

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-III**

**I.A. NO. 3159 OF 2022
IN
C.P./IB/4190/MB/2018**

Filed by
Pankaj Madhusudan Bhuta.

...Applicant/Operational Creditor

Vs.

Rajendar Kumar Girdhar, Resolution
Professional of Mayur Pankh Properties Pvt
Ltd.

.... Respondent

In the matter of

ICICI Prudential Real Estate AIF

...Financial Creditor

Versus

M/S. Mayur Pankh Properties Pvt Ltd.

...Corporate Debtor

Reserved for order on: 22.12.2022

Order Pronounced on: 17.05.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant: Mr. Gauraj Shah and Mr. Rajan Agarwal

Mr. Mulkit Salia, Advocate

For the Resolution Professional: Mr. Siddhesh Bhole, (Advocate)

Per: Madhu Sinha, Member (Technical)

ORDER

1. This Interlocutory Application is filed by Mr. Pankaj Madhusudan Bhuta, Applicant, against the Resolution Professional (Respondent no. 1), ICICI Prudential Real Estate AIF I acting through its investment Manager ICICI Prudential Asset Management Company Ltd (Respondent No. 2) and Yura Business Partners LLP (Respondent No. 3). Praying the following reliefs:
 - a. *Provision be made in the plan for payment of admitted claim of Applicant of Rs. 13,27,136/-*
 - b. *The Respondent no 1 be directed to pay to the Applicant the salary due to Applicant for employment during the CIRP period of Rs91,08,000/- and the same be treated as cost and expenses of CIRP.*
 - c. *Any other order or relief may be granted in favour of the applicant as the Hon'ble Tribunal deem fit.*

2. Brief submissions of the Applicant are as follows:
 - i. The Applicant states that he was a non-promoter director of the Corporate Debtor. He resigned as director on 31.03.2018 however at the request of promoters of Sunshine Group, he continued to work as an employee of the Corporate Debtor even after 31.03.2018 and during the CIRP period.
 - ii. The Applicant further states that he was the only employee of the CD during CIRP period working in managerial capacity. After the CIRP was initiated on 18.12.2018 the Respondent No. 1/ RP received all the details, and documents of the Corporate Debtor and assistance from the Applicant.
 - iii. Applicant filed his claim in FORM D on 25.02.2019 for Rs. 16,79,057/- being his salary for the Pre-CIRP period from

01.04.2018 to 17.12.2018 of which RP has admitted the claim amounting to Rs. 13,27,136/-.

- iv. As per Applicant, he looked after day to day functioning of the Corporate Debtor Company during the CIRP period. He claims that the Respondent No. 1 (Resolution Professional) did not even once step into the office the Corporate Debtor during this period, and it was the Applicant who signed and provided all the documents to the Respondent No. 1 while he was appointed first as IRP and then as RP. The Applicant has accordingly submitted claim for his salary entitled for work during the CIRP period.
- v. In the month of December 2020, as the Applicant's salary was not paid for more than two years and due to severe financial crunch during which time the Applicant was severely ill with Covid, the Applicant once again requested the Respondent to arrange for payment of at least part of his salary due till December 2020.
- vi. The Applicant subsequently wrote an email to Respondent No. 1/ RP on 15.03.2021 for payment of his Salary under CIRP period amounting to Rs. 52,23,523/-. However, Mr. Sunil Munot (from Respondent No. 2 of the present Application) along with RP made false allegations and denied legitimate dues to the Applicant.
- vii. Applicant further states that the earlier Resolution Applicant, Ozone Group and Respondent no. 2 (ICICI Prudential Real Estate AIF I acting through Its investment Manager ICICI Prudential Asset Management Company Ltd). had entered into MOU to drive Corporate Debtor in to insolvency and take

over the Corporate Debtor's project during Resolution process. There were several irregularities in the Ozone group, and RP was informed about the same, but RP did not disclose the same to this Bench. Finally, the Secured Creditors (Respondent no. 2) withdrew the Resolution Plan.

- viii. Thereafter, a consortium of Yura Business Partners LLP filed Resolution which was approved by the Secured Creditors. It is pertinent to note that while the Term Sheet executed by the Promoters of the Corporate Debtors and Respondent no. 2 (Earlier RA), provided for profit of Rs. 124 Crores from the Corporate Debtor's project, Yura is only providing Rs. 68 crores which is significantly less.
 - ix. The Applicant has further stated that in the above Resolution Plan only Rs. 1,00,000/- was provided against entire claim of Rs. 16,79,057/- made by him for his salary under CIRP period.
3. The Resolution Professional (Respondent No.1) has filed a detailed reply along with the Additional Affidavit to this Bench. The Important Paragraphs of the Reply filed by the Resolution Professional are reproduced below:
- i. The Respondent (RP) in his reply stated that on 18.07.2022, Resolution Plans from both the resolution applicants i.e. Fervent Securities Pvt Ltd (in consortium with Apex Tradelink Pvt. Ltd) (Fervent's Resolution plan') and Yura Business Partners LLP (in consortium with Gupta Steel Corporation Pvt Ltd) (Yura's Resolution Plan') were received on 20.07.2022, CoC meeting was held wherein both resolution plans were

unsealed in presence of CoC members holding more than 51 % voting share in the meeting via video conference.

ii. Further that on 09.08.2022, the Yura's Resolution Plan was approved by 94.51% voting share in the 13th meeting of the CoC of the Corporate Debtor.

iii. The Resolution Professional stated that a claim amounting to Rs. 13,27,136/- of the Applicant's unpaid salary up to the date of commencement of CIRP was admitted by him and included in the resolution plan.

iv. Further that the claim of the Applicant for payment of his salary during CIRP period was rejected by CoC in its Commercial wisdom. On the grounds that the Applicant had not rendered any services during the CIRP period to the Corporate Debtor which would entitle him to receive any salary/payment. Also, that the services of the Applicant were not required during the CIRP period and therefore the salary claim of the Applicant was rightly excluded by CoC from the CIRP budget.

FINDINGS

4. Heard the Learned Counsel Mr. Gauraj Shah, Advocate for the Applicant/Operational Creditor Mr Pankaj Madhusudan Bhuta, and Ms. Siddhesh Bhole on behalf of the Resolution Professional /M/s Mayur Pankh Properties Ltd /Corporate Debtor and perused the record.

After hearing the submissions of both sides and upon perusing the material available on record, the issues that needs to be decided by the bench are:

- I. To evaluate if the Claim of the Applicant for payment of salary during CIRP period has been rightfully rejected by the Resolution Professional/CoC and
- II. To evaluate the claim made by the Applicant for the Period prior to CIRP of which an amount of Rs.13,27,136 was admitted by the Resolution Professional.

Let us deal with the above issue in hand one by one.

5. The claim of the Applicant towards payment of salary during CIRP period:

The Applicant is challenging the action of the Resolution Professional with regards to payment of salary during CIRP period whereas the Respondent as per his reply has clearly stated that the CIRP budget presented before the CoC in its 1st Meeting had specifically excluded the salary payable to the Applicant.

The relevant portion of the minutes of the 1st CoC meeting dated 21.01.2019, is extracted as below:

“Notes :1 Salary payable per month of Rs. 1,97,958.00 to Mr. Pankaj Bhuta is not considered in the budget. CoC shall take call on approval of payment of the same. 2... The Committee shall take note of the same.” The CIRP budget was approved with 100% votes in favour of the resolution. Further that the revisions to CIRP budget presented in the 6th and 7th CoC meetings also excluded the salary of the Applicant.

Resolution Professional in his Affidavit clarified and stated that Applicant was a Director of the Corporate Debtor only until 30.03.2018 and the Applicant being key managerial personnel was also responsible for the affairs of the Corporate Debtor only until initiation of the CIRP. The Applicant has not rendered any services

during the CIRP period, which is further made clear from the contents of email dated 8.04.2021 cited by the Applicant in his Application about his exclusion from the CIRP Budget with 100% voting by the CoC. As a supporting evidence, the RP in his Affidavit has attached a list of Directors downloaded from the MCA website which shows that the Applicant is holding position of Director in many of the group Companies of CD and it also shows his status as Director in the Corporate Debtor ending on 31.03.2018.

6. The applicant's claim for salary during Pre-CIRP:

The Resolution Professional in his Affidavit also mentioned about clause 3 of Yura's Resolution Plan, which deals with workmen and employees payments. As per RP, Clause 2.1 States that each employee shall be entitled 75% of the admitted claim, subject to maximum of Rs. 1,00,000/-. This Distribution is as per the waterfall mechanism proposed in accordance with section 53 of the Insolvency and Bankruptcy Code 2016, and Yura's Resolution plan is duly approved by the CoC. Further that the Resolution Professional has admitted the Applicants claim @ 8% payout to the admitted claim of Rs. 13,27,136 subject to maximum of Rs. 100,000/-. Thus, the RP submits that a sum of Rs. 1,00,000/- was admitted towards the applicant's claim, in accordance with and as approved by the CoC in for the workmen/employees in their Commercial Wisdom.

The Bench is convinced with the RP's argument, and is of the opinion that it is not endowed with the jurisdiction to reverse the commercial wisdom of the CoC and that too on a specious ground. Hence the bench feels that RP has rightly admitted the claim for applicant's salary for the Pre-CIRP periods.

7. The Applicant has also produced in support of his claim a letter of employment from the CD dt 30.3.2018 confirming him as a

knowledge worker with a monthly gross salary of Rs. 1,97,958/-, in support of his claim for salary from 31.03.2018 onwards. The RP has submitted that this claim was presented to members of the CoC, and the CoC's decision to not accept his claim was very well intimated by the RP to the Applicant vide RP's letter dated 08.04.2021.

It was further stated by the RP that Applicant's services were not even required during CIRP period and therefore there was no question of salary payment to the Applicant for this period. The CoC has rightly excluded his amount claimed from the CIRP Budget passed in the 1st CoC meeting.

In support of his claim, the applicant has also produced a certificate of employment signed by the RP addressed to 'Whomsoever it may Concern' on 21.12.20. To this, the Resolution Professional submitted that such letter was requested by Mr. Bhuta via an email dated 14.12.2020. the extract of the letter are as follows:

Request for letter of confirmation of employment

Pankaj Bhuta <pankaj@sunshinegroup.co.in>

Mon 14-Dec-20 5:06 PM

To: Mayur Pankh Prooperties Private Limited <mppl@sumedhamanagement.com>

1 attachment (13 KB)

Pankaj Bhuta Letter of Employment.docx;

To,

Mr. Rajendra Girdhar

The Resolution Professional

*Oshiwara Mahada Complex,
Building No. 5 Aster Coop. Housing Society,
Flat No. 205 2nd Floor,
New Link Road,
Oshiwara Andheri (W), Mumbai-400 053*

Subject: Request for issuing confirmation letter of employment to Mr. Pankaj M Bhuta.

Dear Sir,

I Pankaj M Bhuta, having employee ID bearing no OM-004 am an employee of M/s Mayurpankh Properties Private Limited from 1st April 2015 till date.

Due to personal and family reasons I need to Travel to Canada. As per the prevailing rules of VISA application for Canada a letter of confirmation is required to be issued by the employer confirming my employment.

I request you to kindly issue me a letter of confirmation of employment in the prescribed format so that I can avail the necessary Visas and Travel to Canada. Please find attached a draft format for issuing the required confirmation letter.

*Thanking You,
Pankaj M Bhuta*

The RP has clarified that the above mentioned letter provided by the RP was only issued at the request raised by the Applicant on the grounds of getting Visa and traveling to Canada for some personal and family reasons. Thus even though RP has committed a grave mistake by issuing such letter on demand, this Bench notes that only on the basis of such Employment letter dated 21.12.2020 signed by the RP, without any attached proof of work done, the applicant's claim to salary cannot be accepted for the CIRP period. The Applicant has in his email dated 15.03.2021 requested for payment of salary from December 2018 till February 2021 for an amount of Rs. 52,23,523/- and an amount of Rs 91,08,000/- till the date of filing of the present application. Such request was already rejected by CoC in their Commercial wisdom. The extracts of:

- (i) Email from RP to CoC &
- (ii) RP to the Applicant conveying CoC decision in this regard are extracted below:

- (i) Email dt. 20.03.2021, Resolution Professional to CoC members

On sat, 20 Mar 2021 at 22.52, Mayur Pankh Properties Private Limited <mppl@sumedhamanagement.com> wrote;

Dear All,

Without Prejudice.

As you are aware that Mayur Pankh Properties Private Limited ("MPPL") is under Corporate Insolvency Resolution Process ("CIRP"). Mr. Pankaj M. Bhuta, was earlier Director in MPPL and after his resignation he was deployed as an employee in MPPL, from March 30, 2018 vide appointment letter dated 30.03.2018. Further, we would like to bring your notice that Mr. Pankaj M. Bhuta filed his claim in Form D for his outstanding salary before the Insolvency Commencement date for the period 1-4-2018 to 17-12-2018.

After commencement of CIRP, there had been only two staff members i.e. Mr. Pankaj M Bhuta, Project Head and Mr. Amarnath Singh (supervisor). The salary of Mr. Amarnath Singh has been paid, while the salary of Mr. Pankaj M Bhuta has not been paid and the same was not budgeted in the estimated budget. Mr. Pankaj M Bhuta vide Mail dated 4-5-2019 informed that he is working as Key Managerial Personal in Mayur Pankh Properties Pvt. Ltd.

Further we may inform that the undersigned received a trail mail from Mr. Pankaj M Bhuta requesting therein for payment of his salary for the CIRP Period i.e. December 18, 2018 onwards.

It is pertinent to mention that as per the provisions of the Insolvency and Bankruptcy Code, 2016 any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern shall constitute Insolvency Resolution Process Cost.

We are informing Mr. Pankaj M Bhuta that his request has been forwarded to Committee of Creditors and on hearing from them, we shall revert to the matter.

In view of the aforesaid, we would request members of Committee of Creditors to advice on the same.

Thanks and regards,

Rajendra Kumar Girdhar

Resolution Professional in the matter of Mayur Pankh Properties Private Limited

Reg. No. IBBI/IPA-003/IP-N00048/2017-18/10369

Reg. Address with IBBI : Oshiwara Mahada Complex, Building No. 5 Aster CHS, Flat No. 205, 2nd Floor, New Link Road, Oshiwara Andheri (west), Mumbai 400053

Project specific address for correspondence: Sumedha Management Solution Private Limited, C-703, Marathon Innova, Off Ganapatrao Kadam Marg, Lower Parel (West), Mumbai City, Maharashtra 400013

T : +91 22 4033 2400

Reg. Email ID with IBBI: rkqirdhar1@yahoo.co.in

Project specific email ID for correspondence: mppl@sumedhmanagement.com

(ii) Email from Resolution Professional to Applicant (Mr. Bhuta) conveying the CoC's decision on rejection of his claim:

From: Mayur Pankh Properties Private Limited <mppl@sumedhmanagement.com>

Sent: Thursday, April 8, 2021 3:47 PM

To : Pankaj Bhuta <pankaj@sunshinegroup.co.in>

Subject: Re: Request for release my Salary during MPPL CIRP Period.

Dear Mr. Pankaj Bhuta,

This has reference to the trail mail vide which you have informed that you are the only employee of the CD in Managerial Position (Key Managerial Person) and under employment of the Company since April 2018 and you have filed the claim of your salary for the period 1-4-2018 to 17-12-2018.

After the CD was admitted to insolvency vide order dated 18-12-2018. I took over the affairs of the CD in my capacity as IRP (and subsequently confirmed as RP). I made an assessment of the affairs of the CD and noted that the CD had only one real estate project and all activities in relation to the said project had come to a complete halt much before insolvency commencement date of the Corporate Debtor. In the 1st meeting of the CoC held on January 21.2019. CIRP Budget was presented before the CoC, wherein it was specifically mentioned that the salary of the KMP and Directors is not taken into consideration, in the said budget. It was further informed to the members of CoC, via foot note that "Salary payable per month of Rs. 1,94,958.00 to Pankaj K Bhuta is not considered in the Budget. COC shall take call on approval of payment of the same.

The COC, after due consideration approved the CIRP budget without any modifications. The budget was approved with 100% of the members voting in favour. Accordingly, approval of payment of KMP's salary cost was not considered and unanimously rejected by the COC

*In your trail mail below you have stated that-
Quote*

"In January 2019, I had approached you about payment of my ongoing salary, thereupon you had represented and assured me that the CIRP will be completed soon and that the successful Resolution Applicant will pay and clear all the arrears of my salary. " unquote

As stated above, the salary payable to KMP was not included in the budget and approval of CoC was required by placing the same before them. This CIRP budget (excluding the salary of KMP) was approved by the COC. The COCs decision in regard to payment of salary was informed to you, during your meeting. Since I had already informed you the decision of the CoC regarding approval of the CIRP Budget, excluding the salary of KMP, there is no question of my giving any assurance to you regarding salary payment.

It is observed that you had filed the Claim Form D on 25-2-2019 with respect to arrears of salary up to the insolvency commencement date. The claim filed by you has already been accepted and included in the list of creditors.

Further vide your email dated 5-4-2019, you have confirmed that you are working as Key Managerial Person in Mayur Pankh Properties Pvt. Ltd.

While claiming the salary vide the trail mail below, you have stated that you have been performing all the tasks of the company diligently. In this regard, it is evident that the operations in the project were stopped much before the insolvency commencement date of the Corporate Debtor and there are no operations in the project since long. After insolvency commencement date and my appointment as IRP/RP of the CD, it is also quite evident that-

- You have not rendered any services to the project/Corporate Debtor, as no operations were there in the project, and have never reported to me,*
- During my tenure, no communication about the project/task of the project done by you have ever been made by you,*
- No communication about attending to any duties have ever been made by you,*
- Other than submission of you claim on 25-2-2019, there had been no communication with you regarding the work of the project (except your mail dated- 5-4-2019 confirming therein that the you had been KMP of Mayur Pankh properties Pvt. Ltd.).*

If you had indeed rendered any services, as a key managerial person of the CD, you would have reported to me. There had never been any occasion during the entire CIRP period where you had ever discussed with me any work related to Project performed by you as Project Head.

Further on referring the matter to CoC, payment of approval of salary claimed by you has been rejected and it has been reiterated that in the 1st CoC meeting held on 21-1-2019, payment of salary of KMP was not considered and the CIRP Budget was approved without any modification.

This is for your information.

Thanks and regards,

Rajender Kumar Girdhar

Resolution Professional in the matter of Mayur Pankh Properties Private Limited

Reg. No. IBBI/IPA-003-IP-N00048/2017-18/10396

Reg. Address with IBBI: Oshiwara Mahada Complex, Building No. 5, Aster CHS, Flat No. 205, 2nd Floor, New Link Road, Oshiwara, Andheri (west), Mumbai 400053

Project specific address for correspondence: Sumedha Management Solutions Private Limited, C-703, Marathon Innova, Off Ganapatrao Kadam Marg. Lower Parel (West), Mumbai City Maharashtra, 400013

T: +91 22 4033 2400

Reg. Email ID with IBBI: rkqirdhar1@yahoo.co.in

Project specific email ID for correspondence: mmpl@sumedhamanagement.com

We consider the submission of RP that the Applicant has not rendered any services during the CIRP period as there was no operation being carried out by the corporate debtor.

8. The Resolution Professional further in his written submission has rightly pointed out that the Applicant has failed to bring any specific proof on record to prove that he has worked during the CIRP period as claimed, Further when the Applicant claims that after his resignation as director of Corporate Debtor on 30.03.2018, the promoters of the Corporate requested him to continue as an employee of the Corporate Debtor and Applicant thereafter continued as an employee of the Corporate Debtor, this Bench observes that the Applicant has failed to bring any specific proof in respect of work done by him during this period to support his claim. The Resolution Professional has stated that the Operations in the CD were stalled much before the initiation of CIRP and therefore the question of the Applicant working on projects on the Corporate Debtor during CIRP does not arise.
9. In view of the above the Bench finds no reasons to reverse a business decision arrived at by the majority of CoC as per the

process envisaged under the Code. The Resolution Plan of CD is Pending before this Bench for approval in IA 2253 of 2022, which will be dealt accordingly on the grounds of its merits.

10. This Bench is therefore of the view that there are no merits in the above IA 3159 filed by the Applicant which is liable to be rejected.

11. With the above observations and directions, the above Interlocutory Application no. 3159 of 2022 stands dismissed and disposed of.

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)