

IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANAGALAGIRI

IA (IBC)/127/2023

In

CP (IB)/204/7/AMR/2019

[Application filed under Section 66 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016]

In the matter of

M/S KVR INDUSTRIES PRIVATE LIMITED

Between:

Mr. Maligi Madhusudhana Reddy,
Resolution Professional of M/s. KVR Industries Private Limited,
MMR Lion Corp 4th Floor, HSR Eden,
Road No.2, Banjara Hills, Hyderabad – 500034,
Telangana. Email: mmreddyandco@gmail.com

... Applicant/Resolution Professional

AND

1. Mr. Venkat Rao Kotha
(Suspended Director of the Corporate Debtor)
15-171/1, Chipurapalli Road,
Rajam – 532127, Srikakulam District,
Andhra Pradesh.

... Respondent No.1

2. Mr. Anand Rao Suramalla
(Suspended Director of the Corporate Debtor)
H.No: 6-86, V.P. Colony,
Kothavalasa, GMR Nagar,
Rajam – 532127, Srikakulam District,
Andhra Pradesh.

... Respondent No.2

Date of Order: 06.09.2024

Sd/-

Sd/-

CORAM:

SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels Appearance:

For Applicant/RP : Mr. Maligi Madhusudhana Reddy, IRP

For Respondent No.1 & 2 : Mr. Maharshi Viswaraj, Advocate

ORDER

(Per: Bench)

1. This Application is filed by the Resolution Professional (hereinafter referred as 'Applicant') under Section 66 R/w. 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'IBC') against the suspended directors of M/s. KVR Industries Private Limited ' (hereinafter referred as 'Corporate Debtor'(CD)).

The reliefs sought for in the present application are as follows:

- a. To pass appropriate orders and directions under section 66 of the code to make necessary contributions to the assets of the Corporate Debtor within the stipulated timelines, against the Respondents.
 - b. Pass such orders as the Hon'ble Tribunal may deem fit and proper under section 67 of the code.
2. The CD was placed under the Corporate Insolvency Resolution Process (CIRP) by an order dated 18.02.2022 in C.P. (IB) NO. 204/7/AMR/2019, initially appointing Mr. Purusshotham Behra as the Resolution Professional (RP). Subsequently, by an order dated 07.09.2022, the Applicant was

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appointed as the RP. The Applicant engaged Nukala Sreedhar & Co, Chartered Accountants, to conduct a Transaction Audit of the CD, and upon reviewing the audit report, formed the opinion that the CD had engaged in transactions falling under Section 66 of the IBC. This was communicated to the CoC, leading the Applicant to file the present I.A to investigate these transactions further.

3. The Transactional Auditor, based on their report, observations, and verifications, has opined that payments were made to related parties without clear documentation on the nature and purpose of these transactions. This lack of clarity raises concerns that the payments may constitute mis-utilization of funds and preferential treatment over financial and operational creditors. The following are the findings of the Transactional Audit Report, reproduced hereunder:

Transaction Auditor's Conclusion:

based on the information and audit procedure carries out by us, as the company has not followed proper accounting procedure and no valid explanations is provided to us for the observations made by us from the corporate debtor with respect to various adjustments made in debtors, creditors loan balances and settlements of accounts.

The following are the major observations:

Dr. K. Venkata Rao, unsecured loan during the year 2018-2019 the total banks payments to this account is Rs. 4,00,37,338/- and deposits made in this account is Rs. 1,06,00,000/- and the excess drawn is Rs. 2,94,37,338. Further a Journal Voucher is passed for Rs. 5,30,23,690/- by crediting Ratnam Jute Mills Pvt. Ltd. on 01/10/2018.

Bharath Vummidi Ledger Account: During the year the total Bank payments made is Rs. 7,04,20,000/- with opening Debit balance Rs. 2,61,90,000/- total debits summation is Rs. 9,66,10,000/- whereas his account is credited by journal voucher Rs. 5,75,000/- towards hire charges, Rs. 10,00,000/- adjustments JV passed by crediting Dr. K.V Rao Unsecured Loan and Rs. 3,40,35,000/- by crediting Ratnam Jute Mills Ltd. No proper explanation is received except a general reply is given which is given in the following Annexure II as reply from the CD.

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Conclusion:

However, considering the global review of larger volume of transaction reviewed by us are not considered as fraudulent transaction under Section 66 of the IBC 2016 as there are no solid and verifiable evidence to substantiate the commission of fraud. No inference can be drawn on the adverse side in respect of the review of above transaction. Hence, it is declared that there are no transaction falling under section 66 of the Insolvency and Bankruptcy Code, 2016.

4. Respondent 1 and 2 filed their counters jointly denying the contentions of the Applicant stating that the Applicant has failed to substantiate as to which transactions would attract the provisions of Section 66. Moreover, the Transactional Audit Report clearly concludes that there are no transactions falling under Section 66 of the Code. The respondent further stated that the Company's loan account with State Bank of Hyderabad was declared NPA, leading to an inability to pay dues. To meet government and statutory obligations, payments like GST and provident funds were made through R1's personal account at State Bank of India, with funds transferred from the Company's PNB account and recorded via journal entries. As on the date of the initiation of CIRP, the Company owed R1 Rs. 3,71,97,734/-, with R1 claiming Rs. 2,87,97,389/- in Form C. At the end of FY 2018-19, a debit balance arose from journal entries on 01.10.2018, related to an undertaking to collect Rs. 5,30,23,690/- from M/s. Ratnam Jute Pvt Ltd, which R1 deposited during FY 2019-20, along with additional funds for bank dues, statutory payments, and salaries. As of 31.03.2020, Rs. 29,12,77,407/- was due to R1, with no fraudulent transactions or excessive withdrawals identified.
5. We have heard Learned Counsel for the Applicant, the Respondents and perused the record.

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6. The Central issue in this application concerns whether the reliefs as sought by the Applicant in the extant application under Section 66 of IBC, 2016, can be granted against the Respondents?
7. In the instant case the Applicant made allegations against Respondents based on the Transactional Audit Report that there were payments to the related parties and there is no clarity on the nature and purpose of payments. However, on perusal of the Transactional Audit report, we observe that the report has concluded that there is no solid and verifiable evidence to substantiate the commission of fraud and transactions does not fall under preview of section 66 of IBC. Based on the information provided, the Applicant has not support their claims with evidence. The burden of proving the fraudulent intention of the Respondents falls on the Applicant. However, they failed to present substantial evidence.
8. The Hon'ble NCLAT in the case of *Mr. Tenny Jose vs Mr. Prathap Pillai Resolution Professional of M/s. Tenny Jose Limited Company Appeal (AT) (CH) (INS.) No. 95 / 2023*, explained fraudulent trading, relevant para is extracted below for a ready reference.

Fraudulent Trading: 21. The 'Offence of Fraudulent Trading', unlike 'Fraudulent Preference', involves an 'element of blame'. When whole 'business' of a 'Company', is being carried on, with an 'intend to Defraud', then, Section 66 of I& B Code, 2016, is breached, as opined by this 'Tribunal'. 22. A pre-ponderance of probability, will suffice, in respect of an 'Offence of Fraudulent Trading', under Section 66 of the 'Code', is sufficient, but, the 'probability, must be such that, it must 'satisfy', the 'subjective conscience of the 'Adjudicating Authority' / 'Tribunal'

9. We are of view that the scope of Section 66 of IBC is to demonstrate that the business of Corporate Debtor has been carried on with the “intent to defraud” its creditor or for “any fraudulent purpose”. The proof might even be a pre-ponderance of probability but in the instant case nothing can be derived from the mere allegations without sufficient evidence.

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10. The Hon'ble Apex Court of India in the matters of *Svenska Handels Bunken vs. Indian Charge Chrome and Ors. [(1994) 1 SCC 504]* and *Anil Rishi vs. Gurbaksh Singh [(2006) SCC 558]* held that the allegations of fraud are grave in nature and cannot be *ipsi dixit* of the person raising such allegations and such allegations of fraud cannot be merely on suspicion but need to be pleaded with strong evidence.
11. The decision of the *Hon'ble Supreme Court of India, in Union of India v. Chaturbhai M Patel & Co., reported in (1976) 1 SCC 747*, wherein, it is observed that Fraud, must be established beyond reasonable doubt and the mere suspicion, however may be the circumstances, however strange the coincidences, and however grave the doubt, suspicion alone can never take place of proof.
12. Upon examining the factual background and the observations noted above, it is evident that the allegations made by the Applicant are primarily based on the Transaction Audit Report dated 20.03.2023. This report merely reflects the auditor's opinion and fails to provide substantive evidence of any fraudulent transactions. The Transaction Auditor has only expressed suspicion that the Company did not adhere to proper accounting procedures and that no valid explanations were provided. However, the report lacks conclusive evidence of fraudulent intent on the part of the Respondents and further concludes that the transactions do not fall within the purview of Section 66 of the IBC. The Applicant has relied solely on the report's observations, alleging that the Respondents are responsible for fraud, but has failed to provide any concrete evidence to substantiate these claims.


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Moreover, the Applicant has not precisely determined the amount alleged to have been siphoned off.

13. The burden of proving fraudulent intent is upon the Applicant, who is expected to provide evidence, rather than mere conjecture regarding any misconduct by the respondents. Any such evidence could then be evaluated against the allegations, and preponderance of probability measured for any wrongdoing if more likely than not true. We are presented with no such evidence. Therefore, we are unable to assess the likelihood of fraudulent conduct. Consequently, we are unable to find satisfaction regarding any circumstances suggesting fraudulent intent.
14. In view of the above, we hold that the reliefs as sought by the Applicant in this application under Section 66 of Insolvency and Bankruptcy Code, 2016, cannot be granted against the Respondents.
15. Therefore, IA (IBC)/127/2023 in CP (IB)/204/7/AMR/2019 is hereby dismissed.



SANJAY PURI
MEMBER (TECHNICAL)



RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

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