

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2114 of 2021

Under Section 66 r/w Section 70, 71, 72, and 73 of the
Insolvency & Bankruptcy Code, 2016

Mr. Jayanti Lal Jain,
The Liquidator

...Applicant

V/s

Mr. Manharlal Shantilal Mehta
& Others

...Respondent

In the matter of
C.P.(IB) No. 1523/MB/2019
Standard Chartered Bank Limited

...Financial Creditor

Vs.

K.K. Welding Limited

...Corporate Debtor

Order delivered on: 21.01.2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant

: Adv. Mitali Bhatt

For the Respondent : Adv. Mansha Khemka a/w Twinkle Khemka

ORDER

Per: Coram

1. The Company petition i.e. 1523/2019 was filed by a Financial Creditor Standard Chartered Bank Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (the "Code") against the Corporate Debtor. This Tribunal vide an Order dated 28 August 2019 admitted the petition resulting into initiation of Corporate Insolvency Resolution Process.
 - 1.1. Mr. Anil Virjdas Rajkotia was appointed as an IRP and subsequently confirmed as the Resolution Professional.
 - 1.2. During the course of CIRP, Transaction Auditor viz. M/s. Parekh Shah & Lodha (Chartered Accountants) were appointed to undertake the transaction audit of the books of the Corporate Debtor for the period from 01 April 2016 to 28 August 2019 (insolvency commencement date).
 - 1.3. Vide Order dated 07 January 2021 passed by this Tribunal, the Liquidation Process of the Corporate Debtor was initiated and the applicant was appointed as the liquidator.
 - 1.4. The Corporate Debtor was established on 29 November 2001 and is engaged in trading of welding electrodes, welding rods, welding cables, safety equipment's, grinding wheels and welding accessories.
 - 1.5. It is stated by the Applicant that the Respondents are the key managerial personnel and the suspended Directors who are directly responsible for the undervalued transactions and falsification of books of accounts.
 - 1.6. The shareholding pattern of the Corporate Debtor comprises of 14,85,000 shares held by:
 - a. Respondent No. 1 constituting 31.72% shareholding;
 - b. Respondent No. 2 constituting 13.80% shareholding.
2. This Application IA 2114/2021 was filed under Section 66,70, 71, 72 and 73 r/w Section 26 of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs :
 - a. *Require the persons as detailed in this above, to pay such sums i.e. Rs. 19.79 lacs by each of the Respondents (aggregating to Rs. 98.95 lacs) as stated herein above*

in respect of benefits received by them from the Corporate Debtor as the Hon'ble Tribunal may direct;

- b. Pass appropriate directions/orders in terms of Section 66, 70, 71, 72 and 73 of the Code including for recovery/restoration of legitimate amounts due to the Corporate Debtor;*
- c. And for such other/further order and/or direction (s) as the facts and circumstances of the case may warrant.*

3. The Applicant submits that based on the available records and the transaction audit report it is evident that the Corporate Debtor had substantial receivables from Debtors.

3.1. The Applicant resorted to a fraudulent act of writing off substantial receivables without any basis or justification. The said write offs have been arbitrary and the Respondents have failed to provide any evidence with regard to attempts to recover the said amounts prior to resorting to such blanket write-offs. The said fact has been brought out by the transaction auditors in their transaction audit report which is annexed to this Application.

3.2. The Applicant submits that the modus operandi of the Respondents is as such that it has led to substantial financial deterioration of the Corporate Debtor and huge losses to the secured financial creditors. Resultant, the Corporate Debtor is now undergoing liquidation.

3.3. It is submitted that the Applicant it is not out of place to mention that out of the total write-off of Rs. 98.95 lacs, approx an amount of Rs. 61.77 lacs were receivable from the related parties of the Respondents which comprises about 63% of the total write-off. Hence it is evident that the money has been siphoned off by the Respondents while the Corporate Debtor bears the burden of such non-genuine write-offs and resultant loss in the books of the corporate debtor.

3.4. The Applicant submits that the total exposure and estimated loss suffered by the Corporate Debtor due to such "fraudulent and wrongful trading" is Rs. 98.95 lacs as can be seen at internal page 4. 25 and Annexure 2 of the transaction audit report which is annexed to this Application. The Respondents ought to be directed to contribute

equally and be brought back to the account of the Corporate Debtor maintained by the Applicant Liquidator.

- a. Respondent No. 1: Rs. 19.79 lacs
- b. Respondent No. 2: Rs. 19.79 lacs
- c. Respondent No. 3: Rs. 19.79 lacs
- d. Respondent No. 4: Rs. 19.79 lacs
- e. Respondent No. 5: Rs. 19.79 lacs

Aggregating to Rs. 98.95 lacs

4. The Counsel for the Respondent made submissions and Respondent is stated to have filed their Reply, however, the same was not found on the DMS Portal. The Counsel had submitted following in defence –
 - a. The transaction period i.e. 01st April, 2016, to 28th August 2019 exceeds the maximum review period allowed under Section 46(1) of IBC, 2016 i.e. 28th August, 2018, to 28th August, 2019.
 - b. These write-offs are legitimate. They represent less than 0.50% of the total sales achieved during the respective fiscal years and were duly sanctioned by the management after due consideration.
 - c. Analysis of Annexure 2 of the Report dated 15.02.2020 indicates that in 90% of cases, the amount written off per party is less than Rs.1 Lac.
5. We have considered the submissions of the Counsel for both the Parties and perused the material on record.
 - 5.1. The Transaction Audit Report further states that sales for the period 1.4.2016 to 30.9.2016 was Rs. 8581.89 lacs. The Transaction Auditor at Para 5.2.A of its Report has stated as follows –

A huge amount was found written off by the company receivable from the Clients for Rs 98.95 lacs on materiality basis. (FY 2016-17- Rs 65.23 lacs and FY 2018-19- Rs 33.72 lacs). Please refer Annexure 2 for the details of such write offs.

There are no records made available to us regarding the nature of the above balances receivable, underlying transaction details, proof of dispatch of goods, details of disputes with the party, balance confirmation, relationship of the above debits with the business objectives, action taken by the company to recover the said balances, necessary approvals from the Board of Directors, etc. Hence there are reasonable doubts over the adequate procedure taken by the company to recover the dues of the company from those underlying parties.

- 5.2. It is case of the Applicant that the said write offs have been arbitrary and the Respondents have failed to provide any evidence with regard to attempts to recover the said amounts prior to resorting to such blanket write-offs. Per contra, the Respondents have explained that the journal entries passed were genuine accounting entries and were accounted for in accordance with the understanding with respective parties, however, they have not placed on record any documentary evidence to show such understanding being in place. Per contra, the Respondents have stated these write-off as legitimate, representing less than 0.50% of the total sales achieved during the respective fiscal years and were duly sanctioned by the management after due consideration, however the Respondents have not placed on record any Board Resolution or any other evidence approving such write-offs.
- 5.3. Section 66 of the Code does not contemplate any look back period. Section 66(1) of the Code provides that Adjudicating Authority may pass an Order requiring the persons, who were knowingly parties to carrying on of the business with an intent to defraud creditors, to contribute to the assets of the Corporate Debtor.
- 5.4. The Applicant has pleaded that a sum of Rs. 61.77 lacs, out of total written off amounts, was receivable from the related parties. The Respondents have not refuted this statement made by the Applicant at Para 9.6 of the Application. On perusal of Annexure 2 of the Transaction Audit Report, we find that a sum of Rs. 51,31,999/- and Rs. 10,46,876/- due from Sumit Traders (Delhi) and S. S. Weld Vasai have been written off. These two parties are stated to be related parties. There is no justification for writing off the amounts due from the related parties of the Respondents, which certainly an act to defraud the creditors by writing off the sums due from a related party. Accordingly, this write off falls within the scope of Section 66 and the

Respondents are liable to contribute to the Corporate Debtors the amount of Rs. 61,78,875/- jointly or severally. It is made clear that the Applicant shall also be at liberty to recover the amounts from Sumit Traders (Delhi) and S. S. Weld Vasai, as unilateral write-off does not discharge them from their debt obligations.

- 5.5. As regards other parties, we note that the remaining amount of write offs amounting to Rs. 37.18 lacs pertain to number of parties and the bad-debts arises in ordinary course of business. The amounts were written off in the year ended on 31.3.2017 & 31.3.2019 and maximum of these amounts were written off in the year 31.3.2019. The Transaction Auditor at Para 5.2A has further stated that “*there are reasonable doubts over the adequate procedure taken by the Company to recover the dues of the Company from those underlying parties*”. Undisputedly, there is no finding that the debts were written off in lieu of some extraneous consideration. The Applicant has also not pleaded so. The debt so written off constitutes approx. 1% of the total receivable outstanding as on 31.3.2017 (as reported at Para 5.2B of Transaction Audit Report). Accordingly, we are of considered view that the write off of Rs. 37.18 of third parties cannot held to be falling within the scope of Section 66 of the Code, as such write-offs may take place in ordinary course of business.
6. As regards prayer for directions/orders in terms of 70, 71, 72 and 73 of the Code, Section 236 of the Code provides for commencement of prosecution for offences under the IBC. Section 236(1) vests the jurisdiction in the Special Court established under Chapter XXVIII of the Companies Act, 2013 and Section 236(2) bars cognizance of offence by a Court save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf. Accordingly, this Tribunal may only refer the matter to the Board to take appropriate action or direct the Resolution Professional/Liquidator to do so.
- 6.1. At para 14 of the Application, the Applicant has sought levy of penalty in terms of Section 70, 71, 72 & 73 of the Code. As discussed above, the fine can only be levied by the Special Court in terms of Section 236 of the Code on a complaint made by Central Government or the Board or any person authorised by Central Government in this behalf. Accordingly, we consider it appropriate to direct Applicant herein to submit a statement of allegations and findings to IBBI for further investigation in the

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matter and for taking appropriate action in terms of Section 236(2) of the Code, if Board finds it fit to do so. We clarify that, upon finding of such investigation, the Applicant shall be at liberty to file another application seeking appropriate relief under the Code. Nonetheless, the Creditors can also file an application before this Tribunal in terms of Section 339 read with Section 447 of the Companies Act, 2013.

7. In view of the above, the Respondents are liable to contribute to the Corporate Debtors the amount of Rs. 61,78,875/- jointly or severally. The said amounts shall be paid within 30 days of this Order, failing which these amounts shall be recoverable along with interest @ 12% p.a. from the date of this Order.
8. In view of the foregoing, IA 2114 of 2021 is partly allowed and disposed of accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)