

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

CP No.1029/I&BP/NCLT/MB/MAH/2017
U/s 9 of the IBC code, 2016 and Rule 6 of I&B
(Application to Adjudicating Authority) Rules, 2016

In the matter of

Pramod Kapse & 17 Others through their
Power of Attorney Holder, Mr. Pramod Kapse

.. Petitioners /
Operational Creditors

Versus

Phadnis Properties Limited,
Kalpavriksh, 2nd Floor,
Survey No. 46/1C/1, D.P. Road,
Karve Nagar, Pune-411052.

Respondent /
Corporate Debtor

Date of Order : 14.09.2017

CORAM:

Hon'ble Shri M.K.Shrawat, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Counsels Present:

For the Petitioner Shri Murtaza Chherawala

For the Respondent None

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

1. The present Company Petition bearing C.P.No.1029/I&BP/NCLT/MB/MAH/2017 is filed by Mr.Pramod Kapse & 17 Others through their Power of Attorney Holder, Mr.Pramod Kapse (Petitioners / Operational Creditors) against M/s. Phadnis Properties Limited, (Respondent / Corporate Debtor), praying:
 - a. to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor
 - b. appoint an Interim Resolution Professional,
 - c. appoint a Resolution Professional,
 - d. award costs of this application to the operational creditors etc.
2. The case was listed for the first time before the Adjudicating Authority Shri M.K.Shrawat, Member (Judicial) on 04.07.2017, wherein the advocate for the petitioner is present. He was directed to propose the name of Insolvency Resolution Professional and the matter was listed for hearing on 10-07-2017. The learned representative of the creditor present before the specially constituted division bench of Shri M.K.Shrawat, Member (Judicial) & Dr.Ashok Kumar Mishra, Member (Technical), the petitioner not proposed the name of Insolvency Professional and the matter was adjourned to 24-07-2017 for compliance. The petitioner appeared before the specially constituted Division Bench comprising of Shri M.K.Shrawat, Member (Judicial) and Shri Ravikumar Duraisamy, Member (Technical).



3. The petitioner submitted a letter dated nil received by the Tribunal on 21-7-2017 regarding written communication received from Interim Resolution Professional Mr.Kiran Kunte (Form-II) the proposed Interim Resolution Professional Regd.No.IBBI/IPA-001/IP-P00074/2017-18/10159. He also certified that there are no disciplinary proceedings pending against him and he is eligible to be appointed as Resolution Professional.
4. The aforesaid Company Petition was filed before the Mumbai Bench on 03-05-2017 and M.A.No.262 of 2017 was filed on 10-07-2017 by operational creditors praying the Tribunal to allow the production of documents such as Balance Sheet of Corporate Debtor for the Assessment Year 2013-14.

Brief facts of the case are as follows:-

5. It is stated that the cause of action for filing this Application first arose when the Corporate Debtor failed to pay its dues to the Operational Creditors herein. The Operational Creditors were the employees and full time consultants of the Phadnis Properties Limited. It further arose on 13-03-2017, when the Corporate Debtor failed to reply to the Statutory Notice issued by the Operational Creditors under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 r/w clause (b) of sub rule (1) of rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor herein. It is therefore stated that the present Application is well within limitation.
6. The operational Creditors state that they are represented through their Power of Attorney holder Mr.Pramod Panditrao Kapse. A copy of Irrevocable Power of Attorney dated 23-10-2016 is submitted.



7. It is stated that since the year 2013, the Corporate Debtor started defaulting in payment of salaries and other emoluments to the Operational Creditors, after which, the default in payment increased continuously and regularly. The outstanding dues payable to the Operational Creditors also continued to increase with each passing month. Additionally, the Corporate Debtor also defaulted in payment of several statutory dues, relating to the deductions made from the salaries of the Operational Creditors. The entire amounts totalling to Rs.72,62,905/- was due as on date of filing the above Application, details are as follows:-

- a. An amount of approximately Rs.64,76,023/- collectively, is payable to the Operational Creditors, towards their salaries, remuneration and other monetary benefits;
 - b. An amount of approximately Rs.3,30,470/- collectively, towards Tax Deducted at Source (TDS); is required to be deposited to the Income Tax Department.
 - c. An amount of approximately Rs.4,35,912/- collectively, was required to be deposited by the Corporate Debtor with Employees' Provident Fund Organization towards Employees' Provident Fund (EPF) Account.
 - d. An amount of approximately Rs.20,500/- collectively, was required to be deposited by the Corporate Debtor with the Commissioner of Profession Tax towards Profession Tax.
8. It is further stated that the total estimated amount payable by the Corporate Debtor is Rs.72,62,905/- which excludes interest and penalties payable on account of the delay in payment thereof. It is further stated that the amount of Rs.72,62,905/- is on the lower side, since the full details of all the employees are unavailable on account of non issuance of salary slips by the Corporate Debtor during the last few years.

9. It is stated that the Corporate Debtor being in a financial crisis and being insolvent, is unable to pay debts of the Operational Creditors. As per the information available to the Operational Creditors, various Civil, Criminal proceedings are pending before various Civil Courts, the Hon'ble Debt Recovery Tribunal and before various Judicial Magistrates, against the Corporate Debtor and its Directors.
10. It is stated that on account of Corporate Debtor not disbursing the hard-earned salaries and other emoluments payable by the Corporate Debtor, the Operational Creditors are facing severe financial problems, since most of the Operational Creditors are middle class persons and totally dependent on their monthly salaries for their survival and the survival of their families.
11. It is stated that inspite of repeated oral as well as written requests, the Corporate Debtor failed to discharge its debts towards the outstanding salaries and emoluments of the Operational Creditors, for the services rendered. The Corporate Debtor failed to pay the legally payable debt of Rs.72,62,905/-, since the Corporate Debtor is insolvent and is unable to pay the same and therefore, corporate insolvency process must be initiated against the Corporate Debtor as per the provisions of section 33 of the Insolvency and Bankruptcy Code, 2016.
12. It is stated that the Operational Creditors have neither received any email/correspondence/letter from the Corporate Debtor nor any complaint/any kind of objection has been raised by the Corporate Debtor with respect to the Operational Debt of the Corporate Debtor payable to the Operational Creditors. Hence there is no dispute raised by the Corporate Debtor with regard to the dues payable towards salaries and other emoluments to the Operational Creditors. Therefore the Corporate Debtor is under a legal liability to pay the same to the Operational Creditors.

13. It is stated that the Operational Creditors were constrained to issue a legal Notice dated 14-11-2016 under Sections 271 (a), (g) and 272 of the Companies Act, 2013. The said notice was received by the Corporate Debtor and the copy of the said notice dated 14-11-2016 is annexed. The Corporate debtor failed to reply to the said notice and also neglected to pay the dues, despite the statutory notice under section 271 of the Companies Act 2013.
14. It is stated that the Operational Creditors issued another notice under section 8 (1) r/w Rule 5 of the Insolvency and Bankruptcy Code, 2016 and copy of the same is annexed. In spite of receipt of the said notice, the Corporate Debtor has neither paid the dues of the Operational Creditors nor replied to the said notice.
15. It is stated that it is evident that the Corporate Debtor is not in a position to meet its financial commitments and is unable to pay its debts to its creditors in the normal and ordinary course of business. The Operational Creditors therefore submit that with a view to ensure that the financial condition of the Corporate Debtor does not further deteriorate and also to ensure that the Operational Creditors receive their dues from the remaining value of assets of the Corporate Debtor, it is just and equitable and in the interest of Justice that Corporate Insolvency Resolution Process may be initiated against the Corporate Debtor and an order requiring the Corporate Debtor to be liquidated may be passed.
16. The Operational Creditors have issued a notice under section 8(1) r/w Rule 5 of the Insolvency and Bankruptcy Code, 2016 on 02-03-2017 to the Corporate Debtor and thus had given a required statutory notice of 10 days. No payments have been received by the Operational Creditors within 10 days of the

receipt of the said statutory notice by the Corporate Debtor and its Directors. Therefore, this Application is in accordance with the relevant provisions of the Insolvency and Bankruptcy Code, 2016.

17. The Petitioner / Operational Creditor also recommended the name of Mr.Kiran Kunte to act as Interim Resolution Professional and requested for moratorium under section 14(1) of the Insolvency and Bankruptcy Code, 2016, also submitted Form No.2.
18. During the entire proceedings before the Adjudicating Authority on various dates as mentioned above, no representative of the Respondent/ Corporate Debtor appeared and also no reply was submitted by the Corporate Debtor in response to the legal / demand notices issued by the operational creditors dated 14-11-2016 under section 271 (a), (g) and 272 of the Companies Act 2013, and notice dated 02-03-2017 issued under section 8(1) r/w Rule 5 of the Insolvency and Bankruptcy Code, 2016 as stated above. Operational creditors also further submitted that the Corporate Debtor failed to reply to the notices and also neglected to pay their dues. We are satisfied that there is debt and default by the Corporate Debtor as stated supra, application submitted by the Operational Creditors are complete and they also proposed the name of IRP.
19. Heard Shri Murtaza Chherawala, Learned Counsel for the Petitioner / Operational Creditor. Considering the facts and circumstances of the matter as discussed supra and we are also satisfied that there is no disciplinary proceedings pending against the proposed IRP. In the result, the Company Petition bearing CP No.1029/I&BP/NCLT/MB/MAH/2017 is admitted by exercising the powers conferred under section 9 of IBC, 2016.

20. By invoking the powers under Sections 10,12,13,14,15,16, 17, 18, 19, 20, 21, 22 and 25 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority passes the following order :-

1) Appointed Shri Kiran Kunte, Regd. No.IBBI/IPA-001/IP-P00074/2017-18/10159, Kamet Society, Flat No. 12, Plot No.88, Rambaug Colony, Paud Road, Kothrud, Pune-411038 to act as Interim Resolution Professional with a direction to initiate appropriate action contemplated in CIRP in accordance with extant provisions of IBC, 2016 and other relevant rules.

2) We hereby declare the following Moratorium U/S 14(1) of Code in respect of the following:

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (54 of 2002).

- (d) The recovery of any Property by an owner or lessor where such property is occupied by or in the possession of Corporate Debtor.
- (e) This order of moratorium shall have effect from the date of communication of this order till completion of Corporate Insolvency Resolution process (CIRP) or till passing an order for liquidation of Corporate Debtor under section 33, whichever is earlier.
- (f) Directed to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016, on www.ibbi.gov.in (designated website of Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to public.ann@ibbi.gov.in, in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in its Official website.
- (g) The IRP is directed to follow all extant Code of IBC and all the rules and regulations framed by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016. Afford full opportunity to all concerned parties to the issue by duly following Principles of Natural Justice;

- (h) Both the petitioner and respondent are directed to extend full-cooperation to the IRP to discharge his statutory functions;
 - (i) Direct the personnel of Phadnis Properties Limited, its promoters or any other person associated with the management of Phadnis Properties Limited, to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.
- 3) Post the case on 10th October, 2017 with a direction to the IRP to apprise the Tribunal, about steps being taken by him from time to time, in instant CIRP, by way of filing an affidavit.
- 4) The IRP is also directed to schedules meeting(s) of concerned parties, verification etc, in such a way that CIRP shall be completed well before the prescribed time limit of 180 days under the Code..

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-

M.K.SHRAWAT
MEMBER (JUDICIAL)