

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

**IA 1699 and IA 2094 of 2020
IN
CP (IB) 2285/MB/C-II/2018**

In the Application of IA 1699 of 2020

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“code”).

Nishant Singhal

...Applicant

Vs

Mr. Hasti Mal Kachhara,

Resolution Professional of “Deegee Cotsyn Private Limited”

... Resolution Professional

In the Application of IA 2094 of 2020

Under Section 60(5) r/w 74(2) of the Insolvency and Bankruptcy Code, 2016 (“code”).

Nishant Singhal

...Applicant

Vs

Deegee Cotsyn Private Limited

...Respondent

In the matter of

Phoenix ARC Private Limited

...Financial Creditor

Versus

Deegee Cotsyn Private Limited

...Corporate Debtor

Order Delivered on :- 11.03.2022

Coram:

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

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

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Appearances:

In the Application of IA 1699 of 2020

For the Applicant : Mr. Swapan Pradhan, Advocate.

In the Application of IA 2094 of 2020

For the Applicant : Dr. S.K Jain a/w Mr. Yahya
Batatawala, Advocate.

For Respondent No. 1 : Mr. Shyam Kapadia, Counsel

For Respondent No. 2 : Mr. Karl Tamboly, Advocate

ORDER

Per: Shyam Babu Gautam, Member

1. Mr. Naval Kumar Bhoot (One of the Ex-Directors) has filed this IA 2094/2020 seeking directions against the Resolution Professional.
 - (a) To conduct forensic audit related to the staff quarters of the Corporate Debtor and fraud committed by Mr. Nishant Singhal in conclusion Mr. Naval Kumar Bhoot and Mr. Santosh Kumar Bhoot ex-promoters of the corporate Debtor.
 - (b) To recover Rs. 35,25,000/- due to the corporate Debtor from Respondent No. 2.
 - (c) To reject the claim of the Respondent No. 2 of Rs. 18,56,348/- towards arrear of alleged rent payable by the Corporate Debtor.

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(d) Not to hand over the possession of staff quarters to the Respondent No. 2 pursuant to compliance of the purported rent not.

In addition to above has prayed to punish Mr. Nishant Singhal under Section 74(2) of Insolvency and Bankruptcy Code, 2016 for violating the provisions of Section 14 of the said Code.

2. Basically, the follow could be culled out leading to the present case.
 - (i) The applicant Mr. Narendra Kumar Bhoot Respondent No. 3 and Mr. Santosh Kumar Bhoot Respondent No. 4 are brothers and Mr. Nishant Singhal Respondent No. 2 is son of Respondent No. 3.
 - (ii) The Respondent no. 2 allegedly obtained title of agricultural land of 1.37 hectares out of total 2.67 hectares from Survey No. 38/2 situated at Mouja Dabha Prange Badnera vide sale deed dated 18th Feb, 2015 for purchase consideration of Rs.16,55,000/- (Rupees sixteen lakhs fifty five thousand only)
 - (iii) As reflected in the balance sheet of the Corporate Debtor Company (C.D) the Corporate Debtor spend close to Rs. 4.69 crores for developing staff quarters on the said property.

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- (iv) Interestingly the Corporate Debtor entered into an agreement (i.e. Rent Note) dated 12th April, 2018 with respondent no. 2 allegedly agreeing to pay monthly rent for Rs. 1,55,000/- (One lakh fifty-five thousand only) to accommodate the staff of the Corporate Debtor.
- (v) On 26th Feb 2019, the company petition filed by Phoenix Asset Reconstruction Company Private Limited against the Corporate Debtor and the Corporate Debtor was admitted under CIRP by the Tribunal vide order dated 26.02.2019.
- (vi) Post-admission of the application, the applicant Mr. Nishant Singhal lodged his claim dated 16.04.2019, followed by a revised claim dated 08.04.2019 towards arrears of rent of Rs. 18,56,348/- up to 26th February 2019 under the aforesaid Rent Note dated 12th April, 2018.
- (vii) The Resolution Professional rejected the claim of Mr. Nishant Singhal. Mr. Nishant Singhal filed an IA No. 1993/2019 challenging the rejection of claim by the Resolution Professional. The Adjudicating Authority vide its order dated 03.09.2019 directed the Resolution Professional to verify and adjudicate the claim of Mr. Nishant Singhal.

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- (viii) It is evident from the records that various correspondences were exchanged between the parties and the said Mr. Nishant Singhal once again filed MA No. 3693/2019. By an order dated 10.02.2020, this Tribunal directed the Resolution Professional and Mr. Nishant Singhal to reconcile their accounts. With the above directions the MA No. 3693/2019 disposed of.
- (ix) Further based on the aforesaid facts Mr. Nishant Singhal (Respondent No. 2 herein) has filed IA No. 1699/2020 wherein it has claimed the following:-
- a. the RP to comply scrupulously with the Hon'ble Adjudicating Authority's order dated 03.09.2019 as also dated 10.02.2020 in letter and spirit and report compliance within 15 days from the date of the Hon'ble Adjudicating Authority's direction/order,
 - b. This Hon'ble Tribunal (Adjudicating Authority) to once again direct the Resolution Professional to make payment of rent to the applicant in terms of its order dated 03.09.2020 read with Rent note and comply with the said order within 7 days.

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- c. The Resolution Professional to refrain from calling upon or demanding from the applicant any alleged illegal aggregating to Rs. 35.25 lacs in view of failure on the part of RP to justify/establish the said amount as recoverable from the applicant.
- d. The Resolution Professional from calling upon the applicant to provide any irrelevant, personal and/or private/confidential documents/information for reconciliation of accounts in respect of the alleged but illegal debit aggregating to about Rs. 35.25 lakhs to the account of the applicant.
- e. The Resolution Professional to comply with the provisions of the Rent Note scrupulously and handover peaceful and vacant possession of the rented property on determination/expiry of lease tenure on 31.10.2020 as per Rent Note dated 12.04.2018 to the applicant without any dispute or demur,
- f. Without prejudice to the prayer above, the Hon'ble Adjudicating Authority be pleased to initiate **Contempt** Proceeding against Resolution Professional for committing

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contempt or non-compliance of orders, mishandling of the entire matter and pass other appropriate order/direction for taking disciplinary action against the Resolution Professional for violation of the orders/direction of this Hon'ble Tribunal vide Order dated 03.09.2019 and 10.02.2020 read with NCLAT order dated 04.09.2020 in this matter, and

- g. For such further and other orders/directions as the facts and circumstances of the case may warrant.

For which act of kindness, the applicant shall, as in duty bound, for every pray.

3. The applicant Mr. Naval Kumar Bhoot, the ex CMD of the Corporate Debtor in IA No. 2094/2020 has submitted for the following:-

The alleged purchase of the land claimed by Mr. Nishant Singhal is sham and bogus and made only to defraud the Corporate Debtor. The said Mr. Nishant Singhal has not paid any amount to purchase the land and alleged amount exchanged are only paper entries.

- (a) Admitted the sale deed is a fraudulent document produced to defraud the govt for want of stamp duty, as the alleged land

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brought by Mr. Nishant Singhal was claimed to be agricultural land for a paltry sum of Rs. 15 lakhs. The land was non-agricultural land was developed.

(b) The balance sheet of the Corporate Debtor discloses that the Corporate Debtor spent almost Rs. 4.69 crores for developing the said land.

(c) Rent executed is another sham document to the effect that for value of the land which is Rs. 15 lakh an amount of Rs. 1.5 lakh is sought to be paid as monthly rent.

(d) Mr. Nishant Singhal in connivance with respondent nos. 3 and 4 have prepared back dated documents including Rent Note, only with a view to syphon off fund and to squeeze the Corporate Debtor.

(e) Accordingly, the application filed by Mr. Nishant Singhal viz. IA No. 1699/2020 be dismissed with costs and prayers of IA No. 2094/2020 be allowed.

4. Per contra counsel for Mr. Nishant Singhal has argued as under:-

(a) All the allegations so far as to ownership of the land are concerned cannot be made by Mr. Naval Kumar Bhoot or by the Resolution

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Professional as the same are beyond the jurisdiction of this Tribunal.

(b) Further the title of the land as also the entitlement of Mr. Nishant Singhal cannot be questioned in these proceedings as the same have already been adjudicated by this tribunal on the presumptions that the claim of Mr. Nishant Singhal has already been allowed vide its order dated 03.09.2019. Further the said order was carried in appeal before the Hon'ble NCLAT and the appeal against. The said order has also been dismissed. Further the Resolution Professional has not challenged the order of Hon'ble NCLAT and hence the same has become final and binding on the parties.

(c) Since the Corporate Debtor has enjoyed the land during the CIRP period, Mr. Nishant Singhal is entitled to the rent as per the Rent Note dated 12th April 2018.

(d) This Tribunal ought not to enter into controversy which has already been decided earlier and confirmed by the Hon'ble NCLAT.

(e) Accordingly, IA No. 1699/2020 may be allowed.

5. The counsel for the Resolution Professional also made brief submissions of various orders passed and steps taken during the CIRP

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by the Resolution Professional to resolve the controversy in both the IA's. The counsels for the Resolution Professional/ and Resolution Applicant made submissions opposing the application of Mr. Nishant Singhal.

6. Findings and observations:-

(i) At the outset it is seen from the facts brought on record by the applicant Mr. Naval Kumar Bhoot, in IA No. 2094/2020 has not been per se controverted by Mr. Nishant Singhal except seeking to show the earlier orders passed by this Tribunal and confirmed by the Hon'ble NCLAT.

(ii) The relevant portion of the order dated 03.09.2019 is reproduced hereunder: -

8. *The Learned Counsel for the Resolution Professional has raised two-fold objection against the admitting the claim of the applicant. The Resolution Professional states that the claim form submitted by the Applicant on 06.04.2019 is under the name and style of "Nishant Bhoot", while the applicant in this application is "Nishant Singhal", no evidence to the change of name is provided. Secondly, the Resolution Professional states that the alleged rent is being claimed on the basis of a "Rent Note" dated 12.04.2018, which is not a Rent agreement. The*

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Resolution Professional has also challenged the validity of the above said Rent Note. The Resolution Professional states that the rent cannot be claimed in the absence of rent agreement, on the basis of an invalid Rent Note.

9. *The Applicant has submitted a rejoinder wherein a copy of the government notification in support of change of name of the Applicant has been produced on oath, which answers the first objection of the Resolution Professional. The Applicant further states that if the Rent Note is invalid, the Resolution Professional should stop using the premises of the Applicant and return its possession to the Applicant, to which the Resolution Professional is not agreeable. Also, the Resolution Professional is not an adjudicatory authority to adjudicate upon the legal validity of the Rent Note.*

10. *On going through the submissions of both the sides and after perusing the documents produced on record, we are of the view that the claim of the Applicant is sustainable as per law, because the business of the Corporate Debtor is a running concern till date and the men power to run the business is being provided accommodation in the quarters of the Applicant. It is a settled position that the Resolution Professional is*

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supposed to verify and not adjudicate upon the claim made by the Applicant.

11. The objections raised by the Resolution Professional regarding the name of the Applicant and the validity of the Rent Note do not stand in the eyes of law. The Applicant is hereby directed to lodge a fresh claim for pre-moratorium dues, which RP shall accept. For the post-moratorium dues/rent of the Applicant, the Resolution Professional is hereby directed to include the same into CIRP Cost as these are expenses mandatory to run the business of the Corporate Debtor.

8. It may be noteworthy that this Order was passed on an application filed by Mr. Nishant Singhal when his claim was not verified and admitted by the Resolution Professional. Further, directions passed by this Tribunal are for filing and accepting the claim without getting into ownership of property and/or diversion of funds and/or the valuation of the property. We are conscious that Resolution Professional has an extremely important role in the CIRP process of admitting the claim of parties filed within limitation and thereafter preparing list of creditors based on such verification. Thus, the aforesaid order will not come to very limited assistance to Mr. Nishant Singhal as we are now deciding diverse claims made by Ex-promoters

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and after being shown valid and subsisting documents and facts and figures which are material for deciding the issue in hand.

9. Further, upon reading the application filed by Mr. Nishant Singhal it is apparent that the applicant and his father and his uncle (Respondent No. 2 and 3 in **IA No. 2099**) have entered into collusive documents and have acted in hand in glove with each other to defraud the Corporate Debtor of its valuable rights over property and filtered away by entering into sale deed and Rent Note which on the face of record is completely a sham document.
10. The said sale deed and Rent Note if seen as a whole complete smack of malafids and sham transactions. Serial wise sequence of events narrated as under which will demonstrate the conduct of the applicant.
 - (i) we find that the sale deed dated 18th February, 2015 is entered between holding company of Corporate Debtor i.e. Narendra Solvex Pvt. Ltd. (hereinafter referred to holding company) and Mr. Nishant Singhal. The holding company instead of selling the property to Mr. Nishant Singhal could have sold the same to its subsidiary (Corporate Debtor) itself, which raises serious doubts on the transactions.

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- (ii) The description of the property in the sale deed is shown as agricultural land which is admitted not correct and seems to be made only with a view to avoid payment of stamp duty.
- (iii) The sale consideration is only Rs. 16,25,000/- whereas the market value being Rs. 16,22,970/-, further no sale consideration has actually been transferred from Mr. Nishant Singhal to holding company.
- (iv) The same property under Rent Note dated 12th April, 2018 has been rented to Corporate Debtor for annual rent Rs. 18,60,000/- (Rupees Eighteen lakh Sixty thousand only). The said Rent now further records that the entire taxes etc. which is levied by Gram Panchayat/Municipal Corporation, State Government/Central Government and other body shall be paid by the Corporate Debtor. Further, the Rent Note also provide for an escalation of Rent Note 07% annually which is incomprehensible to say that at least.
- (v) The Rent Note has been signed on behalf of Corporate Debtor by father/uncle of Mr. Nishant Singhal which raises serious concerns on its authenticity.

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(vi) As per the audited Balance Sheet of the Corporate Debtor for a property worth of Rs. 0.16 crore it has spent more than 29 times of its value i.e. Rs. 4.69 crores for its development. Further entire benefit of such development of such property is being sought to be gulped solely by Mr. Nishant Singhal by entering into sham transaction.

(vii) Lastly, its also evident that the Rent Note dated 12th April, 2018 has been executed within look back period under Insolvency and Bankruptcy Code, 2016 and sought to be looked with utmost caution as the same has been with related parties and completely bereft of commercial sense.

11. We are fully conscious that the rights of parties are governed by Civil Court, however in view of the nature of transactions by Mr. Nishant Singhal and his father and uncle, we are forced to record findings based on documents and evidence disclosed before us. We are also aware that parties will have to file appropriate proceedings to have their rights adjudicated before the appropriate forum, however, at the same time we may not allow such unscrupulous people to dodge tribunal and take undue advantage of procedures laid down and go scot free when the facts in such glaring fashion on record.

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12. We are of the opinion that upon coming into the knowledge of the aforesaid conduct, the Resolution Professional ought to have initiated legal action to safe guard the assets/property and interest of Corporate Debtor, which has admittedly not been done as is expected. The Resolution Professional who is employed in fiduciary capacity ought to take his job extremely serious and vigilantly to ensure maximum realization for its creditors/employees/government agencies and such lapses only helps such unscrupulous promoter to thrive and make hay for their own misdoing. We are, therefore, cautioning and stern warning to Resolution Professional not to repeat such behavior in future.
13. Before we part with the matter there is one more aspect which may also be deliberated by us which also needs to be looked into. The advocate for Mr. Nishant Singhal has strenuously harped upon the earlier orders passed by this Tribunal and confirmed by the Hon'ble NCLAT, however, the same on by imagination any precedent as they were only at stage of admission of claim by Resolution Professional and not otherwise. It is always open for this tribunal to come to a considered opinion as in the present case.

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14. In such circumstances and for the reasons recorded we hereby dismiss the IA No. 1699/2020 filed by Mr. Nishant Singhal and order that he is not entitled to claim any amount as Rent on the said property as the same was fraudulent transaction created to syphone off money from the Corporate Debtor and its creditor and other stakeholders. Interim Application No. 2094/2020 filed by Mr. Naval Kumar Bhoot also stand disposed of.
15. No orders for cost.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

11.03.2022

SUSHIL/SAM

Sd/-

JUSTICE P. N. DESHMUKH (Retd.)
Member (Judicial)