



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-02
IB-2354/ND/2019
IA/119/2022

IN THE MATTER OF:

Noble Cooperative Bank Ltd.

Vs.

Jarvis Infratech Pvt. Ltd.

....Applicant

.....Respondent

SECTION

U/s 66 R/w Sec. 60(5) of IBC

Order delivered on 17.04.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA/119/2022 in IB-2354/ND/2019 is **allowed**.

**Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)**

**Sd/-
(P.S.N PRASAD)
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI BENCH**

**IA NO. 119 OF 2022
IN
IB NO. 2354/ND/2019**

An application under Section 66 read with Section 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 Noble Co-operative Bank Limited
M.P. Road -1, Raghunathpur, Sector-22,
Noida-201301, Uttar Pradesh

...Financial Creditor

VERSUS

Jarvis Infratech Private Limited
602/96, 6th Floor, Siddharth Building,
Nehru Place, Near Central Bank,
New Delhi-110019

...Corporate Debtor

AND IN THE MATTER OF:

Dinesh Kumar Gupta
Liquidator of Jarvis Infratech Private Limited
B- 1/26, Sector 18
Noida- 201301 (U.P.)

...Applicant

VERSUS

Pantel Technologies Private Limited
Through Resolution Professional Mr. Gagan Gulati
602/96, 6th Floor, Siddharth Building,
Nehru Place, Near Central Bank,
New Delhi-110019

...Respondent No. 1



Mr. Vivek Prakash (Suspended Director & MD)

Flat No. 201, Tower F, The Jewel of Noida,
Sector 75, Noida- 201301 (U.P.)

...Respondent No. 2

Mr. Tarun Kemani (Suspended Director)

Office No. 602/96, Siddharth Building,
Nehru Place, New Delhi-110019

...Respondent No. 3

Order Delivered on:17.04.2023

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Appearances (through Video Conferencing/ physical hearing)

For the Applicant:

***For the Respondent* :**

For the Liquidator: Adv. Govind Bhardwaj, CS Vartika Mittal

ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. The present I.A. No. 119 of 2022 is an application under Section 66 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") along with Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016. The present application is preferred by Shri Dinesh Kumar Gupta ("**Applicant**"), Liquidator of the Corporate Debtor i.e., M/s Jarvis Infratech Private Limited ("**Corporate Debtor**") in compliance of the orders passed by this Adjudicating authority on 03.12.2021 and 16.12.2021.



2. The Applicant/Liquidator has made the following prayers in the application:
- a) *To admit the present application; and/or*
 - b) *To order/instruct Respondent No. 1 (vide powers u/s 66(1) of IBC, 2016) to make contribution to the assets of the Corporate Debtor for the amount of loss incurred on account of fraud as stipulated in Para No. 9 as provided hereinbefore in this application; and/or*
 - c) *To order/instruct Respondent No. 2 & 3 (vide powers u/s 66(2) of IBC, 2016) to make contribution to the assets of the Corporate Debtor for the amount of loss incurred on account of fraud as stipulated in Para No. 10 and 11 as provided hereinbefore in this Application; and/or*
 - d) *To hold Respondent No. 2 & 3 guilty of the fraud committed against the Corporate Debtor as well as Creditors of the Corporate Debtor and instruct/advise the Applicant to institute appropriate legal action against the Respondent No. 2 & 3; and/or*
 - e) *To declare null and void, all the effect and nature of transactions entered by the Corporate Debtor with Respondent No. 1,2 & 3 along with the other transactions with whom the Corporate Debtor had entered into with third parties stated hereinabove; and/or*
 - f) *Any other order as this Hon'ble Tribunal deems fit in this regard in the interest of justice.*
3. The present application was filed on 01.01.2022 before this Adjudicating Authority for seeking necessary directions in respect of the Financial Transactions as prescribed under Section 66 of the Code, which have been entered and executed upon by the promoters, directors and management of the Corporate Debtor, and have adversely affected the financial position of the Corporate Debtor and the substratum of the assets to the tune of R. 2,53,45,487.57 (Two Crore Fifty-Three Lakhs Forty-Five Thousand Four



Hundred Eighty-Seven and Fifty-Seven Paise) approximately of the Corporate Debtor have been eroded through these transactions by the suspended directors and management of the Corporate Debtor during the look back period as prescribed by the Regulations of the Code.

4. Para 9 of the Applicant's Application, on which the Applicant is relying states that there is a benefit to the extent of Rs. 1,35,64,945.57 (One Crore Thirty-Five Lacs Sixty-Four Thousand Nine Hundred Forty-Five Rupees Fifty-Seven Paise) in favor of the Respondent No. 1 i.e., M/s Pantel Technologies Private Limited as detailed hereunder:

Sr. No.	Date of Transaction	Amount (in Rs.)	Nature of Transaction & Remarks
1.	28.02.2019	3,00,000/-	Transferred the debit ledger balance (Debtor) outstanding against I2 K2 Networks in favour of Respondent No.1
2.	02.04.2019	20,00,000/-	Transferred the debit ledger balance (Loan) outstanding against Model Press Pvt Ltd in favour of Respondent No.1
3.	02.04.2019	1,00,122.71/-	Transferred the debit ledger balance (Loan) outstanding against Sohamsaa System Pvt Ltd in favour of Respondent No.1
4.	02.04.2019	2,39,200/-	Transferred the debit ledger balance (Debtor) outstanding against Stock Holding Corporation Ltd in favour of Respondent No.1
5.	02.04.2019	3,00,000/-	Transferred the debit ledger balance (Loan) outstanding against Mr. Raj Singh in favour of Respondent No.1
6.	02.04.2019	5,00,000/-	Transferred the debit ledger balance (Loan) outstanding against Mr. Pawan Kumar Malhotra in favour of Respondent No.1
7.	02.04.2019	2,38,918.55/-	Transferred the debit ledger balance (Debtor)



			outstanding against NKVT Trading & Supplier Pvt Ltd in favour of Respondent No.1
8.	02.04.2019	2,68,470/-	Transferred the debit ledger balance (Debtor) outstanding against Invent World Technology in favour of Respondent No.1
9.	02.04.2019	3,58,206/-	Transferred the debit ledger balance (Debtor) outstanding against ARENA INDIA in favour of Respondent No.1
10.	02.05.2019	24,00,000/-	Transferred the debit ledger balance (Loan) outstanding against Om Sai Vision in favour of respondent No.1
11.	03.08.2019	30,000/-	Transferred the debit ledger balance (Debtor) outstanding against Mr. Roshan Jha in favour of Respondent No.1
12.	03.08.2019	1,90,000/-	Transferred the debit ledger balance (Debtor) outstanding against A2Z Infra Engineers Ltd in favour of Respondent No.1
13.	03.08.2019	4,82,863.60/-	Transferred the debit ledger balances, outstanding against Respondent No.2, Mr. Vivek Prakash, amounting to Rs. 17,00,000/- who despite of returning the said advances to the Corporate Debtor itself, transferred an amount of Rs. 4,82,863/- out of the above stated amount, in favour of Respondent No.1
14.	01.08.2019	01,50,507.50/-	Transferred the debit ledger balance (Debtor) outstanding against Respondent No.1 in favour of Respondent No.1



14.	06.08.2019	36,52,567.50/-	Transferred the debit ledger balance (Debtor) outstanding against Titan Holding Company (On the date of assignment, the amount outstanding against Titan Holding was Rs. 33,48,367/- and in order to reconcile the ledger balance and to bring it to zero balance, the Suspended Directors of Corporate Debtor made payment of Rs. 4,200/- on 14.08.2019 and Rs. 3,00,000/- on 07.09.2019 which shows deliberate attempt to close and tally the ledger balances with fraudulent assignment) in favour of Respondent No. 1
15.	06.08.2019	45,000/-	Transferred the debit ledger balance (Loan) outstanding against Mr. Suman Chakravorty (ex- Director of sister concern and related party Respondent No. 1 itself) in favour of Respondent No. 1
16.	06.08.2019	4,72,744.21/-	Transferred the debit ledger balance (Debtor) outstanding against Syndicate Labels in favour of Respondent No. 1
17.	06.08.2019	20,989/-	Transferred the debit ledger balance (Debtor) outstanding against Synergy Solution and Services in favour of Respondent No. 1
18.	06.08.2019	52,569/-	Transferred the debit ledger balance (Debtor) outstanding against System Spares and Services in favour of Respondent No. 1
19.	14.08.2019	15,000/-	Transferred the debit ledger balance (Loan) outstanding against Mr. Rakesh Kumar of Respondent No. 1 in favour of Respondent No. 1
20.	14.08.2019	25,000/-	Transferred the debit ledger balance (Debtor) outstanding against Mr. Sheraan Arif of Respondent No. 1 in favour of Respondent No. 1



21.	14.08.2019	3,00,000/-	Transferred the debit ledger balance (Advance) outstanding against I2 K2 Networks in favour of Respondent No. 1
22.	23.10.2019	3,99,062/-	A loan of Rs 3,99,062/- outstanding in the account of Mr Ajay Aggarwal was 1st transferred to the account of Mr Vivek Prakash (suspended Director) and subsequently assigned to Respondent No. 1
23.	23.10.2019	11,74,233/-	Transferred the debit ledger balance (Debtor) outstanding against Suspended Director & also the Respondent No. 3 Mr. Vivek Prakash in favour of Respondent No. 1
Total		1,35,64,945.57/-	

5. Further, para 10 of the said Application states that there has been benefit to the extent of Rs. 1,17,80,542 (Rupees One Crore Seventeen Lacs Eighty Thousand Five Hundred Forty-Two), in favor of the Respondent No. 2 & 3, Mr. Vivek Prakash and Mr. Tarun Kemani, respectively as detailed hereunder:

Sr. No.	Date of Transaction	Amount (in Rs.)	Nature of Transaction & Remarks
1.	05.07.2019	58,03,943.25/-	Amount outstanding against World Wide Vision written off without assigning any reason. Loss Attributable to Respondent No. 2 & 3
2.	04.04.2019	19,51,768/-	Amount outstanding against Coramandel Electronic written off without assigning reason & what efforts have been done to recover the dues must be explained. Fraud Attributable to Respondent No. 2 & 3



3.	During FY 2019-20	21,46,097/-	There was stocks of Rs 41,45,551/- as on 01/04/2019 while closing stock as on 10/02/2020 is Rs 19,99,454/-thus stocks of Rs. 21,46,097/- has disappeared while there is no sale during the year. Reason for reduction in stocks not explained. Fraud Attributable to Respondent No. 2 & 3
4.	02.04.2019	56,537/-	TDS Refundable Written Off by Corporate Debtor without assigning any reason and without following due process of law/accounts. Fraud Attributable to Respondent No. 2 & 3
5.	30.04.2019	7,38,018.26/-	GST Ledger Balance Written Off by Corporate Debtor without assigning any reason and without following due process of law/accounts. Fraud Attributable to Respondent No. 2 & 3
6.	02.05.2019	1,19,284/-	Directorate of Prosecution Ledger Balance Written Off by Corporate Debtor without assigning any reason and without following due process of law/accounts. Fraud Attributable to Respondent No. 2 & 3
7.	31.03.2019	2,58,000/-	Amount assigned from Ledger Account of Star Vision India to Mr. Vijay Singh without any justifiable reason and without following any due process of law/accounting. Fraud Attributable to Respondent No. 2 & 3
8.	02.04.2019	7,06,894.52/-	Amount outstanding in the ledger of Star Vision India (Credit balance) illegally assigned in favour of Sciknow Techno Solutions Pvt. Ltd. without any justifiable reason and without following any due process of law/accounting. Fraud Attributable to Respondent No. 2 & 3
Total		1,17,80,542/-	



6. The present application has come up before this Adjudicating Authority to seek directions for the restoration and re-instatement of the financial transactions qualified under Section 66 of IBC, 2016 as observed by the Liquidator and ex-RP, during the CIRP period through a Transaction Audit Report.

7. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -
 - i) That the Hon'ble Adjudicating Authority passed an order initiating CIRP against the Corporate Debtor vide order dated 10.02.2020 in the matter being CP IB No. 2354/ND/2019 titled as *Noble Co-operative Bank Limited v. Jarvis Infratech Private Limited*, to which Mr. Gagan Gulati was appointed as the Resolution Professional.

 - ii) That after the initiation of CIRP, the Applicant started dispensing with the statutory duties and responsibilities as contemplated under the IBC, 2016. The Applicant while discharging such duties encountered various suspicious and doubtful nature of transactions which were executed in violation of Section 66 of the Code. The basic accounting rules were not followed by the suspended Board of Directors of the Corporate Debtor. The Applicant intimated about the same to the Committee of Creditors (CoC) and the CoC deemed it appropriate to sanction the conduct of Transaction Audit of the Corporate Debtor.

 - iii) That consequent to the decision of CoC, the Applicant undertook to proceed with the initiation of Transaction Audit of the Corporate Debtor's Books of Accounts. The Applicant faced great difficulty during such Audit because of lack of Co-operation from the suspended Board of Directors, who neither provided required data/information, nor provided adequate support in providing explanations to the entries/vouchers, bills, transactions, etc. Therefore, on the basis of the records and information available with



the Applicant as well as the Transaction Auditor, a Provisional Transaction Audit Report was submitted by the Transaction Auditors before the Applicant which was further put up before the CoC in 2nd CoC meeting.

- iv) That the Transaction Audit Report revealed that many such transactions were executed in violation of established law and accounting principles and hence, deemed appropriate by the Applicant for reporting before this Adjudicating Authority as well as the Insolvency and Bankruptcy Board of India (IBBI). The Suspended Board of Directors were given ample opportunities to give reasonable justification regarding said transactions, however, no response was received from the said Board of Directors.
 - v) That the Applicant has filed prior applications before this Hon'ble Tribunal to bring forth in the knowledge and cognizance of this Hon'ble Tribunal, certain unusual financial transactions which were entered upon by the suspended Board of Directors and management of the Corporate Debtor during the look back period, which falls under the category of Fraudulent Transactions as laid down under Section 66 of the Code and the same were disposed of accordingly.
 - vi) That the present application has been preferred by the Applicant to disclose and bring forth to the utmost knowledge of this Hon'ble Tribunal, the Fraudulent Transactions covered under the ambit of Section 66 of the Code as disclosed in the Provisional Transaction Audit Report dated 19.08.2020.
8. We have gone through documents on record filed by the applicant and arguments advanced by counsel of the Liquidator.
9. In the present case, the Applicant being the Liquidator of the Jarvis Infratech Private Limited, is seeking to restore the position of the Financial



Transactions identified by the Applicant under Section 66, as it existed before such financial transactions had been entered into by the Corporate Debtor and also to make the Respondent No. 1,2 and 3 liable to contribute towards the assets of the Corporate Debtor for the loss which has been incurred, owing to their fraudulent conduct.

10. Section 66 of the Insolvency and Bankruptcy Code, 2016 deals with Fraudulent Trading or Wrongful Trading. The said Section reads as:

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor.

Explanation. —For the purposes of this section, a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due



diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

11. It is pertinent to mention that M/s P.K. Chad & Co., Chartered Accountants were appointed as Transaction Auditors of the Corporate Debtor. As per the Transaction Audit Report, prepared by the Transaction Auditors, certain observations have been made by the Transaction Auditors:

- a) The management of the Company has wrongfully, deliberately and arbitrarily diverted its assets in form of “accounts receivable/recoverable” aggregating to Rs. 1,31,65,883.57 (One Crore Thirty-One Lacs Sixty-Five Thousand Eight Hundred Eighty-Three Rupees Fifty-Seven Paise) in favour of the “related party” viz. PTPL and Rs. 7,06,894.52 (Seven Lacs Six-Thousand Eight Hundred Ninety-Four Rupees Fifty-Two Paise) in favour of the another “related party” viz. STSPL on preferential basis with the mala-fide intention of wiping off the recoverable/receivable assets from the books of accounts and Balance Sheet of the Company for the benefit of favourite parties on preferential basis thereby leaving the least for the other creditors, which apparently amounts to misappropriation/diversion of the assets and breach of trust of the other creditors of the company and the company itself.
- b) The management of the company has deliberately made a payment of Rs. 1,53,38,176 (One Crore Fifty-Three Lacs Thirty-Eight Thousand One Hundred Seventy-Six) out of the only major receipt of Rs. 1,57,39,397 (One Crore Fifty-Seven Lacs Thirty-Nine Thousand Three Hundred Ninety-seven) during the year 2019-20 to the “related party” viz. STSPL on preferential basis apparently with the mala-fide intention of diverting the funds of the company and depriving the other creditors of the company of their rights.



- c) The management of the company has been found having indulged in misutilization/diversion of its funds by way of advancing/diverting its funds to the directors and other parties without any consideration flowing into the company.
- d) The management of the company has wrongfully, deliberately and arbitrarily written off its assets to the extent of Rs. 86,69,550.46 (Eighty-Six Lacs Sixty-Nine Thousand Five Hundred Fifty Rupees Forty-Six Paise) apparently with the mala-fide intention of wiping off the assets and presenting the unfair and untrue position of profit/loss and assets/liabilities of the company, which is apparently an attempt to defraud the company and its creditors and to misappropriate/divert the assets of the company.
- e) The company appears to have booked unreasonably high expenditure to the Profit & Loss Account for the period ended on 10.02.2020 thereby inflating the loss during that period and possibly misappropriating the funds of the company by such actions.
12. We are of the view that the abovementioned observations are made by the rightly appointed Transaction Auditors and hence, have been taken on record. Further, it is relevant to mention that despite sending of multiple notices by the Applicant, the Respondents made no appearance. The Applicant has further enclosed affidavit of service, which justifies that there has been no default on the part of the Applicant and hence, the said Respondents has been proceeded Ex-parte with, by this Adjudicating Authority. In addition to that, we opine that the abovementioned Transaction Auditors are expert in the concerned field and that there has been no reply on the part of the Respondents, we see no impediment in allowing the present application.
13. Hence, we allow the Liquidator on behalf of the Jarvis Infratech Private Limited to restore the position of the Financial Transactions identified by the Applicant under Section 66, as it existed before such financial



transactions had been entered into by the Corporate Debtor. Further, we direct the respondents to contribute to the assets of the Corporate Debtor, as detailed in Paragraphs 9 and 10 of the instant application based on the expert opinion of the Transaction Auditor leading to formation of opinion/belief on the part of the liquidator.

14. The I.A No. 119 of 2022 stands allowed and hence disposed of in terms of the above direction.
15. Let copy of the order be served to the parties.

Sd/-

Dr. Binod Kumar Sinha
Member (Technical)

Sd/-

Shri P.S.N. Prasad
Member (Judicial)