

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2071 of 2021

Under Section 66(1) r/w Section 70, 71, 72, and 73 of the
Insolvency & Bankruptcy Code, 2016

Mr. Jayanti Lal Jain,
The Liquidator

...Applicant

V/s

Mr. Manharlal Shantilal Mehta
& Others

...Respondent

In the matter of
C.P.(IB) No. 1523/MB/2019
Standard Chartered Bank Limited

...Financial Creditor

Vs.

K.K. Welding Limited

...Corporate Debtor

Order delivered on: 21.01.2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant

: Adv. Mitali Bhatt

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For the Respondent : Adv. Mansha Khemka a/w Twinkle Khemka

ORDER

Per: Coram

1. The Company petition i.e. 1523/2019 was filed by a Financial Creditor Standard Chartered Bank Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (the "Code") against the Corporate Debtor. This Tribunal vide an Order dated 28 August 2019 admitted the petition resulting into initiation of Corporate Insolvency Resolution Process.
 - 1.1. Mr. Anil Virjdas Rajkotia was appointed as an IRP and subsequently confirmed as the Resolution Professional.
 - 1.2. During the course of CIRP, Transaction Auditor viz. M/s. Parekh Shah & Lodha (Chartered Accountants) were appointed to undertake the transaction audit of the books of the Corporate Debtor for the period from 01 April 2016 to 28 August 2019 (insolvency commencement date).
 - 1.3. Vide Order dated 07 January 2021 passed by this Tribunal, the Liquidation Process of the Corporate Debtor was initiated and the applicant was appointed as the liquidator.
 - 1.4. The Corporate Debtor was established on 29 November 2001 and is engaged in trading of welding electrodes, welding rods, welding cables, safety equipment's, grinding wheels and welding accessories.
 - 1.5. It is stated by the Applicant that the Respondents are the key managerial personnel and the suspended Directors who are directly responsible for the undervalued transactions and falsification of books of accounts.
 - 1.6. The shareholding pattern of the Corporate Debtor comprises of 14,85,000 shares held by:
 - a. Respondent No. 1 constituting 31.72% shareholding.
 - b. Respondent No. 2 constituting 13.80% shareholding.
2. This Application IA 2071/2021 was filed under Section 66,70, 71, 72 and 73 r/w Section 26 of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs :
 - a. *Require the persons as detailed in this above, to pay such sums i.e. Rs. 121.39 lacs by each of the Respondents (aggregating to Rs. 606.94 lacs) as stated herein above*

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in respect of benefits received by them from the Corporate Debtor as the Hon'ble Tribunal may direct;

- b. Pass appropriate directions/orders in terms of Section 66, 70, 71, 72 and 73 of the Code including for recovery/restoration of legitimate amounts due to the Corporate Debtor;*
- c. And for such other/ further order and/or direction (s) as the facts and circumstances of the case may warrant.*

3. The Applicant submits that based on the available records and the transaction audit report it is evident that the Corporate Debtor had substantial receivables from Debtors which have been adjusted by passing journal entries against credit balances of other parties without any genuine business reasons and is merely an attempt to wipe out all the debtors which are secured with the financial creditors.

3.1. The Applicant resorted to a fraudulent act of writing off substantial receivables without any basis or justification aggregating to Rs. 6.06 crores. The said write offs have been arbitrary and the Respondents have failed to provide any evidence with regard to attempts to recover the said amounts prior to resorting to such blanket write-offs. Passing journal entries to adjust the amounts receivable from Debtors aggregating to Rs, 606.94 lacs against the creditors balances is squarely covered under section 66 of the Code.

3.2. The said fact has been brought out by the transaction auditors in their transaction audit report which is annexed to this Application. It is also pertinent to note that after completing the in-depth analysis of the financials of the Corporate Debtor and the cash trail the transaction auditors have categorically stated at internal page 87 that the account should be classified as "fraud".

3.3. The Applicant submits that the modus operandi of the Respondents is as such that it has led to substantial financial deterioration of the Corporate Debtor and huge losses to the secured financial creditors. Resultant, the Corporate Debtor is now undergoing liquidation.

3.4. The Applicant submits that the total exposure and estimated loss suffered by the Corporate Debtor due to such "fraudulent and wrongful trading is Rs. 606.94 lacs as

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can be seen at internal page 5, 27 and 87 read with Annexure 2 of the transaction audit report which is annexed to this Application. The Respondents ought to be directed to contribute equally and be brought back to the account of the Corporate Debtor maintained by the Applicant Liquidator.

- a. Respondent No. 1: Rs. 121.39 lacs
- b. Respondent No. 2: Rs. 121.39 lacs
- c. Respondent No. 3: Rs. 121.39 lacs
- d. Respondent No. 4: Rs. 121.39 lacs
- e. Respondent. No. 5: Rs. 121.39 lacs

Aggregating to Rs. 606.94 lacs

4. The Counsel for the Respondent made submissions and Respondent is stated to have filed their Reply, however, the same was not found on the DMS Portal. The Counsel had submitted following in defence –
 - a. The transaction period i.e. 01st April, 2016, to 28th August 2019 exceeds the maximum review period allowed under Section 46(1) of IBC, 2016 i.e. 28th August, 2018, to 28th August, 2019.
 - b. The journal entries passed were genuine accounting entries and were accounted for in accordance with the understanding with respective parties: Hence, there does not arise any question of these being not justified.
5. We have considered the submissions of the Counsel for both the Parties and perused the material on record.
 - 5.1. The Transaction Auditor at Para 5.2.D of its Report has stated as follows –

*We have also observed various instances, on test check basis, wherein the **balance of Client ledgers for Rs 606.74 lacs were transferred to the another Client Ledger.** These types of adjustments create reasonable suspicion over the genuineness of the balances of the ledgers of the trade receivables as well as incurring of the balances through genuine trade transactions.*
 - 5.2. The party wise details of such journal entries is given in Annexure 5 of the Transaction Audit Report.

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(For the period from 01.04.2016 to 31.03.2019)

Particulars	Off Setting Ledger	Nature of Off Setting Ledger	Date of Adjustment	Amount of Adjustment - Dr/(Cr)
INSTANCES WHERE THE BALANCE OF ONE TRADE RECEIVABLE WAS ADJUSTED WITH ANOTHER TRADE RECEIVABLE				
Aikya Infraprojects Pvt Ltd	Theme Lights Pvt Ltd (D)	Trade Receivables	31/03/2018	(3,52,13,239)
Aikya Infraprojects Pvt Ltd	ACME TRADING CO (ULHASNAGAR)	Trade Receivables	31/03/2018	(1,67,86,151)
Aikya Infraprojects Pvt Ltd	Erman Metals Pvt Ltd	Trade Receivables	31/03/2018	(64,71,023)
FRIGMAIRES ENGINEERS-KHOPOLI	UNITECH ENGINEERING CO	Trade Receivables	01/09/2018	16,20,000
FRIGMAIRES ENGINEERS-KHOPOLI	UNITECH ENGINEERING CO	Trade Receivables	18/09/2018	3,83,400
INNOVATION UNLIMITED-VILE PARLE	VIMAL INTERNATIONAL-NAGDEVJI X LANE	Trade Receivables	31/12/2017	1,99,999

INSTANCES WHERE THE BALANCE OF ONE TRADE RECEIVABLE WAS ADJUSTED WITH TRADE PAYABLE				
Aikya Infraprojects Pvt Ltd	Blue Sea Commodities pvt ltd ©	Creditor - Trade	31/03/2018	(14,70,36,615)
Marshall Multiventures (I)Pvt Ltd	MIRAGE MULTIVENTURES PVT LTD(C)	Creditor - Trade	31/03/2018	(13,21,07,129)
RAMAN TRADERS/DELHI/V	Pranajali Enterprises Pvt Ltd ©	Creditor - Trade	31/03/2017	(7,01,31,697)
Raman Traders (Delhi)/V	Ghamm Steel Services Pvt Ltd	Creditor - Trade	31/03/2017	(2,13,71,224)
Raman Traders (Delhi)/V	HARI TRADING CORPORATION(C)	Creditor - Trade	31/03/2017	(1,64,34,638)
Rajesh Traders(D)	ESAB INDIA LTD.(TARATAL FTY.) (L41CE007)	Creditor - Trade	31/03/2017	(1,01,70,593)
HEALUS INDIA PVT.LTD.	MIRAGE MULTIVENTURES PVT LTD(C)	Creditor - Trade	31/03/2018	(94,51,219)
Raman Traders (Delhi)/V	VINAYAK TRADING CORPORATION(C)	Creditor - Trade	31/03/2017	(83,28,910)
SURAJ TRADE	Pranajali Enterprises Pvt Ltd ©	Creditor - Trade	31/03/2017	76,76,528
Theme Lights Pvt Ltd (D)	Blue Sea Commodities(C)	Creditor - Trade	31/03/2018	70,64,758
AMOOPLYA ENGINEERS PVT LTD. (A347)	CHANDAN ENTERPRISES(C)	Creditor - Trade	31/03/2019	(70,00,000)
KAFILA FORGE LIMITED	New Age False Ceiling Pvt Ltd ©	Creditor - Trade	31/03/2018	(68,37,155)
Rajesh Traders(D)	ESAB INDIA LTD.(AMBATTUR FTY.)(C)	Creditor - Trade	31/03/2017	(67,16,191)
IHI CORPORATION	MURUJ ELECTRODE PVT LTD(C)	Creditor - Trade	31/03/2018	(55,73,465)
BAJAJ INDUSTRIAL ALLOYS PVT LTD-CHA	ADOR WELDING LTD.(CHENNAI)	Creditor - Trade	31/03/2017	(48,84,002)
KASEGAON EDUCATION SOCIETY,	MURUJ ELECTRODE PVT LTD(C)	Creditor - Trade	31/03/2018	(41,26,546)
Rajesh Traders(D)	SAI INDO METAL RESOURCES PVT LTD(C)	Creditor - Trade	30/06/2017	(40,00,000)
INDIANA TRADERS(MARINE LINES)/V	ADOR WELDING LTD.(RAIPUR)	Creditor - Trade	31/03/2017	(39,47,774)
BAGHERWAL ELECTRODES PVT.LTD. (C)	J K Steel CORPORATION(C)	Creditor - Trade	31/03/2017	28,04,117
Singh Trading Company	AMOOPLYA ENGINEERS PVT.LTD. (L41CA072)	Creditor - Trade	31/03/2018	25,00,000
K.K.WELDING PVT.LTD.SALE (K052)	MURUJ ELECTRODE PVT LTD(C)	Creditor - Trade	31/03/2018	(22,01,029)
Rajesh Traders(D)	ESAB INDIA LTD.(NAGPUR FTY.) (L41CE008)	Creditor - Trade	31/03/2017	(21,02,850)
BAJAJ INDUSTRIAL ALLOYS PVT LTD-CHA	Murli Electrode Pvt Ltd ©	Creditor - Trade	31/03/2018	(17,62,857)
IHI CORPORATION	Murli Electrode Pvt Ltd ©	Creditor - Trade	31/03/2018	(17,34,061)
Rajesh Traders(D)	ESAB INDIA LTD.(FCW PLANT)	Creditor - Trade	31/03/2017	(17,25,424)
Raman Traders (Delhi)/V	SYNDTECH POLYMERS PVT LTD(C)	Creditor - Trade	31/03/2017	(15,52,800)
BAGHERWAL ELECTRODES PVT.LTD.	Murli Electrode Pvt Ltd ©	Creditor - Trade	31/03/2018	(12,91,331)
Rajesh Traders(D)	ADOR WELDING LTD.(SILVASSA)	Creditor - Trade	31/03/2017	(11,43,581)
YOGEEAENTERPRISES(ULHASNAGAR)/V	MURUJ ELECTRODE PVT LTD(C)	Creditor - Trade	31/03/2018	(9,61,744)
BAGHERWAL ELECTRODES PVT.LTD.	AMOOPLYA ENGINEERS PVT.LTD. (L41CA072)	Creditor - Trade	31/03/2017	6,92,209
AMOOPLYA ENGINEERS PVT.LTD. (A347)	CHANDAN ENTERPRISES(C)	Creditor - Trade	30/03/2019	(6,60,859)
Ars Ravechi Ratna	AMOOPLYA ENGINEERS PVT.LTD. (L41CA072)	Creditor - Trade	17/05/2017	5,50,000
PIONEER TRADING CORPORATION (P17)	MIRAGE MULTIVENTURES PVT LTD(C)	Creditor - Trade	31/03/2018	(3,68,982)
SHREE SAI WELDING COMPANY	AMOOPLYA ENGINEERS PVT.LTD. (L41CA072)	Creditor - Trade	31/03/2018	2,66,506
KAFILA FORGE LIMITED	MIRAGE MULTIVENTURES PVT LTD(C)	Creditor - Trade	31/03/2018	(2,59,132)
SHREE SAI ENTERPRISES(VADGADI)/V	AMOOPLYA ENGINEERS PVT.LTD. (L41CA072)	Creditor - Trade	31/03/2018	2,13,750
AMOOPLYA ENGINEERS PVT.LTD. (A347)	CHANDAN ENTERPRISES(C)	Creditor - Trade	03/04/2018	1,85,409
Rajendra Damodar Shinde	ADOR WELDING LTD.(CHENNAI)	Creditor - Trade	31/03/2017	(1,80,000)

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- 5.3. It is case of the Applicant that passing journal entries to adjust the amounts receivable from Debtors aggregating to Rs, 606.94 lacs against the creditors balances is squarely covered under section 66 of the Code. It is further stated that the said write offs have been arbitrary and the Respondents have failed to provide any evidence with regard to attempts to recover the said amounts prior to resorting to such blanket write-offs. Per contra, the Respondents have explained that the journal entries passed were genuine accounting entries and were accounted for in accordance with the understanding with respective parties, however, they have not placed on record any documentary evidence to show such understanding being in place.
- 5.4. Undoubtedly, the receivables are Property, accordingly transfer of such receivables, even if by way of book entry without any direct cash out-flow would constitute transfer of a property. The transfer of receivable has the effect of discharging the debt due from the Corporate Debtor. Accordingly, such transfer of receivables to the creditors are in nature of preferential treatment accorded to such creditors. The Applicant has sought the orders in terms of Section 66 of the Code, meaning thereby such journal entries are claimed to have accorded fraudulent preference to such creditors.
- 5.5. Section 66 of the Code does not contemplate any look back period. Section 66(1) of the Code provides that Adjudicating Authority may pass an Order requiring the persons, who were knowingly parties to carrying on of the business with an intent to defraud creditors, to contribute to the assets of the Corporate Debtor. The Transaction Auditor at Para 1.6 of its Report has raised suspicion over the genuineness of the balances of the ledgers of the trade receivables as well as incurring of the balances through genuine trade transactions. After taking other findings stated in the Report into consideration, the Transaction Auditor has stated that the account of the Corporate Debtor should be classified as "Fraud". The Applicant, herein, has proceeded on the basis of conclusions in this Report.
- 5.6. From the allegation in the Report, it follows that the transactions creating receivables have itself been looked with suspicion, leading to further conclusion that the sale transactions creating such receivable may also be non-genuine. It is settled legal proposition that suspicion, howsoever strong, can not substitute proof. In our considered view, the applicant has sought avoidance of these transactions in terms of

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section 66 of the Code merely on inference drawn by the Transaction Auditor, however, such inference is based on contradictory proposition. The inference of Transaction Auditor that sale transactions creating such receivable may also be non-genuine is contradictory to the assertion of the applicant that transfer of such receivable by journal entries to settle the creditor's account has caused loss to the Corporate Debtor. After considering the pleadings in the application and observation in the Transaction Audit Report, we are of considered view that the allegations made in the Application need to be further investigation to have it substantiated because a non-genuine receivable (which in reality does not exist) can not cause loss to the Corporate Debtor. If the sale transactions creating such non-genuine receivable itself may be non-genuine, this leads to inevitable conclusion that either the inventory corresponding to the value of sale transaction has been siphoned of or the purchase of such inventory is also in-genuine. If we look at the other part of the report, we find that the Transaction Auditor has referred to several instances of circular transactions of bogus sale and purchases at Para 1.11 of its Report and has given some examples in this relation. However, it is not clear whether any of receivables, being subject matter of settlement through journal entries, was also created out of such circular trading. In the absence of necessary details, we are of considered view that no order in terms of Section 66 of the Code can be passed.

- 5.7. As regards prayer for directions/orders in terms of 70, 71, 72 and 73 of the Code, Section 236 of the Code provides for commencement of prosecution for offences under the IBC. Section 236(1) vests the jurisdiction in the Special Court established under Chapter XXVIII of the Companies Act, 2013 and Section 236(2) bars cognizance of offence by a Court save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf. Accordingly, this Tribunal may only refer the matter to the Board to take appropriate action or direct the Resolution Professional/Liquidator to do so.
- 5.8. At para 14 of the Application, the Applicant has sought levy of penalty in terms of Section 70, 71, 72 & 73 of the Code. As discussed above, the fine can only be levied by the Special Court in terms of Section 236 of the Code on a complaint made by Central Government or the Board or any person authorised by Central Government in

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this behalf. Accordingly, we consider it appropriate to direct Applicant herein to submit a statement of allegations and findings to IBBI for further investigation in the matter and for taking appropriate action in terms of Section 236(2) of the Code, if Board finds it fit to do so. We clarify that, upon finding of such investigation, the Applicant shall be at liberty to file another application seeking appropriate relief under the Code. Nonetheless, the Creditors can also file an application before this Tribunal in terms of Section 339 read with Section 447 of the Companies Act, 2013.

6. In view of foregoing, IA 2071 of 2021 is partly allowed and disposed of accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)