IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT II

MA. No. 2170/2019

In

CP(IB)No. 166/(MB)/2018

Application filed under section 60(5) & 65 of Insolvency and Bankruptcy Code, 2016.

Dilshad Trading Co. Pvt. Ltd.

...Applicant

V/s

1. **Sikkim Ferro Alloys Limited**
2. **Akshata Mercantile Private Limited**

... Respondents

In the matter of

Sikkim Ferro Alloys Limited

...Operational Creditor

V/s

Akshata Mercantile Private Limited

...Corporate Debtor

Order Pronounced on :- 24.06.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)

For the Applicant : Mr. Zal Andhyarujina, Sr. Counsel

For the RP : Mr. Shyam Kapadia, Counsel

For the CoC : Ms. Fatema Kachwalla, Counsel

ORDER

Per- Shyam Babu Gautam, Member Technical

1. It is an application filed by the Dilshad Trading Co. Pvt. Ltd. (one of Operational Creditor), through its Director, Mr. Vinod Jatia under sections 60(5) and 65 of IBC, 2016, against the Sikkim Ferro Alloys Limited (SFAL/Original Petitioner/ Operational Creditor) and Akshata Merchantile Private Limited (AMPL/Corporate Debtor), seeking following reliefs:

i.) Corporate Debtor should not be allowed to be liquidated, till the investigation of CBI is pending;

ii.) That there be blanket freeze on the sale of the assets of the Corporate Debtor as well as that of its Directors;

iii.) That the RP to submit, at the earliest, the forensic audit report of the Corporate Debtor and to disclose any vulnerable transactions carried out between the Corporate Debtor and any other Topworth Group of Companies;

iv.) That the original Petitioner be sentenced to maximum punishment u/s 65 of the IBC;

v.) That the entire CIRP be declared as non-est;

vi.) Other further reliefs and order as this Tribunal may deem fit and proper.

However, during the course of arguments, the Ld. Counsel for Applicant has not pressed the above-mentioned reliefs and insisted to appoint an independent auditor before passing a liquidation order and also agreed to pay the fees, decided by this Tribunal.

2. On perusal of the Application, it reveals that the present applicant had supplied steel and iron products to the Corporate Debtor as on 31.03.2017 and the outstanding due was Rs. 45,00,000/- for which the Applicant had submitted its proof of claim as an Operational Creditor to the IRP and further to RP on 26.10.2018 and 12.12.2018 respectively and the same was admitted by both of them.

3. The Applicant have submitted that AMPL is part of Topworth Group of Companies being managed by Mr. Abhay Lodha and the same are wilful defaulters to the Banks. The Accounts were declared NPA and AMPL has defrauded the banks. The Applicant has further submitted that there are several criminal cases filed by the CBI which are still under investigation. As the

criminal cases are pending against the directors of both the Companies, applicant could not have faith on the Original Petitioner.

The Applicant submits that as bank officials are also involved in the criminal conspiracy by AMPL. This case has been filed and admitted without any dispute amongst two wilful defaulters. The agenda is to exploit the rules of the Insolvency Code to declare bankruptcy without having to pay any amount to the creditors. Moreover, RP has yet to submit the forensic audit report of the Corporate Debtor and the said report will highlight the vulnerable transactions carried out as either undervalued or fraudulent. The Applicant has further submitted that the entire procedure of filing liquidation proceedings by SFAL against AMPL was done with malafide intentions to defraud the banks and genuine operational creditors and the erstwhile Directors and the people actually responsible for management of AMPL can liquidate their asset and become debt free. The Applicant has prayed that the Corporate Debtor should not be allowed to be liquidated and there should be a blanket freeze on the sale of the assets of the Company as well as of its Directors.

4. Over which the argument of the Respondent is that this Hon'ble Tribunal does not have the jurisdiction to adjudicate the said application as its challenging the Order dated

23.07.2018 viz., admitting the Petition filed under section 9 of IBC. The said application is in nature of a review and this Hon'ble Tribunal does not have the power to review its own order. The Respondent has further taken a preliminary objection that the said application is barred by estoppel as the applicant have already acted upon the order dated 23.07.2018 by lodging the claim before Interim Resolution Professional and which has been duly accepted. The Applicant is now estopped from contending that the order admitting the petition is wrongly passed.

The Respondent has further submitted that the applicant has no locus to file application under section 65 seeking maximum punishment for the Corporate Debtor as it is only the Adjudicating Authority which can, either suo moto or in an application by a person initiating the Corporate Insolvency Resolution Process or liquidation, pass necessary orders. The Respondent has submitted that the application lacks substance and is only based on conjectures.

5. On the request of the Applicant Counsel to appoint any Auditor which this Tribunal may deem fit to audit the books and accounts of the Corporate Debtor, this bench hereby appoints ***CA Dr. Shardul D. Shah, M.com, LL. B, FCA, Phd., 101-B/101-C Jolly Bhawan No. 2, New Marine Lines, Mumbai, 400020; Phone no. 9820287625, 22625086***, to audit the

books and accounts of the Corporate Debtor with a direction to file a report within 15 days from passing this order. The Applicant is hereby directed to pay a fee of Rs. 4,00,000/- (Rupees Four Lakhs Only) to the Auditor appointed by this Tribunal. The Registry is hereby directed to communicate this order to the concerned parties and to the Auditor immediately.

6. Accordingly, the present application is partly-allowed.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**JUSTICE P.N. DESHMUKH**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

24.06.2022