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

ITEM No. 203

IA/769(AHM)2024 in
C.P.(IB) & PrePackaged)/1(AHM)2023

Order under Section 60(5) of IBC, 2016

In The Matter Of:

Vikash gautamchand jain **.....Applicant**
RP of Kethos Tiles Pvt. Ltd

.....Respondent

Order delivered on: 06/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD

IA/769(AHM)2024 in CP(IB) & Pre-Packaged/1(AHM)2023

[*An application filed under* Section 60(5) *of the Insolvency and Bankruptcy Code, 2016* r.w. Rule 11 of NCLT Rules, 2016]

Mr. Vikash Gautamchand Jain
Resolution Professional of
Kethos Tiles Private Limited
204, Wall Street-1,
Near Gujarat College,
Opp. Orient Club,
Ellisbridge, Ahmedabad-380006.

…. Applicant

Order Pronounced On: 06.06.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Vishwas V Shah, Advocate

O R D E R
[Per: Bench]

1. This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") read with Rule 11 of the NCLT Rules, 2016 seeking the following prayers:-

a) *Extend the period of PPIRP of Kethos Tiles Private Limited for 60 days after the last date of PPIRP i.e., 03.05.5024.*
b) *Pass such other or further order as may be deemed fit and proper in the facts and circumstances of the instant case.*

2. It is stated that this Adjudicating Authority vide its order dated 04.01.2024 admitted M/s. Kethos Tiles Private Limited ("Corporate Debtor") under Section 54C of the IBC, 2016 r.w. Rule 4 of Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021. Mr. Vikash Gautamchand Jain was appointed as Resolution Professional ("RP").

3. It is stated that the Committee of Creditors ("CoC") was constituted on 11.01.2024 and the report of the same was filed with this Tribunal on 23.01.2024.

4. It is stated that the following works have been carried by the RP during the period of PPIRP:-

a) *Public Announcement inviting claims from Stakeholders in Business Standard (All Gujarat Edition) & Sandesh (All Gujarat Edition) dated 06.01.2024.*
b) *Constitution of CoC & filing report*
c) *Appointment of Valuers, Transaction Auditor, Other Professional for GST return filing, E-voting agency.*

d) *Publication of Invitation of Resolution Plan (P11) in Financial Express (English & Gujarati) on 25.01.2024 pursuant to which no prospective Resolution Applicant has submitted Resolution Plan.*

e) *Fixation of Minimum Criteria*

f) *Fixation of "Basis for Evaluation" under Regulation 42(1) of PPIRP Regulations, 2021*

g) *Fixation of a certain number/percentage for considering Resolution Plan "significantly better" than another Resolution Plan under Regulation 4292) of PPIRP Regulations, 2021.*

h) *Fixation of "Tick Size" (minimum improvement over another resolution plan in terms of score) under Regulation 42(3) of PPIRP Regulations, 2021.*

i) *Discussion on Base resolution plan submitted by Corporate Debtor to improve the resolution plan with better financial terms.*

5. It is stated that the RP called 3rd meeting of CoC on 30.04.2024. The members of CoC stated that revised base resolution plan submitted by the Corporate Debtor is under consideration. In the said meeting, the CoC noted that the period of PPIRP comes to an end on expiry of 120 days from the date of admission of PPIRP. The CoC further noted that period of PPIRP was expired on 03.05.2024 and the CoC requested the RP to file an application seeking extension of PPRIP period of 60 days. The resolution for seeking extension of PPIRP period was

passed with 91.75% voting on 02.05.2024 by E-voting. A copy of 3rd CoC meeting and copy of e-voting is annexed as Annexure- C and Annexure D respectively.

6. In view of the above, the Applicant has filed this application seeking extension of time of PPIRP period by 60 days after the date of completion of PPIRP (120 days) i.e., on 03.05.2024.

7. Vide order dated 03.06.2024 it is stated as under:

> *"Learned counsel for the applicant was asked to provide the provision of law under which extension of the PPIRP is possible. Learned counsel for the applicant states that there is no express provision in the law, however, there are precedents."*

The Applicant mentioned that there are certain precedents from the coordinate benches of NCLT, however, none was filed by the Applicant. Therefore, these precedents of Coordinate NCLT benches have a persuasive effect and are not binding on us.

8. We have heard the learned counsel for the Applicant and have perused the records.

9. The observations of this Tribunal are as under:

a) The present Application is filed by the Resolution Professional of Kethos Tiles Pvt. Ltd. seeking an extension of the Pre-packaged Insolvency Resolution

Process(PPIRP) by 60 days pursuant to the Resolution passed by the CoC in its 3rd meeting held on 30.04.2024.

b) It is seen from the application that the Period of 120 days mentioned in the PPIRP came to an end on 03.05.2024. There is no Resolution Plan approved by the CoC till date as per the Application.

c) The Section 54D which is reproduced as under:

> *"54D. Time-limit for completion of pre-packaged insolvency resolution process. --(1) The prepackaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.*
>
> *(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or sub-section (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date.*
>
> ***(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified."***

d) A plain reading of Section 54D of Insolvency & Bankruptcy Code, 2016 reveals that a time period of 120 days from the date of commencement of PPIRP is

provided in the Act. As per Section 54D(3), if no Resolution Plan is approved by CoC the RP shall file an Application for Termination of PPIRP. Contrary to the Section Resolution Professional in the present matter has filed an Application seeking extension of time.

e) It is seen that the Counsel for the Applicant relied upon Section 12 of the IBC,2016 to be applied in the PPIRP matters. The Sections which shall be applies to Chapter III-A governing PPIRP mutatis mutandis are stated through Section 54P which is reproduced as under:

> *"54P. Application of provisions of Chapters II, III, VI and VII to this Chapter. --(1) Save as provided under this Chapter, the provisions of sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of this Part shall, mutatis mutandis apply, to the pre-packaged insolvency resolution process, subject to the following, namely: --*
>
> *(a) reference to "members of the suspended Board of Directors or the partners" under clause (b) of sub-section (3) of section 24 shall be construed as reference to "members of the Board of Directors or the partners, unless an order has been passed by the Adjudicating Authority under section 54J";*
>
> *(b) reference to "clause (j) of sub-section (2) of section 25" under section 26 shall be construed as reference to "clause (h) of sub-section (2) of section 54F";*
>
> *(c) reference to "section 16" under section 27 shall be construed as reference to "section 54E";*

(d) reference to "resolution professional" in sub-sections (1) and (4) of section 28 shall be construed as "corporate debtor";

(e) reference to "section 31" under sub-section (3) of section 61 shall be construed as reference to "sub-section (1) of section 54L";

(f) reference to "section 14" in sub-sections (1) and (2) of section 74 shall be construed as reference to "clause (a) of sub-section (1) of section 54E";

(g) reference to "section 31" in sub-section (3) of section 74 shall be construed as reference to "sub-section (1) of section 54L".

with above mentioned averments it is concluded that the provision under of Section 12 do not apply to the Pre-Packaged Insolvency Resolution Process which is under Chapter III-A.

f) The Resolution Professional has not complied with the direction given under the provisions of Section 54D and 54K (11) (12), Section 54K (11), (12) which are reproduced below:

"(11) Where the resolution plan selected under sub-section (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under sub-section (12).
(12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:

Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified."

g) In view of the above findings and as no resolution Plan has been approved within the specific time

period which is 120 days, we are constrained to order Termination of Pre-Packaged Insolvency Resolution Process of the Corporate Debtor initiated by the order dated 04.01.2024.

h) It is also seen that the RP appointed by this Tribunal has misled the Tribunal and has not performed the duties as mandated under the code.

i) The Registry of this Tribunal is directed to send a copy of this order to IBBI and the Indian Institute of Insolvency Professionals of ICAI, the IPA of the RP for taking necessary action in this regard.

10. In view of the above observations and averments, the present Application is Rejected, PPIRP initiated vide order dated 04.01.2024 is hereby terminated and Corporate Debtor is released from rigor of law.

11. Hence **IA/769(AHM)2024** is rejected and **C.P.(IB) & Pre-Packaged)/1(AHM)2023** is dismissed accordingly.

-sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)

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