

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-397(PB)/2018

IN THE MATTER OF:

Bank of India

.... Applicant/petitioner

Vs.

Basic India Ltd.

.... Respondent

IN THE MATTER OF:

Mr. Anup Sood

(Resolution Professional of Corporate Debtor,

Basic India Limited)

.... Applicant

Order under Rule 11 of the NCLT Rules, 2016

Order delivered on 24.07.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR

HON'BLE PRESIDENT

SH. S. K. MOHAPATRA,

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP

For the Respondent

Ms. Medha Tandon, Adv. with Ms. Seena Jangid, CS

Mr. Abhay Kaushik, Adv.

ORDER

M.M. KUMAR, PRESIDENT

CA-713(PB)/2019:-

This is an application filed by the Resolution Professional seeking direction to the Ex-Director/Promoter not to leave the country without permission of this Tribunal and to impound their

passports. When the application was heard on 23.04.2019 after notice, we passed the following order:-

“Ld. Counsel for the non applicant respondent seeks and is granted one week time to file reply with a copy in advance to the counsel opposite.

The non applicant-respondent seeks and is granted one week time to file reply with a copy in advance to the counsel opposite. The non applicant Mr. Athar Zia, Mrs. Sheeza Zia & Mr. Mohammad Zulfiqar Ullah Siddiqui are directed not to leave the country without the prior permission of this tribunal.”

2. Reply and rejoinder have been filed and the allegations have been controverted.

3. Brief facts of the case necessary for disposing of the application are that Corporate Insolvency Resolution Process was initiated in respect of Basic India Ltd. -Corporate Debtor when the petition was admitted on 12.10.2018 and the applicant was appointed as IRP who later was confirmed as RP on 06.11.2018. The averments and allegations made in the application shows that the non applicant-respondents namely Mr. Athar Zia, Mrs. Sheeza Zia & Mr. Mohammad Zulfiqar Ullah Siddiqui indulged in under-value, wrongful and fraudulent transactions. An application under Section 25(2)(j) of the Insolvency & Bankruptcy Code has already been filed in that regard which is pending. Reference has been made to the apprehension expressed by the CoC that in the face of direction for

Forensic Auditor, the Ex-Director/Promoter of the Suspended Board of Directors may flee the country. The minutes of the 6th CoC meeting dated 22.03.2019 under "Item –B any other matter with permission of the chair" the Committee of Creditors observed as under:-

"Member of the committee representing Financial Creditor, Mr. R.K. Gupta expressed his fear that in the face of the matters coming up in forensic audit and also that a huge amount was involved the directors of the suspended board of directors of M/s. Basic India Ltd. may leave the country. The matter was discussed and after due deliberations, it was resolved by the committee with 100% vote as under:

Resolved that an application be filed before Hon'ble Adjudicating Authority praying for orders impounding the passports of the directors to prevent them from leaving the country." (Annexure-1)

4. The aforesaid resolution has armed the applicant-Resolution Professional to file the instant application.

5. In the Reply the stand taken is that the non applicant-Ex-Directors have not signed or diverted the funds of the Corporate Debtor-respondent. They are peace living and law binding citizen. They have always co-operated with the resolution Professional. There is not even a single instance which may lead to the conclusion that they may flee the country. The decision of the CoC in its 6th meeting held on 22.03.2019 is arbitrary and the demand for impounding the passport is absolute unwarranted. On the ground that the Resolution Professional and the Bank of India are related, some allegations have been made. It is alleged that the Resolution Professional has retired

as DGM of Bank of India. According to the reply a reference has also been invited to the email sent by the RP on 16.02.2019 and 15.04.2019 seeking some clarification in respect of the observations made by the forensic auditor which have been furnished. It has thus been asserted that the family of Mr. Athar Zia-non applicant-respondent no. 1 is living in India having been employed or working in Delhi and therefore there is no possibility for them to flee the country. The non applicant-repsondent No. 3 who is father of non applicant-respondent No. 2 is a Retd Sqadren leader of Indian Air Force and a senior citizen. He is not in a position to travel abroad. Reliance has been placed on the observation made by the Hon'ble Supreme Court in the case of *Satish Chandra Verma v. Union Bank of India and others (Civil Appeal No. 3802 of 2019)* decided on 09.04.2019.

6. In the rejoinder the applicant has reiterated the allegations made in the application and has stated that the explanation tendered by the non applicant-respondent No. 1 to 3 was placed before forensic auditor and the same has been rejected. It has been pointed out that even in the pending application filed under Section 25(2)(j) of the Insolvency & Bankruptcy Code, 2016 a detailed rejoinder in respect of fraudulent and under value transaction has been filed. The allegations against the Resolution Professional-applicant have also been controverted.

7. We have heard Ld. Counsel for the parties.



8. Ms. Medha Tandon, Ld. Counsel for the applicant-Resolution Professional has argued that the fraudulent transactions and under value transactions involve more than 45 Crores and in a situation of this nature, the CoC in its 6th meeting has rightly apprehended that the non applicant-respondents may flee the country. In order to ensure that the accused remain present to face the process of law, it is necessary that they should not leave the country without prior permission of this Tribunal. The best way to prevent them from leaving this country is to direct them to surrender their passports. According to the Ld. Counsel in a large number of cases such like people have taken refuge in foreign lands and has engaged the state authorities in unnecessary litigation. Therefore, it is necessary to issue direction to the non applicant-respondent not to leave the country and surrender their passport.

9. Mr. Abhay Kaushik, Ld. Counsel for the non applicant-respondent has however argued that the right to travel abroad is a basic human right for it nourishes independent and self- determining creative character of individual. In that regard reliance has been placed on the observations made by Hon'ble the Supreme Court in *Ms. Menaka Gandhi v. Union of India (1978) 1 SCC 248* and Satish Chandra Verma's case (Supra). It has further been submitted that the tribunals do not enjoy any jurisdiction to direct surrendering of passport which amount to impounding it and in that regard the reliance has been placed on the observation made in the case of *Suresh Nanda v. Central Bureau of Investigation*. According to Ld. Counsel the jurisdiction to impound the passport vest with the

passport officer under Section 10(3)(e) of the Passport Act, 1967. In that regard reliance has also been placed on para 7 & 17 Mr. Kaushik has further argued that there is no possibility of the non applicants-respondent No. 1 to 3 to flee the country and apprehensions are wholly unfounded. According to the Ld. Counsel respondents have their families and they have roots in the society. It is further submitted that they have fully co-operated with the Resolution Professional in furnishing each and every information and being law binding citizens, they can't be visited with an order of impounding of their passport.

10. Having heard the Ld. Counsel for the parties and perusing the record we are of the considered view that the non applicant-respondent No. 1 to 3 would be required by the law enforcing agencies and there are substantial allegations which cannot be brushed aside merely on the ground that the non applicants have co-operated with the Resolution Professional or other investigating agency so far or on the ground that the non applicants have roots in society which would prevent them to flee this country. Therefore, the direction issued on 23.04.2019 that non applicants-respondent Mr. Athar Zia, Mrs. Sheeza Zia & Mr. Mohammad Zulfiqar Ullah Siddiqui are not to leave the country without prior permission of this Tribunal is made absolute. Accordingly, we direct the aforesaid persons are not to leave the country without prior permission of this Tribunal.

11. In so far as impounding of passport is concerned we accept the submission made on behalf of non applicants-respondent No. 1 to 3

that the jurisdiction to impound the passport vests in the passport authorities under Section 10 or under Section 10A of the Passport Act, 1967. In that regard we follow the view taken by the Hon'ble Supreme Court in para 17 of the judgment in Suresh Nanda's case (Supra) which reads as under:-

"In the present case, neither the Passport Authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the Passport Authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10-A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport Authority under Section 10(3)."

12. However, it does not mean that the Resolution Professional-applicant is denuded of his right to press for relief by filing appropriate application with the passport authorities under Section 10 or under section 10A of the Passport Act, 1967. The aforesaid position emerges from para 19 of the judgement rendered in Suresh Nanda's case (Supra) wherein Hon'ble Supreme Court held that it would be open to the complainant to approach the passport authorities under Section 10 or Section 10A of the Passport Act, 1967 for impounding of the passport of such like persons in accordance with law.

13. As a sequel to the above discussion we dispose of the application by issuing following direction :-

1. Non applicant-respondent 1 to 3 namely Mr. Athar Zia, Mrs. Sheeza Zia & Mr. Mohammad Zulfiqar Ullah Siddiqui shall not leave the country without taking prior permission of this Tribunal and the direction issued in that regard on 23.04.2019 (supra) are made absolute.
 2. The Resolution Professional – applicant is granted liberty to move an appropriate application, if so advised, to the passport authorities under Section 10 or Section 10A of the Passport Act, 1967 for impounding of the passport of the non applicant-respondent No. 1 to 3. The rejection of the prayer in that regard shall not be construed any bar on the right of the Resolution Professional-applicant to move the passport authorities.
14. The application stands disposed of in the above terms.

Sd/-

(M.M.KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

24.07.2019
Ritu Sharma