

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

CP (IB) No.37/BB/2017

UNDER RULE-9 OF I&B CODE.

IN THE MATTER OF M/SJAHNVI MAKWANA CONSTRUCTION PRIVATE LIMITED

AND

M/S. NANDANA HOTELS LIMITED

Coram: 1. Hon'ble Shri.Ratakonda Murali, Member Judicial
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Order delivered on 14th December, 2017

For the Petitioner: M/s. Hegde & Rao, K.N. Phanindra Vaishali Hegde, Advocates. &
Smt. Medha Kulkarni, IRP.

For the Respondent : Shri Pavan Jain, Advocate.

BETWEEN:

M/s. Jahnvi Makwana Construction Pvt. Ltd.,
No. 701, 'Pushpkamal', 14, Happy Home Coop.
HSG Society, Nehru Road, Vileparle €,
Mumbai – 400 057.

...

Petitioner

AND

M/s. Nandan Hotels Limited,
Flat No.901, 9th Floor, Barton Center,
M.G. Road, Bangalore – 560 001.

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Respondent

ORDER

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial):

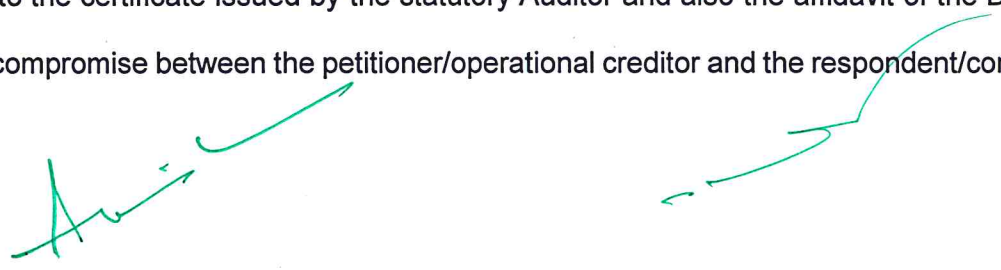
The Company Petition was filed by Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code for initiating Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor. This Tribunal had passed an order dated 17.08.2017 appointing an Insolvency Resolution Professional and also passed moratorium order under Section 14 of the Code. The IRP had filed a report on 04.09.2017. She had made a public announcement as per the requirement of the I&B Code and has further given details of action taken on or after her appointment as IRP.

On 31.08.2017, the IRP had filed a memo along with Photostat copies of Annexures-1 to 5. Annexure-1 is the attested copy of certificate signed by the statutory Auditor Shri Naveen Kumar Gupta M. Chartered Accountant, that there are no loans from any Bank or any financial institution. Annexure-2 is the attested copy of affidavit signed by the Director showing the list of creditors and trade creditors upto 05.10.2017. Attested copy of the affidavit of the Director shown as Annexure-3 showing that there are no loans from any Bank or any financial institution. Annexure-4 is the attested copy of memorandum of understanding. Annexure-5 is the attested copy of the balance confirmation by the only one trade creditor stating that the dues are in ordinary course of business and there is no default.

During the pendency of the matter, Shri Pavan Jain, Advocate, had filed appearance for the respondent/Corporate debtor. The IRP was also present on 06.10.2017 and she had informed the Tribunal that the petitioner/operational creditor had entered into a memorandum of understanding with the Corporate Debtor where-under, the Corporate Debtor undertook to repay the money due to the petitioner/operational creditor.

In this connection, four post-dated cheques were issued by the Corporate Debtor to the petitioner/operational creditor and one among them was already encashed. The IRP has filed a memo dated 05.10.2017. In her memo, the IRP has reported that the Corporate Debtor has no financial creditors.

Subsequently, the IRP has filed another memo dated 26.10.2017 enclosing the original certificate of the statutory Auditor that the company has no unsecured loan outstanding from a person other than its Directors and the relatives. Annexure-2 is the original affidavit given by the Director. Annexure-3 is the affidavit of the Director and Annexure-4 is the memorandum of Understanding. Again the IRP has filed another memo dated 16.11.2017. She has filed the provisional unaudited financial statement showing the balance as on 15.09.2017. She has referred to the certificate issued by the statutory Auditor and also the affidavit of the Director and the compromise between the petitioner/operational creditor and the respondent/corporate debtor.

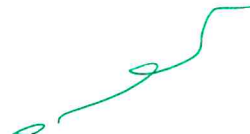
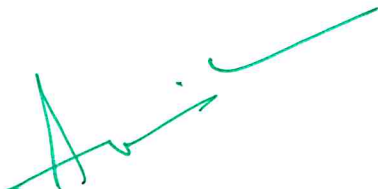


The IRP has submitted a brief note on 01.12.2017 which is a resolution plan as per Section 30(6) of I&B Code. She has stated that the Operational creditor/Petitioner and the Respondent Corporate Debtor have entered into a Memorandum of Understanding and that other creditors are only running trade creditors, business is sustainable and seeking order for setting aside the order for admission under the Insolvency & Bankruptcy Code.

It is stated that the above resolution plan is proposed and accepted by 95% of the creditors in value in the Committee of Creditors meeting held as on 14.11.2017 and even 95% of the value of operational creditors have also voted in favour of the above resolution plan. It is further stated that there are no financial creditors. Unsecured loan from the Director and related parties as on 15.09.2017 amounting to Rs.22,21,11,452/- (Rupees twenty two crores twenty one lakhs eleven thousand four hundred and fifty two only) and the money was given for creation of assets/to renovate the hotel. This investment is made by the Director in improving the business.

We have seen the resolution plan of the IRP. The resolution plan is in the nature of payment to operational creditor. No employee dues are pending. The cut-off date for payment was on 15.12.2017. Out of the four post-dated cheques given as per the Memorandum of Understanding, three cheques were encashed and the total amount paid was Rs.82,25,000/- (Rupees eighty two lakhs and twenty five thousands only) and the last payment of Rs.27,50,000/- (Rupees twenty seven lakhs and fifty thousand only) is due on 15.12.2017. As per the Memorandum of Understanding, the operational creditor shall realise the post-dated cheques and there are no financial creditors and the Committee of Creditors have accepted the resolution plan. In the sense, there was no need to go further against the Corporate Debtor with reference to the I&B Code.

On careful consideration of the resolution plan and also documents appended thereto by the IRP, the Tribunal is of the view that the Insolvency Resolution Process initiated against

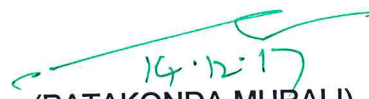


the Respondent-Corporate Debtor had achieved its purpose and the IRP appointed under Section 14 of the Code and the moratorium period shall cease to have effect from today.

As per Section 30 sub-section (2) of the insolvency and Bankruptcy Code, 2016, the Resolution Professional has confirmed the following:

- (i) All insolvency resolution costs are paid.
- (ii) No operational creditor has been paid less than amount to be paid in the event of liquidation under Section 53.
- (iii) One operational creditor Era Hospitality Pvt. Ltd. has also been given post-dated cheque, the last being on 15.12.2017.
- (iv) No employees' dues are pending and liquidity in business is satisfactory. Hence in accordance with Section 31 of the Insolvency and Bankruptcy Code, 2016, the resolution plan is approved and accordingly
 - (i) The moratorium order passed by this Tribunal on 17.08.2017 shall cease to have effect and
 - (ii) The Resolution Professional shall forward all records relating to the conduct of Corporate Insolvency Resolution Process and the resolution plan to the Board to be recorded in its data base.


(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

psp.