

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA Nos.464/20 & 855/20  
In  
CP (IB) No. 398/Chd/PB/2018  
(Admitted)**

**Under Section 7, 60(5), 19(2) IBC 2016  
read with Rule 11 of the IBC, 2016**

**IN THE MATTER OF:**

The State Bank of India .....Petitioner-Financial Creditor

Versus

Priknit Retails Limited .....Respondent-Corporate Debtor

And in the matter of:-

**In the matter of IA No. 464/2020:-**

Mr. Vijay Kumar Ghai, Suspended Director  
S/o Sohan Lal Ghai,  
Aged 68 Years,  
House no 3177, Street No.7,  
Gurdev Nagar, Ludhiana- 141001,  
Mobile 9316277777  
vkg0124@gmail.com

...Applicant

Vs.

Sanjay Kumar Aggarwal, Liquidator  
Priknit Retails Limited,  
#14, New Punjab Mata Nagar,  
Main Street Pakhowal Road,  
Ludhiana-141012 (PB)  
Mobile 9876105414

...Respondent

**And in the matter of IA No.855/2020:-**

Mr. Vijay Kumar Ghai,  
Suspended Director  
S/o Sohan Lal Ghai,  
Aged 68 Years,  
House no 3177, Street No.7,  
Gurdev Nagar, Ludhiana- 141001,  
Mobile 9316277777  
vkg0124@gmail.com

...Applicant

Versus

1. Sanjay Kumar Aggarwal, Liquidator  
Priknit Retails Limited,  
#14, New Punjab Mata Nagar,  
Main Street Pakhowal Road,  
Ludhiana-141012 (PB)  
Mobile 9876105414 ...Respondent No. 1
2. State Bank of India,  
Stress Asset Management Branch, Fountain Chowk  
Civil Lines, Ludhiana-141001 ...Respondent No.2

**Order delivered on: 12.01.2024**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

- For Applicant in IA : Ms. Salina Chalana, Advocate  
Nos.464/2020 and  
855/2020
- For Liquidator : Mr Dharam Pal Garg, Advocate
- Liquidator in-person : Mr. Sanjay Kumar Aggarwal
- For State Bank of India : Mr. Harsh Garg, Mr. Pulkit Goyal, Ms. Ramneek Kaur,  
and Mr. Sudhir Sharma Advocates

**Per: Harnam Singh Thakur, Member (Judicial)  
Subrata Kumar Dash, Member (Technical)**

These IAs No. 464/2020 and 855/2020 have been filed by the Suspended Directors against the Liquidator and are based on identical facts and the prayers are also similar. These being interrelated/interconnected are taken up together.

**IA 464/ 2020**

1. The present application has been filed by the Suspended Director of the Corporate Debtor M/s Priknit Retails Limited, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (For brevity referred to as "IBC"), read

with Regulation 7(2)(h), 12 of the Code of Conduct for Insolvency Professional and Section 24 A of the IBC for taking appropriate action against the Resolution Professional Sanjay Kumar Aggarwal for making a false declaration under the IBBI Circular No. IP/005/2018 dated 16th January 2018 deals with Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes and for the removal/change of the Official Liquidator.

2. Brief Facts of the matter stated in the application are listed below;

2.1. The Applicant is a suspended director of the Corporate Debtor, Priknit Retails ("CD" For Brevity), whereas the Respondent, Sanjay Kumar Aggarwal was the Resolution Professional appointed in the course of the CIRP proceedings of the CD. Later, upon the commencement of the Liquidation Proceedings, the Resolution Professional Mr Sanjay Kumar Aggarwal, was also appointed as the Liquidator.

2.2. The Applicant states that the Respondent did not mention that his wife Smt Usha Aggarwal, is a regular employee of the State Bank of India, which was the Financial Creditor and Member of the CoC. Mrs Usha Aggarwal was earlier posted as the Branch Manager at SBI Basant Avenue Branch, Ludhiana, and was later posted at the Local Head Office, State Bank of India, Sector -17, Chandigarh.

2.3. Applicant states that the Respondent was duty bound to disclose if there was any relationship with the Financial Creditor (which would include any relative also), no such disclosure was made. For the same, the Applicant has

reproduced a downloaded copy of the from the site of the Institute of Insolvency Professionals.

2.4. The Applicant has reproduced a copy of the email sent by them to the Respondent for the confirmation of the Declaration on 14 June 2020, as well as a copy of the response by the Respondent dated 15 June 2020, wherein the Respondent has again, made no mention of the above.

2.5. The Applicant relied upon Regulation 7(2)(h) of the Code of Conduct for Insolvency Professionals, which has been reproduced below;

*“ Regulation 7. An Insolvency Professional shall not take up an assignment under the Code if he, any of his relatives, any of the partners or directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director is not independent, in terms of the Regulations related to the processes under the Code, in relation to the Corporate Person/ Debtor and its related parties.”*

The same has been read with Regulation 12 which has been reproduced here below;

*“ 12. An Insolvency Professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable.”*

Further, the IBC, 2016 under section 24-A provides that,

*“[(24A)] “Related Party”, in relation to an individual, means- (a) a person who is a relative of the individual or a relative of the spouse of the individual;*

*(b) a partner of a limited liability partnership, or a partnership firm, in which the individual is a partner;”*

*Explanation- For the purposes of this clause-(a) “relative”, with reference to any person, means anyone who is related to another, in the following manner, namely...”*

3. In his Reply, the respondent Liquidator made the following submissions:

3.1. The Respondent states that the Applicant, being a Suspended Director/ former Director of the Corporate Debtor, has no **locus standi** to file the present application, as the Applicant has no matters that are to be determined by the Liquidator, and therefore he cannot move the present application seeking the removal of the Liquidator in absence of any provisions under law and in view of settled principles of Law. The Respondent Liquidator further states that the application deserves to be dismissed on this score alone. In this context, the Respondent Liquidator relied upon the judicial decision of *Rajive Kaul v. Vinod Kohari and Ors in CA (AT)(INS) No.44 of 2020*, wherein it was observed that an order of liquidation shall be treated as a notice of discharge of the officers including the directors of the Corporate Debtor. The respondent states that in view of the same, the Applicant is not entitled to file the present application in the capacity of a suspended director as per the Liquidation Order Dated 18.05.2020 as well as the provisions of Section 33(7) of the Code, as the Applicant has already been discharged from being a director of the Corporate Debtor.

3.2. The Respondent states that the present application is barred by the principles of res- sub-judice, as the Applicant has already filed a similar

application on the same set of allegations bearing IA no. 855 of 2020 before this Tribunal which is pending adjudication.

3.3. The Respondent further stated that if a former director of a company under liquidation is empowered to interfere and create hindrances in the Liquidation process of the Corporate Debtor, it would result in defeating the objectives of the Code and would cause unnecessary delay in the completion of the liquidation process which needs to be one year in terms of Regulation 44 of the Liquidation process Regulations.

3.5. The respondent liquidator has submitted that the present application deserves to be dismissed for **non-joinder** of the necessary parties in the present application such as the complainant bank or other concerned persons as a party to the present application, which would be necessary for adjudication upon the averments.

3.6. It is submitted that the Liquidator has made the declaration which, as per the statutory provisions, is required to be submitted along with Form 2 by an insolvency Professional with regards to any related parties to the Corporate Debtor as defined under 5(24) of IBC. The Respondent states that merely any relative including the wife of the liquidator working with the Financial Creditor as a permanent employee in a lower capacity is not connected with a decision to influence the CIRP or the Liquidation Process and is in no way associated with the Liquidation proceedings. Thus, as per the Respondent, it doesn't fall within the ambit of declaration of disclosure under Clause A/B/C/D as per the IBBI Circular dated 16.01.2018.

For the above, the Respondent placed reliance on the Hon'ble Supreme Court's decision in *SBI vs M/S Metenere Limited (Civil Appeal No. 2570 of*

2020) where it was held that even a retiree or pensioner of the same bank, can be appointed

as a Resolution Professional by the same bank and there is no conflict of interest therein.

3.7. Respondent states that his actions were taken in good faith, and for that relies upon Section 233 for protection of Liquidator for the action taken in good faith.

3.8. Respondent Liquidator submits that, as per statutory law, the appropriate forum for raising any grievances against the Insolvency professional is to move a complaint against the latter before the IBBI. Respondent states it is relevant to mention here that the applicant/ Suspended Director has already exhausted his remedy by raising the same grievances, the same grounds, and similar issues as raised in the present case before the IBBI. Hence, the Respondent claims that the present application filed by the applicant before this Tribunal is barred by the law of *res judicata*.

4. In the Short Reply filed vide Diary no 00729/5 filed on 07.08.23, submitted by Respondent no 2, i.e, State Bank of India ("SBI" for brevity), the Financial Creditor Institution where the wife of Respondent no 1 is an employee, the following was submitted;

4.1. The Respondent states that the Applicant has primarily filed specific allegations against the Liquidator and not the SBI, and therefore the reply to the same shall be given by the Liquidator/ Respondent no.1 himself.

4.2. The wife of Respondent no 1 is working at the SBI in the post of Deputy Manager and has never dealt with the concerned account of the Corporate Debtor.

**I.A. No. 855/2020**

5. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for taking appropriate action against the Resolution Professional, i.e, Shri Sanjay Aggarwal, for making a false statement, seeking directions to be issued to him to refund all fees/expenses to the creditors received by him through the present liquidation, and further seeking actions against him for making false and misleading statements.
6. The brief facts stated in the application are as follows:

7.1. The applicant is the suspended director of the corporate debtor, while Respondent No.1 and Respondent No. 2 are the Liquidator (Sh Sanjay Kumar Aggarwal) and the Financial Creditor (State Bank of India), respectively of the CD.

7.2. As per the Applicant, the State Bank of India issued a notice of wilful defaulter dated 30.08.2016, wherein Sanjay Kumar Aggarwal is declared as a wilful defaulter.

7.3. It is submitted that the CBI lodged an FIR ( FIR No. RCBD 1/E/0004) dated 10.09.2020 under Section 420, 468, 471 r/w 120-B of the IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act (Amendment) Act, 2018 on account of offences of criminal conspiracy, cheating, forgery using forged documents and genuine and falsification of documents, and criminal misconduct by Union Bank of India, causing wrongful loss of Rs. 26.16 crores in which the Respondent no. 1 is an accused.

7.4. It is stated that SBI also lodged a separate FIR, which was registered on 30.06.2019, based on the forensic audit carried out of the said company from 01.01.2013 till 31.03.2016. Proceedings were initiated by SBI against the

respondent to declare him as a wilful defaulter, yet SBI proposed the name of the respondent as IRP in its application filed under Section 7 of the Code.

7.5. It is averred by the applicant that Smt. Usha Aggarwal, w/o Respondent no 1, is an employee of State Bank of India which is also the financial creditor and a member of the CoC of the CD, and this fact has been brought on record by way of an application, and no declaration of disclosure of his relationship with the financial creditor was made by the respondent. The applicant requested confirmation of the aforementioned relationship via the respondent in several emails; however, the respondent did not provide any such confirmation.

7.6. It is stated by the applicant that an objection was raised by the applicant vide email dated 08.10.2019, wherein it is stated that the minutes of the meeting where the relationship of the respondent with the financial creditor of the company was discussed have been omitted by the respondent from the minutes of the meeting.

7.7. The applicant has referred to Regulations 7(2)(h) and 12, which provide for the code of conduct for Insolvency Professionals, and Section 24A of the Code, which defines related party.

7.8. The applicant asserts that a conflict of interest has arisen and that the respondent and SBI have taken malicious and fraudulent actions that have resulted in the liquidation of the company.

7. In the Reply filed by Respondent No 1 filed vide diary No. 00225/25 dated 31.12.2021 refiled vide Diary No. 02039/01 dated 05.01.2022, i.e, the Liquidator for M/s Priknit Retails Limited, the following was submitted:

8.1. The Respondent states that the applicant has no *locus standi* to file the present application as he is merely a suspended director/ former director of the CD, whose matters are not to be determined by the Liquidator and thus, he cannot move the present application for the removal of the Liquidator in the absence of any provisions under law and view of settled principles of law.

8.2. Respondent submits that the present application is barred by the principle of **res sub-judice** as the applicant has already filed a similar application pending adjudication, bearing IA no 464 of 2020 before this Tribunal on the same set of allegation

8.3. Respondent submits that the present application is a **pressure tactic** to delay the ongoing liquidation proceedings. For the same, the respondent places reliance on **Regulation 44** of the Liquidation Process Regulations states that the Liquidator shall liquidate the CD within one year of the Liquidation Commencement date.

8.4. The Respondent submits that an order of liquidation shall be treated as a notice of discharge of the officers including directors of the Corporate Debtor, and for this submission, the Respondent has placed reliance on the *Hon'ble Appellate Authority's decision in Rajive Kaul v. Vinod Kumar Kothari & Ors. in CA (AT)(INS) No. 44 of 2020*. The Applicant was discharged from being a director of the Corporate Debtor as per the Liquidation order dated 18.05.2020 and the provisions of section 33(7) of the Code, hence the Applicant has no *locus standi* in the Liquidation Process of the Corporate Debtor.

8.5. The Respondent submits that the application deserves dismissal on grounds of non-joinder of necessary parties as the applicant has not arrayed the concerned complainant bank or other concerned persons as a party to the present application.

8.6. It is submitted that the Liquidator has made the declaration which, as per the statutory provisions, is required to be submitted along with Form 2 by an Insolvency Professional with regards to any related parties to the Corporate Debtor as defined under 5(24) of IBC. The Respondent states that merely any relative including the wife of the liquidator working with the Financial Creditor as a permanent employee in a lower capacity, is not connected with a decision to influence the CIRP or the Liquidation Process and is in no way associated with the Liquidation proceedings. Thus, as per the Respondent, it doesn't fall within the ambit of declaration of disclosure under Clause A/B/C/D as per the IBBI Circular dated 16.01.2018. For the above, the Respondent placed reliance on the Hon'ble Supreme Court's decision in *SBI vs M/S Metenere Limited (Civil Appeal No. 2570 of 2020)* where it was held that even a retiree or pensioner of the same bank, can be appointed as Resolution Professional by the same bank and there is no conflict of interest therein.

8.7. Respondent states that his actions were taken in good faith and for that relies upon Section 233 for protection of Liquidator for the action taken in good faith.

8.8. The Respondent, with regard to the Supreme Tex Mart controversy, states that he had consented to act as an additional independent non-executive director with the said company on 10.11.2015, and later he

resigned from the directorship of the said company w.e.f. 14.11.2015. He submits that the company management has intentionally filed his resignation with the Ministry of Corporate Affairs/ RoC in E-form DIR-12 in February 2016. The Respondent submits that the Non-Executive Independent Director cannot be implicated in any criminal proceedings.

8.9. The Respondent Liquidator submits that a notice was issued by the SBI to the Directors of M/s Supreme Tex Mart Limited, which was never sent to or received by the Liquidator. Upon getting to know about the filing of the present application before this tribunal, and upon taking the matter up with the SBI, the officials of the SBI communicated to the Liquidator that the SBI has exonerated the Liquidator and has not classified the Liquidator as a wilful defaulter.

8.10. With regard to the allegation of a case/FIR being filed against the Liquidator, the Respondent Liquidator submits that the allegation is factually incorrect as the Respondent has neither been called by the CBI in the said case/FIR nor has he been informed of the registration of the said case/FIR against him. The Respondent Liquidator states that in the said FIR only the name of the accused is the same as that of the Respondent, i.e, Sanjay Kumar Aggarwal, however, no other detail of the said accused matches with the identity of the Respondent as no DIN no. of the accused has been mentioned in the FIR. The Respondent further submits that the FIR was to be registered against the Promoters/Whole-time Directors/ Guarantors of M/s Supreme Tex Mart Limited wherein only the name of Sh. Sanjay Gupta is missing and accordingly, the name of Sanjay Kumar Aggarwal has been wrongly incorporated in the FIR instead. The Respondent Liquidator

submits that he was/is never involved in the affairs and/or operations or financial matters of M/S Supreme Tex Mart.

8.11. The Respondent submits that the Financial Creditor, i.e, SBI the Executive (Membership & Monitoring) ICSI Institute of Insolvency Professionals (Subsidiary of ICSI & Registered as IPA of IBBI) have already given a clean chit to the Respondent Liquidator.

8. In the Reply filed by Respondent No 2, i.e, the State Bank of India, vide Diary No. 00225/22 on 14.09.2022 and refiled on 18.10.2022 vide Diary No. 00225/22, the following was submitted;

9.1. With regards to the show cause notice dated 30.08.2016, Respondent No. 2 submits that they issued the same to Respondent No. 1, Respondent No. 1 was exonerated by Respondent No. 2 and was not declared a wilful defaulter.

9.2. Respondent No. 2 submits that Respondent No. 1 was appointed as an IRP on 11.09.2019 as an RP on 05.10.2019 and Liquidator on 18.05.2020. i.e., and was not declared as a wilful defaulter by Respondent No. 2. Respondent No.1 was appointed as an IRP on 11.09.2019, as an RP on 05.10.2019, and finally Liquidator for the Corporate Debtor. The FIR was lodged by the Union Bank of India on 10.09.2020 after all of the above appointments had taken place.

9.3. Respondent no 2 states that it never put the name of Respondent No. 1's in any of its FIRs filed with the authorities.

9.4. Respondent no 2 submits that the wife of Respondent no 1 is working with Respondent no 2 in the post of Deputy Manager and has never dealt with the concerned account of the Corporate Debtor.

9.5. Respondent No 2 submits that they are a public sector bank that has employed lakhs of people and therefore cannot be blamed for any kind of bias with the Corporate Debtor.

9.6. The Respondent No 2 submits that the Corporate Debtor is merely shunning away from its liability toward the Respondent No.2 and wants to delay the liquidation process in some manner or the other.

9. We have carefully considered the submissions made in the application by the parties and have also perused the records.

10. The allegations made by the Suspended Director in these applications are mainly as follows:

a) The Liquidator withheld information that his wife was working for the financial creditor as a permanent employee and such non disclosure vitiated the liquidation process;

b) The Liquidator was proceeded against by the Financial Creditor i.e., SBI as a willful defaulter; FIR was registered by the bank- SBI on 30.06.2019 against the Liquidator, also there was another FIR by the CBI against the Liquidator.

11.1. After going through the pleadings, we give credence to the explanation of the bank that though the Liquidator's wife was working as a permanent employee in a lower capacity with the financial creditor SBI, she

had no decision to influence the CIRP and was also no way associated with liquidation proceedings.

11.2 Regarding the allegation that the financial creditor i.e, SBI has brought against the Liquidator, we rely on the averment of the liquidator that the SBI subsequently communicated to the Liquidator that he has been exonerated and the fact that the respondent Liquidator was not an existing Independent Director of the company at the relevant time, and no criminal proceedings lie against him. We also note that the financial creditor SBI has given a clean chit to the Liquidator on the above allegations and returned him as Liquidator. We also give weightage to the averments by SBI that the Liquidator has not been declared the wilful defaulter. Nothing to the contrary has been placed before us during the course of the present hearing.

11.3 As regards the allegation that CBI had lodged an FIR dated 10.09.2020 under various Sections of the Prevention of Corruption Act, 2018, we note that there is nothing on record to rebut the claim of the Liquidator that the FIR was to be registered against the promoter whole time Director of M/s Supreme Tex Mart limited i.e., Sh. Sanjay Gupta but the name of Sh. Sanjay Kumar Aggarwal has been wrongly incorporated in the FIR.

11.4 We also note that subsequent to the filing by FIR on 10.09.2020, there is nothing on record to suggest that any further intimation has been received from the Liquidator in this regard from the CBI. This reinforces the claim that the respondent liquidator was not an accused before the investigating agency. We also take note of the fact that the applicant has

not been able to rebut the contentions of the Liquidator that no FIR was filed by the CBI against him though in the case of M/s Supreme Tex Mart, his name was wrongly incorporated in the FIR. In the absence of any evidence contrary to the claim of the respondent liquidator, no adverse view in this regard is taken.

11.5 We are of the considered opinion that the allegations made in these applications pertain to the domain of the IBBI and the same cannot be agitated before this Adjudicating Authority. The respondent has stated that the petitioner has already filed a complaint on the issues raised in the application before the IBBI, and the same has not been denied by the petitioner.

11.6 After a critical analysis of the averments by the parties, this Bench is of the considered view that the alleged violations can at worst be technical violations and cannot be held to be capable of vitiating the resolution/ liquidation process of the Corporate Debtor.

11. In view of the aforementioned discussions, we find no merit in both the IA Nos.464/20 and 855/20 and the same stand dismissed accordingly.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

January 12, 2024  
RHD/PDP