

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 87 OF 2021

Under Section 19 (2) of Insolvency &
Bankruptcy Code, 2016

Mr. Mahesh Sureka
Resolution Professional

...Applicant

V/s

Minesh Prints Limited & others,

...Respondents

In the matter of

C.P.(IB) No. 4461/MB/2019

Minesh Prints Limited

...Corporate Applicant

Order delivered on: 03/01/2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the RP : Mr. Mahesh Surekha, RP

For the Respondent : Mr. Mr. Viraj Parikh, Advocate
i/b Mr. Saurabh Pandya,
Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 87/2021 is filed by Sh. Mahesh Sureka, the Resolution Professional (“Applicant”) of the M/s Minesh Prints Limited (“Corporate Debtor”) against the Respondents, which includes Corporate Debtor & the Suspended Directors as Respondent No. 1-4, and the Debtor parties from the outstanding balances towards sale are receivable by the Corporate Debtor as Respondent No. 5 to 19. The Applicant has sought following reliefs:
 - a. Direction to the Respondents 1,2,3,4 to assist Resolution Professional to recover the amount from sundry debtors or to identify the stocks which sundry debtors may opt to return to Resolution Professional;
 - b. Directions to the Respondents No 5 to 19 to make immediate payment or return the goods, assist Resolution professional to recover the amount from sundry debtors or to identify the stock which sundry debtors may opt to return to Resolution professional.
2. The Applicant was appointed as the Interim Resolution Professional of Minesh Prints Limited, by this Tribunal vide its order dated 04-03-2020 passed in CP (IB) 4461 (MB) 2019 admitting the Corporate Debtor into the Corporate Insolvency Resolution Process (“CIRP”).
3. It is stated that the CIRP commenced pursuant to application filed by the Corporate Debtor’s Suspended Board in terms of Section 10 of the Insolvency & Bankruptcy Code, 2016 (“Code”). The Respondent No. 3 is the brother of Respondent No. 2 and The Respondent No. 4 is the son of Respondent No. 2. Prior to

initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor, the Respondents are stated to be in charge, responsible for and managing and controlling all the business and affairs of the Corporate Debtor and as such have been well aware and possess all the relevant information and documents in relation to the Corporate Debtor including but not limited to its financial position, assets and liabilities.

3.1. The Applicant is constrained to prefer the present Application under Section 19(2), and 60 (5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person)) Regulations, 2016 ("CIRP") seeking appropriate orders and directions from this Hon'ble Tribunal on account of the non-co-operation from the Respondent No 5,6,7,8,9,10,11,12,13,14,15,16,17,18,[19](#) [as](#) sundry debtors of the corporate debtor and from Respondent no 1,2,3,4, for not taking any action for recovery of dues for last 2 and half years intentionally. Non collection of dues from these sundry debtors is affecting the CIRP process.

3.2. The details of the sundry debtors is as follows :

- i. Asha Textile Rs. 7, 19, 92,461/- (Rupees Seven Crore Nineteen Lakhs, Ninety Two Thousand Four Hundred and Sixty One only). The outstanding is pending from June 2017 and since at the time of initiation of CIRP period the debt

was within 3 year and hence the entire amount is under limitation period.

- ii. Bhagwati Enterprises Rs. 7, 40, 35,557/- (Rupees Seven Crore Forty Lakhs, Thirty Five Thousand Five Hundred and Fifty Seven Only). The outstanding is pending from June 2017 and since at the time of initiation of CIRP period the debt was within 3 year and hence the entire amount is under limitation period..
- iii. Khushi Fabrics Rs.76,50,888/- (Rupees Seven Six Lakhs, Fifty Thousand Eight Hundred and Eighty Eight Only). The outstanding is pending from June 2017 and since at the time of initiation of CIRP period the debt was within 3 under limitation period..
- iv. Mahalaxmi Fashion Rs 56,61,588/- (Rupees Fifty Six Lakhs, Sixty One Thousand Five Hundred and Righty Eight Only) The outstanding is pending from June 2017 and since at the time of initiation of CIRP period the debt was within 3 year and hence the entire amount is under limitation period.
- v. Sona Synthetic Rs 84,87,006/- (Rupees Eighty Four Lakhs, Eighty Seven Thousand and Six Only). The outstanding is pending from June 2017

and since at the time of initiation of CIRP period the debt was within 3 year and hence the entire amount is under limitation period..

- vi. Sparsh Silk Mills Rs. 1,20,80,431/- (Rupees One Crore Twenty Lakhs, Eighty Thousand Four Hundred and Thirty One Only). The outstanding is pending from much earlier of April, 2017
- vii. SR Silk Fashion Rs. 39,29,876/-(Rupees Thirty Nine Lakhs, Twenty Nine Thousand Eight Hundred and Seventy Six Only). The outstanding is pending from much earlier of April, 2017.
- viii. Devka Art Pvt Ltd Rs 6,694/- (Rupees Six Thousand Six Hundred and Ninety Four Only). The outstanding is pending from much earlier of April 2017.
- ix. Gomati Sales Corporation Rs. 8,61,500/- (Rupees Eight Lakhs, Sixty One Thousand Five Hundred Only). The outstanding is pending for sale of fixed assets ie machinery.
- x. Himeer Textile Rs. 1,26,416/-(Rupees One Lakhs, Twenty Six Thousand Four Hundred and Sixteen Only). Running Account but from April, 2019 no activity

- xi. Lotus Industries Rs. 4,00,997/- (Rupees Four Lakhs, Nine Hundred and Ninety Seven Only). Running Account but from April, 2019 no activity
- xii. Prabhat Industries Rs 2,70,090/- (Rupees Two Lakhs, Seventy Thousand and Ninety Only). The outstanding is pending from much earlier of April 2017
- xiii. Sangeeta Fashion Rs. 3,63,607/- (Rupees Three Lakhs, Sixty Three Thousand Six Hundred and Seven Only). Running Account but from April, 2019 no activity
- xiv. Vaibhav Fashions Fab Rs14,835/- (Rupees Fourteen Thousand Eight Hundred and Thirty Five Only). The outstanding is pending from much earlier of April 2017
- xv. Yash Art Rs 13,515/- (Rupees Thirteen Thousand Five Hundred and Fifteen Only) The outstanding is pending starting from April 2017 amount is too big of Rs. 18, 58, 95,460 (Rupees Eighteen Crore Fifty Eight Lakhs Ninety Five Thousand Four Hundred and Sixty Only). More than 50% of the amount is for June 2017 ie: just before the starting of GST Taxation.

- 3.3. It is stated that if sundry debtors have any issue for non payment than they would have returned the goods or should be ready to hand over the stock to Resolution professional. If sundry debtors are not making payment and neither ready to hand over the stock back to Resolution professional and members of the board of the suspended directors have not taken any legal action, it implies that all respondent are tied up with each other. The Applicant is stated to have tried to call them and discussed with them and also sent notices to them for payment.
- 3.4. It is stated that the Applicant Resolution Professional has discussed and kept this matter in the 3rd CoC and have now taken up the matter with this Tribunal which has been discussed in the 3 COC meeting.
- 3.5. In view of the aforesaid facts and circumstances, the Applicant has stated that it is just and necessary and in the interest of justice that appropriate orders should be passed to makes CIRP process as transparent and the resolution applicant, if any, can comes out with reasonable terms for all creditors who have filed their claims; the sundry debtors should be asked to make payment immediately or hand over the material back to Resolution Professional as for non-payment of material, this stock should be considered as asset of corporate debtor; and the members of the board of the suspended director should be directed to assist the Resolution professional in identifying the stock and taking back the material.

4. The Respondents No. 2, 3 and 4 have filed the Reply jointly stating that the present application seeks reliefs that fall outside the jurisdiction of this Tribunal and the Applicant is attempting to convert this Tribunal into a money recovery forum for Corporate Debtor, and the Resolution Professional is also attempting to outsource his responsibilities and duties to the Suspended Directors. It is further pleaded that the reliefs sought in the present application against the suspended directors are completely vague and ambiguous, hence it must be dismissed in limine.

4.1. It is further stated that The CIRP period of 180 days has expired and the Respondents are not aware of any resolution passed by the CoC for extension of the CIRP period or any order extending the CIRP period passed by this Tribunal. Accordingly, the Applicant is now functus office after expiry of 180 days from 24th March, 2020.

5. We have heard the Learned Counsel and perused the material available on record.

5.1. We find that the Applicant is seeking directions for co-operation from the Sundry Debtors and the Suspended Directors in realisation of debts owed by the Sundry Debtors to the Corporate Debtor for goods sold to them prior in time. The Applicant has stated the position of such debtors in the application and has pleaded that most of such debts are overdue and in some cases, no business is being done with such parties. Needless to say, the Sundry Debtors ought to have paid this money without intervention of this Tribunal, as this money is owed to the Corporate Debtor by them and Suspended

Directors are statutory obligations to assist the Resolution Professional in realisation of these debts.

5.2. The Applicant has sought directions from this Tribunal to make the Suspended Board to contribute to the Corporate Debtor in terms of Section 19(2) of the Code, to the extent the money is not paid by the stated parties. However, we are of considered view that such directions are not permissible under section 19(2) and this Bench can not direct them to co-operate. Had this Application been filed in terms of Section 66 of the Code meeting the conditions precedent provided therein, this Bench could have assumed jurisdiction to consider the prayer of the Application, if such prayer would otherwise be permissible under that Section.

5.3. The Applicant has also sought the directions to the Sundry Debtors stated in this Application to pay towards outstanding dues or return the goods lying unsold with them. We are of considered view that the Applicant has lien over such Goods as “Unpaid Seller” in terms of Provisions contained in Section 47 of Sale of Goods Act, 1930. Accordingly, no specific direction is necessary from this Tribunal. As regards payment of debts owed by them to the Corporate Debtor, we are of considered view that these debtors are under an obligation to pay the same to the Corporate Debtor and must pay the same. To this extent, we consider it appropriate to direct Respondent No 5 to 19 to co-operate the Applicant in realisation of the debts owed by them to the Corporate Debtor without any further delay. Needless to say, the Respondent No. 1 to 4 shall extend

necessary co-operation, as sought by the Applicant from time to time, to expedite the realisation of these debts.

6. In view of aforesaid directions, this IA 87/2021 is partly allowed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)