

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

MA/518/2019

In

CP/710/IB/CB/2017

Under Section 60(5) of the IBC, 2016

In the matter of M/s. Gemini Arts Private Limited

Mr. T.V Balasubramanian, RP

For M/s. Gemini Arts Private Limited

---Applicant

Order delivered on: 02.08.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Counsel for the Applicant: Shri.Thriyambak.J Kannan, Advocate

Ms. Arushi N. Hegde, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Order Pronounced on 02.08.2019

It is an MA filed for exclusion of 180 days from the CIRP period of 270 days on the ground the erstwhile Resolution Professional, appointed at the instance of the Petitioner/Financial Creditor/Mother-in-law (to avoid confusion she is hereby referred with her name "Bharathi") of the Managing Director of the Corporate Debtor, did not discharge any of the functions of the CIRP



so long as he continued as the Resolution Professional i.e., until before he was replaced by the Applicant/the present Resolution Professional and on the ground erstwhile directors of the Corporate Debtor and Bharathi have not allowed the Resolution Professional to discharge his functions as RP either by not providing the Debtor Company records or by filing one or other application preventing the Resolution Professional from discharging his functions as RP.

2. On perusal of this MA, it appears that this Bench admitted the Company Petition on 22.06.2018 appointing the Insolvency Professional as IRP on the suggestion made by Bharathi/Financial Creditor; thereafter the IRP constituted CoC including Bharathi/the Petitioner in main CP as member of the CoC.

3. During the period of CIRP, another Financial Creditor, namely Kotak Mahindra Bank being aggrieved of making Bharathi as member of CoC on the ground that she is the mother-in-law of the erstwhile Managing Director of the Corporate Debtor, on which, this Bench on 19.12.2018 allowed MA/667/2018 excluding Bharathi from the CoC stating that she being a relative of the erstwhile Managing

Director of the Debtor Company, she is not entitled to continue as member of the CoC. Against which, Bharathi has filed an appeal before the Honourable NCLAT, but so far, no stay has been granted on the proceedings pending before this Bench except stating that the decision of the CoC is subject to the outcome of the decision of the Honourable Appellate Tribunal. As 180 days of the CIRP period got over on 19.12.2018, it was extended for another 90 days which was due to expire on 18.03.2019. It essential to mention that on 13.02.2019 this Applicant was appointed as RP replacing the earlier Resolution Professional, accordingly this Applicant has taken charge on 13.02.2019.

4. Soon after this Applicant was appointed as RP, he has come to know various acts of omissions and commissions by the erstwhile management. When the Applicant tried to unravel those omissions and commissions, the erstwhile Management has put all kinds of hurdles to this Applicant. Since the erstwhile IRP did not gather information reflecting the affairs of the Debtor Company, he could not trace out supporting documents like vouchers/challans/bills for

the accounts maintained by the erstwhile management, therefore this Applicant has tried to retrieve those records to reconcile the accounts so as to protect the Debtor Company's assets, which include a land under development viz. 7 grounds and 596 square feet located at Mount Road in Chennai. Though this Corporate Debtor filed Financial Statements on 31.03.2018, supporting records and books of accounts in respect to the same are not available. The Resolution Professional on taking up his duties on 13.02.2019 found that there was only 34 days left to complete the CIRP which appeared to be impossible to collect all this information to reconcile the records, therefore moved MA/234/2019 seeking exclusion of 56 days, which was granted on 18.03.2019.

5. As to the tally backups, the tally backup provided by the erstwhile Resolution Professional, the tally backup collected from the premises of M/s. Anand Ram Developers and the tally backup provided by the Ex-Directors are in variance to each other, particularly in relation to the related party transactions. For the entire CIRP period of 270 days i.e. 22.06.2018 till 19.03.2019 and

subsequent exclusion has been completed without any books or records relating to the Corporate Debtor, this Applicant who has taken charge as Resolution Professional on 13.02.2019, could not get sufficient information for preparation of information memorandum and for seeking Expression of Interest and for seeking to set aside the preferential/fraudulent transactions.

6. This Applicant submits that unless the CIRP period during which the earlier Resolution Professional continued is excluded, it will not be possible to try for Reorganisation of the Corporate Debtor, he further submits, if the period expired without undergoing CIRP is not excluded, it would be nothing but sending this Corporate Debtor to liquidation without undergoing effective CIR process.

7. In view of the same, this Applicant has sought for exclusion of entire CIRP period of 180 days during which earlier Resolution Professional continued.

8. Having gone through the facts afore mentioned, it is true that the records of the Debtor Company have not been placed before the present Resolution Professional, indeed neither the Ex-Directors

provided information enabling the Resolution Professional to discharge his functions nor has he been allowed to collect information on his own. The Resolution Professional has been unable to prepare final information memorandum and present it before the CoC on account of there being uncertainty surrounding various transactions and documents pertaining to the Corporate Debtor. The end result is, this Applicant is not in a position to find out as to how much is payable by the Corporate Debtor Company, as to how much is to come to the Corporate Debtor Company and as to what are the supportings taken into consideration while erstwhile management preparing financial statements filed before the RoC. It appears that so many related party transactions have taken place, as to them also, no information is available.

9. To get the financial position of this company and to act upon it, we believe it is necessary to exclude the time during which the earlier Resolution Professional continued without discharging any of the duties of the Resolution Professional except constituting CoC. For replacement of the earlier Resolution Professional with the present

Resolution Professional, the reason is that the earlier Resolution Professional failed to discharge his duties conferred upon him under the Code.

10. In view of the same, this Bench hereby excludes 180 days of CIRP period and extend the period for another 180 days with effect from completion of 56 days extension already provided; accordingly this application is hereby **allowed**.

-Sd-

(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-

(B. S.V. PRAKASH KUMAR)
Member (Judicial)

TJS