applicant that a winding up petition was already filed against Respondent No.1 (that is operational creditor) and the same was admitted by the Hon'ble High Court of Gujarat vide order dated 24.08.2016 in Company Petition No. 347 of 2015. Further, provisional Liquidator was also appointed by Hon'ble High Court of Gujarat vide order dated 07.02.2020.
4. The Applicant has also submitted that Respondent No.1 filed application bearing no. CP (IB) 535 of 2018 against Corporate Debtor with fraudulent intention, unclean hands and ulterior motives. Respondent No. 1 has fraudulently obtained the order dated 10.03.2021 by consciously suppressing the indispensable facts.
5. We have heard the learned counsel of the Applicant and perused the material on record. We restrained ourselves giving findings on controversy whether it was case of fraudulently initiation of CIRP for the single reason that there is no enough material on record to establish fraudulent intention on the part of the Applicant.



6. It has been, however, noted that Respondent No.1 did not bring into notice of this Adjudicating Authority the order dated 07.02.2020 regarding appointment of provisional Liquidator passed by Hon'ble Gujarat High Court. This fact was brought into notice after the Corporate Debtor was admitted into CIRP vide order dated 10.03.2021. Following that the operation of the said order dated 10.03.2021 was placed under suspension vide order dated 17.03.2021 by this Adjudicating Authority.

7. We have heard the learned counsels Shri Rashesh Sanjanwala, Senior Advocate and Shri Harmish K. Shah appearing for the Applicant Corporate Debtor and the Respondent no. 2 IRP respectively. It is noted that order to issue notice to the Official Liquidator was passed by this Adjudicating Authority vide order dated 30.11.2021. It is also noted that as per the provisions of section 279 of the Companies Act, 2016, no suit or other legal proceedings could be proceeded with, by or against the company under winding up, when an order of winding up against such company has been passed or a provisional Liquidator is appointed, except with the leave of the Tribunal. The section 9 application in CP (IB) No. 535 of 2018 was filed by the Operational Creditor through its authorized Director Bharat J Choksi. However, after the appointment of provisional Liquidator by the Hon'ble Gujarat High Court vide order dated 07.02.2020, the said application could not be proceeded with unless such provisional Liquidator makes an application to proceed with the matter, with the leave of this Tribunal. Since, no such application has been preferred by the provisional Liquidator, the main CP (IB) No. 535 of 2018 was not maintainable. Hence, we are constrained to recall the order of admission dated 10.03.2021 secured by Respondent No. 1 in CP (IB) No. 535 of 2018 in relation to the Corporate Debtor. In view thereof, the order of admission dated 10.03.2021 and the CIRP



initiated thereof in relation to the Corporate Debtor i.e. Aakash Polyfilms Ltd. is cancelled; and the moratorium as declared under section 14 of IBC, 2016 also stands withdrawn.

8. A copy of this order shall be duly communicated to Insolvency and Bankruptcy Board of India, Regional Director, Ministry of Corporate Affairs and Registrar of Companies of Gujarat for necessary action as these authorities may contemplate.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

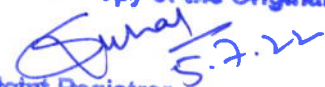
-SD-

MADAN B. GOSAVI
MEMBER (JUDICIAL)

Shweta Desai



Certified to be True Copy of the Original


Joint Registrar
NCLT, Ahmedabad Bench
Ahmedabad