

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA No. 726 of 2023

In

CP(IB) 934 (IB)2020

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

IN THE MATTER OF

**Mr. Amit Sangal Proprietor of M/s. Nitin
Plastic**

First Floor, Rana Market, Meerut
Road, Muzaffar Nagar – 251003, Uttar
Pradesh.

... Applicant/ Operational Creditor

V/s.

**Mr. Kairav Anil Trivedi RP M/s. Prince
MFG Industries Private Limited**

413 - 414, SHRAMJEEVAN B5, OPP.
LODHA, NEW CUFFE PARADE,
WADALA (E), MUMBAI - 400037
(MAHARASHTRA)

... Respondent No. 1/RP

**Mr. Piyush Gangji Chheda, Suspended
Board of Director of M/s. Prince MFG
Industries Private Limited**

601, 6th Floor, K N Building, Bhandarkar
Road, Matunga East, Mumbai - 400019
(Maharashtra).

... Respondent No. 2/SBOD

**Mr. Rupal Piyush Chheda, Suspended
Board of Director of M/s. Prince MFG
Industries Private Limited**

601, 6th Floor, K N Building, Bhandarkar
Road, Matunga East, Mumbai - 400019
(Maharashtra).

... Respondent No. 3/SBOD

**Mr. Harshvardhan Piyush Chheda,
Suspended Board of Director of M/s.
Prince MFG Industries Private Limited**

601, 6th Floor, K N Building, Bhandarkar
Road, Matunga East, Mumbai - 400019
(Maharashtra).

... Respondent No. 4/SBOD

**Sarvashree Industries Private limited
Manufacturing Contractor of M/s. Prince
MFG Industries Private Limited**

C/o Kundan Lal Agrawal, Ward No. 32,
Praful Marg, Near Jami-Ina Babu Fulwari,
Munceriganj, Begusarai - 851101 (Bihar).

... Respondent No. 5/ Contractor

**Canara Bank Ltd. Member Of Committee
of Creditors of M/s. Prince MFG
Industries Private Limited**

'Kahamalaya' 37, New Marine Lines,
Mumbai - 400020 (Maharashtra).

... Respondent No. 6/ Member of CoC

IN THE MATTER OF

**Mr. Amit Sangal Proprietor of M/s. Nitin
Plastic**

... Operational Creditor

V/s.

**M/s. Prince MFG Industries Private
Limited**

... Corporate Debtor

Order delivered on :- 28.03.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant : Adv. Anuj Solanki

For the erstwhile RP : Adv. Kairav Trivedi

ORDER

Per: - Kuldip Kumar Kareer (Judicial)

1. This IA has been filed by the Applicant i.e. Mr. Amit Sangal Proprietor of M/s. Nitin Plastic (Operational Creditor) seeking the following prayers;
 - a. to issue directions to conduct PUFEE, Forensic Transaction Audit of the Corporate Debtor from some creditworthy audit firm;
 - b. declare the transactions mentioned in the Application as void and to restore the position as it existed before the said transactions;

- c. take appropriate action against the RP under section 47(2) of the Code, 2016 and also to direct the RP to bear the expenses which were incurred on account of breach of law by him while conducting the CIRP;
- d. to direct the concerned authorities to take appropriate action against the Respondents;
- e. stay the proceedings of the CIRP during the pendency of the Application;
- f. reject the Resolution Plan approved by the CoC which has been placed before this tribunal vide IA 2977 of 2022;
- g. direct de-novo commencement of CIRP.

Facts of the Case:

2. The Applicant is the Operational Creditor and had filed an application being CP No. 934/ 2020 under section 9 of the Code for initiation of the Corporate Insolvency Resolution Process against the Prince MFG. Industries Private Limited – Corporate Debtor (hereinafter referred to as 'the CD') before National Company Law Tribunal, Mumbai Bench.
3. The Tribunal admitted the application of the applicant under Section 9 of the Code, initiated CIRP against the CD in CP(IB) 934 (IB)2020 vide order dated 05/10/2021 and appointed Mr. Kairav Anil Trivedi as IRP (Respondent No. 1).
4. Respondent No. 1 Mr. Kairav Anil Trivedi Resolution Professional of M/s. Prince MFG Industries Private Limited (hereinafter referred to as 'RP') constituted Committee of Creditor which consists of Canara Bank (67.36% voting rights), Axis Bank (18.72% voting rights) and

ICICI Bank (13.92% voting rights).

5. The RP in collusion in the Respondent No. 2, 3 and 4, who are the Suspended Board of Directors of the CD (hereinafter collectively referred to as 'SBOD), has done several violations of the of the Code, Regulations and Rules framed under the Code.
6. The SBOD, who was the responsible for management of the CD, had all information of the CD's financial affairs and it siphoned off assets of the CD. It is evident from the Financial Statement from 13/02/2019 to 31/03/2019 (46 Days), which were filed by the CD that the CD had inventories of Rs. 1,58,76,22,304.67/- and what was the balance remaining till the date of initiation of CIRP. No information was given to the Stakeholders. Short Term borrowings of the CD is from SBOD as follows:
 - a. Respondent No. 2 (SBOD 1) — Mr. Piyush Gangji Chheda – Rs. 48,44,48,355.10/-
 - b. Respondent No. 3 (SBOD 3) - Ms. Rupal Piyush Chheda – Rs. 29,12,20,985.76/-
 - c. Respondent No. 4 (SBOD 4) — Mr. Harshvardhan Piyush Chheda – Rs. 7,50,59,781.81/-

Total of above borrowing from SBOD was Rs. 85,07,29,122.67/-. The SBOD knew from the very beginning that the CD would be bankrupt soon and they were in good position to take back the loan amounts from the CD.

7. The SBOD had continuously been taking credits from the other creditors only for the defrauding such creditors in the event of insolvency of the CD. Several Creditors are now fighting cases before

the various Courts of the Country for justice, which has become meaningless after approval of the Resolution Plan by this Tribunal.

8. The Resolution Plan, which was brought by the RP at behest of SBOD, only misguided this Tribunal and violated the important Provisions, Rules and Regulations of the Code and other Law/Acts. The RP has brought the Resolution Plan before this Tribunal to provide safe exit to the SBOD who were responsible for pushing the CD into Bankruptcy. The SBOD wanted to avoid our liabilities in collusion with RP and suppressed all the preferential/undervalued/other transactions of the CD, which resulted in huge losses to the Creditors, Stakeholders, Government Authorities, etc.
9. According to the Note No. 7 of the Audited Balance Sheet of the CD for year ended 31/03/2019, the statutory liabilities of the CD was as follows:

ESI Payable	-	1,54,497
PF & Other Charges Payable	-	3,20,567
Professional Tax Payable	-	800
CST Payable	-	3,22,133
TDS Payable	-	18,47,051

Total Statutory Liability of the CD as on 31/03/2019 was Rs. 26,45,048/-. The CD has not filed its Audited Financial Statement to concerned ROC, therefore, no one knows the exact details of the statutory dues. We believe that there are lot of statutory dues pending to the Government Department/Regulators, etc. Therefore, Resolution Plan vide application no 2977 of 2022 filed by the RP is

liable to be rejected keeping in view the law laid down in following cases:

- a. State Tax Officer Vs. Rainbow Papers Limited - Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020 — Hon'ble Supreme Court of India
- b. Mrs. C.G. Vijayalaxmi Vs. Shri Kumar Rajan, RP & ORS. - Hon'ble NCLAT, Chennai
- c. Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, RP of Jet Airways (India) Ltd. & ORS - Hon'ble NCLAT Principal Bench, New Delhi

10. It is evident and pertinent to note that the RP in collusion with the SBOD clearly avoided the Forensic Audit/PUFE Audit.

Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 reads as follows:

35A Preferential and other transactions-

- (1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.
- (2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.

- (3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.

The RP was in a better position and had several documents, like Bank Account Statements, Accounts, Ledgers, Financial Statements etc. of the CD to find out the Preferential and other transactions of the Corporate Debtor which were carried out by the SBOD to defraud the Creditors; but the RP with mala-fide intention brought the resolution plan without filing the application for avoidance of preferential and other transactions of the Corporate Debtor. Further, even the applicant has limited information available on public domain to find out the Preferential and other transactions which RP in collusion of the SBOD has been trying to conceal. It is thus prima-facie evident that abovementioned preferential and/or other transactions are void and liable to be reversed.

11. It is on record that Respondent No. 6 Member of COC (hereinafter referred to as 'the Canara Bank') alleged in an application that the RP has been working at the behest of the SBOD. Canara Bank has also alleged that the RP was doing work in an extremely unprofessional way.
12. Further, it is noteworthy that the Applicant/Operational Creditor has already made a complaint against the RP to IBBI and disciplinary action may have been initiated against him.
13. The applicant cites section 47 of the Code as follows:

Section 47 - Application by creditor in cases of undervalued transactions

1. Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

2. Where the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that-
 - (a) undervalued transactions had occurred; and
 - (b) liquidator or the resolution professional as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order—
 - i. restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;
 - ii. requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

14. It is further submitted that with fraudulent intention the SBOD has not filed the Annual Report for last 2 Financial Years before initiation Of

CIRP only for defrauding the Creditors of the Corporate Debtor and hiding the actual position of the CD from the Creditors. It was deliberately done by the SBOD for hiding preferential, undervalued and other transactions to jeopardise the interest of the Creditors, Stakeholders, Government Authorities, etc. It is evident that the Corporate Debtor was incorporated as Corporate Body from a Partnership Firm only for defrauding Creditors, Stakeholders, Government Authorities to take undue advantage and misuse of the Code.

The Applicant has further cited here Section 49 of the Code as follows:

Section 49 - Transactions defrauding creditors Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor –

- (a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or
- (b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order— (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and (ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section-

- i. shall not affect any interest in property which was

acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

- ii. shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

As per Section 49 of the Code, the SBOD be directed to produce audited financial statements with explanations of PUFEE transactions of previous years 2 Financial Years before initiation of CIRP.

15. The Applicant has further submitted that Sarvashree Industries Private Limited, Manufacturing Contractor of M/s. Prince MFG Industries Private Limited, the Respondent no. 5 (hereinafter referred to as 'SIPL') is the inactive shell company. The SIPL has not filed its Financial Statement since incorporation i.e., from 16/02/2020 to 31/03/2021 and 01/04/2021 to 31/03/2022.

The Applicant has relied on the section 248 of the Companies Act, 2013 which provides as under:

Section 248: Power of Registrar to remove name of company from register of companies

- (1) Where the Registrar has reasonable cause to believe that -
 - (a) A company has failed to commence its business within one year of its incorporation l[or];
 - (b) a company is not carrying on any business or operation

for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455; or,

- (c) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section IOA; or
- (d) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

- (2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public

notice to be issued in the prescribed manner: Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

- (3) Nothing in sub-section (2) shall apply to a company registered under section 8.
- (4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.
- (5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.
- (6) The Registrar, before passing an order under subsection (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the

name of the company from the register of companies.

- (7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.
- (8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

COMPANIES ACT, 2013 Section 248 - Power of Registrar to remove name of company from Register of Companies

The management of the SIPL hide himself behind the curtain of Corporate Entity. As stated earlier that the Canara Bank strongly believe that the SIPL is related party of the CD.

The relation of the SIPL with the CD proved from the following documents:

- (i) Address of the SIPL in GST portal same on the premises of the CD in Uttarakhand.
- (ii) A Copy of Bank Account Statement of SIPL for disclose the close relationship between the Corporate Debtor.

16. This Tribunal has given emphasis on allegation made by the Canara Bank in Additional Affidavit of application No. 247 of 2022 regarding violation of Section 28 of the Code. According to Canara Bank, on 10/11/2021, the IRP without any authorization, knowledge, or

approval of the COC, executed a MOU falsely representing himself as a RP appointed by the CoC, on a Rs. 100/- Stamp Paper dated 02/11/2021 with a third party i.e., SIPL for manufacturing at Haridwar with retrospective effect from 05/10/2021. The MOU is unregistered, unstamped and not even notarized. This MOU does not mention any DIN of Signatory of SIPL, any Board Resolution for authorization for signing on behalf of SIPL, etc. Copy of the Additional Affidavit and MOU are already on Record vide IA 3525 (MB) 2022 in cp (1B)/934 (MB)/2022, which is filed by the Operational Creditor/Applicant.

17. Further, the Canara Bank has already shared a Forensic Audit Report with the RP and based on said Forensic Audit Report, Canara Bank has initiated further action against the Promoters/SBOD including intimation to CBI, etc. The Canara Bank was aware about the fraud committed by the CD, but they have approved the Resolution Plan without considering the PUF/Forensic Audit and filing an application for avoidance of said transactions. The object of the Application for avoidance of Preferential, Undervalued, other Transactions is to maximize the value of the CD and to benefit all Creditors including Government Authorities, Bankers, Stakeholders, etc. of the CD.

It is thus prima-facie evident that the RP brought this Resolution Plan with malafide intention in collusion with SBOD and being a large shareholder in COC, the Canara Bank should also have given clarification on abovementioned facts and additional affidavit in application 247 of 2022, which was filed by the Canara Bank.

It is thus proved that the RP has been working at the behest of the CD, to avoid the PUF/Forensic Audit with malicious and dishonest

intention, which is causing irreparable loss to the Creditors, Stakeholders, Government Authorities, etc.

Submissions of the Respondent:

18. This reply has been filed by the RP challenging the maintainability of this application without filing detailed point wise reply and thus the RP reserves his rights to file a point wise reply if and when required at a later stage.
19. This application filed by the Operational creditor is prima facie not maintainable u/s 47 of IBC due to specific reasons mentioned here in below.
20. Section 47 of the IBC relates only to UNDERVALUED TRANSACTIONS, where in an Application can be filed by a creditor only when an Undervalued transaction has taken place and the Liquidator or RP has not been reported it to AA.
21. Definition of Undervalued transaction under section 45 of IBC.

A transaction will be considered undervalued if the corporate debtor has made the transaction

- (a) by way of a gift or
- (b) by paying a consideration which is significantly less than what the corporate debtor had paid for the asset.

If such transaction was made in ordinary course of business, section 45 will not apply.

The look back period is two years preceding insolvency commencement date in case of related party transactions, and one-year

preceding insolvency in all transactions which are not related party transactions.

The look back period should commence from the insolvency commencement date and not from the date on which section 43 came into effect.

22. The RP states that the Transaction Audit has been completed for a period of 4 years by a reputed Multinational Firm. Further, Transaction Auditor was appointed with the due approved by the COC after deliberations. There are no Undervalued Transactions u/s 47 of IBC observed by the said Transaction Auditor or by the RP.
23. Therefore, after completing the necessary due diligence on the part of the RP and the Transaction Auditor, no Undervalued transactions were found during the defined period which puts to rest the false and misleading allegations made by the Operational Creditor that the Undervalued transactions had occurred but were not reported by the RP.
24. The Applicant under the guise of this Application u/s 47 is trying to raise issues on fraud which have been specially covered under the separate sections of IBC, where in the OC cannot file any application.
25. The OC has approached this Bench under the guise of this Application u/s 47 with a malafied intention to stall the Resolution Process even when the Applicant is fully aware that the resolution plan has been reserved for orders and his earlier Application in IA 3525 of 2022 has also been heard and reserved for orders.

The claim of the Operational Creditor was accepted by the RP and thus the interest of the Operational Creditor has been covered in the

Resolution Plan. Despite that the OC continues with these malafied acts under the guidance of his PCS/Lawyer.

26. Since this application has been filed by the operational creditor with a malafide intention to stall the resolution plan and this is the third attempt of misrepresentation of facts by the same person and in all these misrepresentations the main prayer has been to stall the resolution plan. Therefore, this application should be dismissed with heavy exemplary cost both on the OC and his lawyer as time and effort of the Bench has been misused not just once but thrice even when the OC and his lawyer are fully aware that the Resolution Plan has been reserved for orders even before filing of the instant Application.

Analysis and Findings:

27. We have heard the Counsel for the parties and have gone through the records.
28. At the very outset it has been pointed by the Counsel for the RP/Respondent that Resolution Plan has already been approved by this Tribunal vide order dated 13.10.2022 passed in IA 2977 of 2022. Therefore, the prayer sought in para (e), (f) and (g) of the prayer clause have been rendered infructuous. The Counsel for the Respondent has further pointed out that during the pendency of the CIRP, Forensic Audit was got conducted and an avoidance Applicant i.e. IA 993 of 2023 has already been filed which is pending for disposal and therefore, the allegations made with regard to the fact that no Forensic Audit was got conducted or the report of the Forensic Auditor was not acted upon is nothing but a fallacious argument to mislead this bench.
29. On the other hand, Counsel for the Applicant has argued that the Respondent/RP has been acting in collusion with and at the behest of

the Suspended Board of Directors and has not brought out undervalued transaction as envisaged u/s 47 of the Code, 2016 and, therefore, action is liable to be initiated against him.

30. The Counsel for the Applicant has further urged that the Application be allowed, and all the reliefs sought should be granted.
31. We have weighed the contentions raised by the Counsel for the parties and have carefully gone through the record.
32. We are of the considered view that so far as reliefs asked for at para (e), (f) and (g) are concerned the same have become infructuous as the Resolution Plan has already been approved by this Tribunal vide order dated 13.10.2022 passed in IA 2977 of 2022.
33. It has rightly pointed out by the Counsel for the Respondent/RP that a Forensic Audit was duly got conducted by the consent and approval of the CoC and an avoidance Application i.e. IA 993 of 2023 has already been filed which is pending for disposal. Therefore, even the prayer clause (a) is also rendered infructuous.
34. As regards prayer clauses (b), (c) and (d) are concerned, the case put forward by the Applicant is that there were certain undervalued transactions in respect of which no action was taken by the Respondent/RP as he was acting in collusion with the Suspended Board of Directors and wanted to save them from the rigors of said section. However, in this regard the Applicant has not brought forward any document or evidence on the basis of which it could be even prima facia be ascertained that some transactions were falling u/s 47 r/w section 49 in respect of which no action was taken by the RP. In this regard, in our considered view, the allegations made in the Application are quite vague and ambiguous and on the basis of the same, no

definite conclusion can be arrived at to hold that there were some transactions falling u/s 47 r/w Section 49 which were not acted upon by the Respondent.

35. As a result of above discussions, we do not find any merit in the present Application and dismiss the same with no order as to cost. **IA 726 of 2023** is therefore, **dismissed being devoid of merit.**

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

ANKIT

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)