

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

IA 2110 of 2023
In
CP (IB) 1178 of 2017

Under section 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF

Devendra P. Jain

(Liquidator of Luthra Water Systems Pvt.
Ltd.)

Top Floor, C/o Swati Jewelers, Spring Field,
Judges Bungalow Road, Vastrapur,
Ahmedabad, Gujarat - 380054.

... Applicant

V/s.

Bell Finvest (India) Ltd. & Anr.

1107, Maker Chamber V, Nariman Point,
Mumbai - 400021.

... Respondent No. 1

Union Bank of India

68/72, Babu Genu Road, P B N. 2587,
Kalbadevi, Mumbai - 400002.

... Respondent No. 2

IN THE MATTER OF

Bell Finvest (India) Ltd. & Anr.

1107, Maker Chamber V, Nariman Point,
Mumbai - 400021.

... Financial Creditor

V/s.

Luthra Water Systems Pvt. Ltd.

22-25 Trinity Chambers, 115-117, Bora
Bazar Street, Fort, Mumbai - 400001

... Corporate Debtor

Order delivered on :- 18.01.2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Applicant/Liquidator : Adv. Tanushree Sogani

For the Suspended Board of
Directors : Adv. Ayush Rajani

For the Respondent : Adv. Vinit J Mehta

ORDER

Per: - Coram

1. The present Application is filed by the Applicant/ Liquidator of Luthra Water Systems Private Limited (hereinafter referred to as the 'Corporate Debtor') under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 ('the Code') seeking directions for appointment of IBA approved forensic auditor on such terms and to direct the Respondents to make proper provision for costs and fees of the forensic auditor.

Facts leading to the present Application:-

2. Pursuant to a Petition filed under Section 7 of the Code against the Corporate Debtor, Corporate Insolvency Resolution Process (CIRP) was initiated vide order of this Tribunal on 15.11.2014. Subsequently, by an order dated 18.12.2019, Liquidation Process was initiated against

the Corporate Debtor.

3. In the Liquidation Process, Stakeholders' Consultation Committee ('SCC') was constituted with Respondents as its constituents. The voting share of Respondent No. 1 is 66.76% and Respondent No. 2 is 24.41%.
4. The Applicant during CIRP got conducted forensic audit of the Corporate Debtor/verified the accounts of the Corporate Debtor and informed the SCC that there was no discrepancy found. The Applicant further submitted that he, on various occasions, sent emails/letters and made follow-ups with the Suspended Board of Directors seeking certain documents and clarifications regarding audit report and balance sheet of the Corporate Debtor; however, the Suspended Board of Directors provided only limited documents/information. In the circumstances, no Application under Sections 43, 45, 50 and 66 of the Code could be filed.
5. The Respondent No. 1 sought to conduct forensic audit of the Corporate Debtor not only for the preceding two years from the date of commencement of CIRP process, but from the beginning of loan granted by the Respondent No. 1 to the Corporate Debtor. However, the SCC Members (Respondent No. 1 and 2) could not arrive at a consensus on the period of forensic audit, the name of forensic auditor (IBA registered), and the fees payable for Auditor's service. In the circumstances, the Applicant herein has filed the present Application.

Analysis:-

6. No written reply has been filed by the Respondents. However, the Counsels appeared for the parties and made submissions during the hearing. We have considered the submissions of the parties and perused the available records.

7. It is observed that the Liquidation Process against the Corporate Debtor was initiated on 18.12.2019 and all the funds realized from sale of available assets and recovered from the debtors were distributed on 15.06.2022 under the provisions of Section 53 of the Code, 2016. On account of lock downs declared due to Covid-19, the Liquidation Process was delayed but the affairs of the Corporate Debtor has now been closed.
8. The Applicant has submitted that the transaction audit conducted during the CIRP for period of two years preceding the commencement of CIRP did not reveal any facts or irregularity which could warrant the filing of Applications relating to avoidance transactions with the Tribunal. As a result, no application under Section 43, 45, 55 and 66 of the Code was filed nor is pending with the Tribunal for adjudication.
9. The Respondent No. 1 has also not brought to our notice any provision of the Code which enables conducting of forensic audit for a period from the date on which it granted financial assistance to the Corporate Debtor and also not brought to our notice any material facts which warranted invocation of the incidental powers of this Tribunal to direct appointment of a forensic auditor to conduct the audit. It is also pertinent to observe that the members of the SCC (Respondent No. 1 and 2) could not arrive at the scope of audit, period, auditor, fees, etc. In such a scenario, we do not consider it appropriate to direct engagement of an auditor even from the list of IBA approved forensic auditors to conduct an audit at this belated stage as no purpose would be served by appointing a forensic auditor when distribution of assets has already taken place.

10. In view of the above, the Application deserves to be dismissed. Hence,
IA No. 2110 of 2023 stands **dismissed**.

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

ANKIT

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)