

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA No. 421 of 2023

In

CP (IB) 1594 of 2017

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the
Insolvency and Bankruptcy Rules, 2016

IN THE MATTER OF

**Impresario Entertainment and Hospitality
Pvt. Ltd.**

American Express Bakrey House 66A Claire
Road, Byculla, Mumbai - 400008.

... Applicant

V/s.

Partha Sarathy Sarkar

(Interim Resolution Professional)

1st Floor, Jalaram Krupa Building, 61,
Janmabhoomi Marg, Fort, Mumbai -
400001.

... Respondent

IN THE MATTER OF

Holesome Foods Private Limited

124, Shaan Apartment, Kashinath Dhuru
Road, Dadar, Mumbai – 400028.

... Corporate Debtor

Order delivered on :- 22.03.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances (through VC):

For the Applicant : Adv. Rohan Agarwal a/w Almira
Lasrado

For the Respondent : Adv. Pratik Sarkar

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. The present Interlocutory Application is filed by the Applicant seeking direction to the Respondent, the Resolution Professional ('RP') appointed in the case of Holesome Foods Private Limited ('the Corporate Debtor') to conclude the Corporate Insolvency Resolution Process ('CIRP') initiated against the Corporate Debtor in accordance with law.

Brief facts as stated by the Applicant in the Application: -

2. The Applicant is a Financial Creditor and a related party of the Corporate Debtor who filed the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') pursuant to which CIRP has been initiated in the case of Corporate Debtor vide order of this Tribunal dated 11.04.2018. The Applicant herein was appointed as Interim Resolution Professional and was subsequently confirmed as RP. In the CIRP process, the IRP/RP invited claims by making public announcement dated 21.04.2018 and constituted Committee of Creditors ('CoC') comprising of sole member, Sales Tax Department. Though the Applicant is a Financial Creditor as recognized in the order dated 11.04.2018, the Applicant is not part of the CoC as it is a related

party on account of its entire shareholding in the Corporate Debtor.

3. It is stated that the Applicant vide email dated 02.09.2022, letter dated 14.10.2022 and meeting with the Respondent tried to ascertain the status of CIRP process, but could not succeed due to non-disclosure of information by the Respondent.
4. It is further stated by the Applicant that the Applicant has been unable to consolidate its financial accounts as Corporate Debtor is its subsidiary company and it is imperative that the CIRP of the Corporate Debtor be taken to its logical conclusion. Hence, the present Application.

Submissions of the Respondent: -

5. The Respondent/RP filed his reply stating that the Application is not maintainable in the absence of impleading Sales Tax Department, the sole member of CoC as party. The Respondent stated that he did not enter into any communication with the Applicant on account of the prohibition under Regulation 7(2) (h) of IBBI (Insolvency Professionals) Regulations, 2016 first schedule, clause 17 which deals with the code of conduct as applicable to RPs and also due to the fact that the Respondent has become *functus officio* after expiry of the period specified for conclusion of CIRP under the Code.
6. It is also stated by the Respondent that the loan given by the Applicant to the Corporate Debtor has already been booked as a loss/impairment in the books of the Applicant and hence the conclusion of CIRP has no relevance for finalizing the financial statements of the Applicant and that the directions sought against the Respondent by the Applicant are non-est.
7. We have heard the submissions of the Counsel for the parties and

perused the records.

8. The Applicant being a financial creditor of the Corporate Debtor initiated the CIRP under Section 7 of the Code and holds entire shareholding of the Corporate Debtor. The CoC constituted by the RP comprises of only one member, i.e. Sales Tax Department and the Applicant could not become a member as it is a related party.
9. It is the submission of the Applicant that Corporate Debtor being a wholly owned subsidiary of the Applicant, taking the CIRP process to its logical conclusion is necessary for finalizing its financial statements as well as for concluding the process under the Code. As against the submission of the Applicant, the contention of the Respondent is that his position has become *functus officio* after expiry of the period specified for conclusion of CIRP under the Code and hence directions sought against the Respondent are non-est. It is an admitted fact that the period specified under the Code for conclusion of CIRP has lapsed since long, but the process has not been taken to its logical conclusion. The main contention of the Respondent is that RP is presently *functus officio* and no action can be taken by him to conclude the CIRP. Therefore, we need to notice Section 23 (1) of the Code which reads as under:

“Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:

Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a

liquidator under section 34 is passed by the Adjudicating Authority.

A plain reading of Section 23 (1) clearly establishes that the Resolution Professional is bound to discharge his roles and functions as per the Code not only during the time limit specified under Section 12 of the Code but till the approval of the resolution plan or appointment of liquidator, as the case may be, by the Adjudicating Authority.

10. It is also the contention of the Respondent that the Code of Conduct specified for Insolvency Professionals in first schedule to IBBI (Insolvency Professionals) Regulations, 2016 prohibits any private communication with any of the stakeholders unless required by the Code, rules, regulations and guidelines thereunder, or orders of the Adjudicating Authority and hence even the status of the CIRP cannot be disclosed to the Applicant. The scheme of the Code has kept the Applicant, though a financial creditor, out of the resolution process for being a related party. At the same time, one cannot ignore the fact that the Applicant is the sole shareholder of the Corporate Debtor who has initiated the action under Section 7 of the Code. When a person is allowed or is eligible to initiate proceedings under the Code, he has every right to know the status of the CIRP, if not anything more. In the facts and circumstances of the case, we do not see any justification for not disclosing the status of the CIRP to the Applicant even on repeated requests.

11. The Respondent, having accepted the engagement as RP, has a bounden duty to take all actions and process as per the Code, regulations etc till conclusion of the process. The RP cannot shirk his responsibility simply by stating that the period stipulated for CIRP has been over and he has become *functus officio*. It appears that there is a lapse on the part of

RP to take prompt action to facilitate conclusion of CIRP process in a time bound manner as prescribed under the Code/Rules/Regulations. Even in the reply filed by the Respondent, there is an apparent hesitation to disclose the actual status of CIRP by the Respondent.

12. Based on the above discussion, we are fully convinced that direction is required to be issued to the Respondent for taking necessary actions as per the Code, including filing of necessary Application before the Adjudicating Authority for conclusion of the CIRP .

Resultantly, we allow IA 421 of 2023 and direct the Respondent to take immediate steps for concluding the CIRP process as per the provisions of the Code. A copy of the order be served on the Insolvency and Bankruptcy Board of India (IBBI) to look into the conduct of RP in the matter.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

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