



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 202**  
**IB-66/ND/2022**

**IA-5751/2024, IA- 3762/2024, IA- 2875/2024**

**IN THE MATTER OF:**

**State Bank of India**

... **Applicant/Petitioner**

**Versus**

**JSSI Hydraulics Pvt.Ltd.**

... **Respondent**

**Under Section: 7 of IBC, 2016**

**Order delivered on 19.12.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH**  
**HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Vipul Ganda, Adv. Ishu Bansal, Adv. Nirti Dua

**For the IMC** : Adv. Sumant Batra, Adv. Sarthak Bhandari, Adv. Aya Khusheed, Adv. Debashis Nanda, Adv. Aradhana Singh  
Adv. Rekha Kureel

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-5751/2024 & IA-3762/2024:** IA-5751/2024 has been preferred by M/s Sunrise Industries one of the bidders, who claims itself to be second highest bidders for recalling the order dated 29.04.2024. The IA-3762/2024 has been preferred by RP again for recall of order dated 29.04.2024. Mr. Sumant Batra, Ld. Counsel for the RP submitted that the SRA viz. JM Hydraulic Solutions Pvt. Ltd. could furnish forged performance bank guarantee not once but twice. The position could not be disputed by Mr. Sunil Fernandes, Ld. Counsel appearing for the SRA, but he submitted that the forgery could take place without the knowledge and notice of the SRA and in a way the SRA itself is duped. After hearing Ld. Counsel appearing for the RP and SRA, we passed the order dated 06.11.2024 in IA-3762/2024. The order reads thus:-

*“**IA-3762/2024:** Mr. Sumant Batra, Ld. Sr. Counsel appearing for the RP submitted that the SRA could furnish the performance bank guarantees one after the other which could be found fake. According to him, one may plea alibi for one of such lapse by passing the blame on others but for*



*repeated act of procuring forged documents and using the same for its benefit, the SRA cannot be absolved of liability. Per contra Mr. Sunil Fernandes, Ld. Counsel appearing for SRA submitted that the crucial date was 04.07.2024, when the SRA acquired knowledge about the fact that PBG was forged and thereafter on 23.07.2024, an amount of Rs. 1.5 crores was deposited in the CIRP account of the Corporate Debtor. Mr. Sumant Batra, Ld. Sr. Counsel submitted that having come to know about the performance bank guarantee being forged the FIR was lodged by RP on 03.07.2024 and it was only thereafter the aforementioned amount could be deposited. It is also the submission of Mr. Sunil Fernandes, Ld. Counsel that after 04.07.2024 no act of fraud or forgery could be committed. In any case, Mr. Sumant Batra, Ld. Sr. Counsel appearing for the RP seeks to produce certain judgments to buttress his plea that in the circumstances espoused in the application, the Resolution Plan need to be recalled. Mr. Sunil Fernandes, Ld. Counsel appearing for the SRA also seeks an adjournment to take instructions from his client before making further submissions in the matter. Let the application be listed for hearing on 27.11.2024.”*

Today, Mr. Sunil Fernandes, Ld. Counsel for the SRA submitted that he has taken instruction from his client and confronted with the factual and legal situation on the issue, the SRA has given instruction not to oppose the IA-3762/2024. The relief sought in IA-5751/2024 is same as sought in IA-3762/2024, thus in a way there is no opposition to both the applications.

As can be seen from sub-regulation (4A) of Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, the RP shall provide for requirement from the resolution applicant in case its resolution plan is approved under sub-section (4) of Section 30, to provide a performance security within the time specified and such performance security stands forfeited if Resolution Applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contribute to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule. The Regulation 36B(4A) reads thus:-

**“36B. Request for resolution plans.**

.....

*(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified*



*therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.”*

A perusal of Para 20 of the order dated 29.04.2024 reveals that the SRA was under obligation to renew the performance guarantees/FD and keep the same alive till the resolution plan is fully implemented. Para 20(ii) of the order reads thus:-

“20. ....

*(ii) The Performance Guarantee/FD shall be renewed in the name of and kept alive by the “Monitoring Committee of the Corporate Debtor” till the Resolution Plan is fully implemented.”*

As can be seen in Para 12 of the order dated 29.04.2024, we noted that the SRA had furnished performance security in the form of bank guarantee. The para 12 reads thus:-

*“12. The details of the Payment Schedule as per Form H are extracted below:*

Particulars	Amount	Details of payment
Earnest Money Deposit	Rs 10,00,000	
Upfront Contribution, if any, as per the Resolution Plan submitted by the applicant		
Performance Security under Regulation 39(4) Sub Regulation (4A) of Regulation 36B read with Regulation 39(4)	Rs 1,50,00,000	Performance Guarantee in the form of Bank Guarantee is at Page No. 6-10 of Additional Affidavit dated 03.08.2023 ”

Apparently there is breach of order dated 29.04.2024, rather in a way, the order was obtained by misrepresentation of factual position. As can be seen from the Judgment passed by Hon’ble Supreme Court in **Yashoda vs. Sukhwinder Singh**



**and Ors** (2022) 17 SCC 307, it is well settled order of law that is Judgment and order it cannot be said to be a Judgment or order in law. Para 24 to 26 of the Judgment reads thus:-

*“24. What would be the effect of suppression of earlier proceedings has been considered by this Court in S.P. Chengalvaraya Naidu [S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1]. The Court observed thus : (SCC p. 5, paras 5-6)*

*“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that ‘there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence’. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.*

*6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ext. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-*



*production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ext. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”*

**25.** *Again in A.V. Papayya Sastry v. State of A.P. [A.V. Papayya Sastry v. State of A.P., (2007) 4 SCC 221], this Court observed thus : (SCC pp. 231-32, paras 21-26)*

*“21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:*

*‘Fraud avoids all judicial acts, ecclesiastical or temporal.’*

*22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.*

*23. In the leading case of Lazarus Estates Ltd. v. Beasley [Lazarus Estates Ltd. v. Beasley, (1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)] Lord Denning observed : (All ER p. 345 C)*

*‘... No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.’*

*24. In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was “mistaken”, it might be shown that it was “misled”. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be*



*brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.*

*25. It has been said : fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).*

*26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of “finality of litigation” cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.”*

*26. As observed, there is an essential distinction between mistake and trickery. In the present case, it is sought to be argued on behalf of the respondent-plaintiffs that the averment in Para 15 of the plaint was with regard to a lis on the basis of the agreement. It is submitted that the earlier suit was not based on the agreement and as such, there was no suppression. We find the argument to be unsustainable. We are of the view that such a statement was made as a trickery so as to obtain the judgment by misleading the court.”*

According to Mr. Sumant Batra, a view similar to one taken in aforementioned Judgment was also taken in **Ram Kumar vs. State of Uttar Pradesh and Ors** 2022 SCC OnLine SC 1312, **State Bank of India & Ors vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr** (Civil Appeal Nos. 5023-5024 of 2024) and **C/M Darul Ulum Samadhiya and Another vs. State of UP and Others** 2023 SCC Online All 418.

As can be seen from Section 33(3) of IBC, 2016, where the resolution plan approved by this Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interest are prejudicially affected by such contravention, may make an application to the



Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) & (iii) of clause (b) of sub-section (1). The Section 33(3) of the Code reads thus:-

**“33. Initiation of liquidation.—**

.....  
(3) *Where the resolution plan approved by the Adjudicating Authority under section 31 or under sub-section (1) of section 54L, is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”*

Ideally, when a plan is not implemented, this Tribunal should order liquidation of corporate debtor. Nevertheless, the spirit of IBC, 2016 is not to ensure dissolution of a company, but is to provide mechanism to put the corporate debtor back to its feet. In the present case, the lapse/mischief by SRA could lead to the present situation. Its act and conduct has not only caused prejudice to corporate debtor and the creditors, but has also adversely affected the other bidders, who could bring forth bid/proposed resolution plans. For act and conduct of the SRA who could furnish forged performance bank guarantees, not once but twice, we may not make creditors, corporate debtor and other PRAs to suffer. Besides at this stage we are not aware, whether the liquidation process will maximize the value of corporate debtor or the same would be maximized by way of resolution plan. Such area is best left to the commercial wisdom of the CoC which comprise the financial creditor.

Sub-section (4) of Section 33 of IBC, 2016 provides that on receipt of application under sub-section (3) (ibid) if the Adjudicating Authority determines that the corporate debtor has contravened the provision of resolution plan it shall pass a liquidation order as referred to in sub-clauses (i), (ii) & (iii) of clause (b) of sub-section (1). The Section 33(4) of IBC, 2016 reads thus:-

**“33. Initiation of liquidation.—**

.....  
(4) *On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”*



When a plan is contravened, the corporate debtor should be ordered to be liquidated. However, in the present case the situation is bit different. As can be seen from the aforementioned Judgment of Hon'ble Supreme Court, an order obtained by misrepresentation or fraud is in a way or no order in the eyes of law. Thus once the SRA procured the order passed by us by misrepresentation and fraud, in a way the order dated 29.04.2024 has become non-est. Thus the proposition arising in the present matter is not the one which is covered by Section 33(3) and (4) of IBC, 2016, but is a peculiar situation. In fact the SRA could lead to a situation that if today we order liquidation, the sanctity of CIRP provided under IBC would be under cloud and the bidders would be discouraged from submitting expression/interest/ resolution plan, precipitating that the process may not go through for many reasons. Besides, as has been noted hereinabove, once the order dated 29.04.2024 obtained by misrepresentation/fraud has become non-est, it cannot be said that there is any order which is in existence and is contravened by the corporate debtor. The order can be set to have been contravened, if it can be presumed or treated to be in existence.

Since the order dated 29.04.2024 obtained by fraud/misrepresentation has become non-est, the situation prevailing as on date of deciding the IA-3762/2024 is restored. The order dated 29.04.2024 has turned non-est, in a way the IA-3577/2023 stands restored and need to be looked at as afresh.

Now if in such circumstances, we examine the IA, apparently the performance bank guarantee is not there and the requirement of provision of Regulation 36B (4A) of I&B (CIRP) Regulation Process is not satisfied. Thus when the requirement of Regulations is not satisfied, apparently the SRA has contravened the provision of Section 30(2) & (3) of IBC, 2016.

Apparently, Mr. Sumant Batra, Ld. Counsel who represented RP along with Mr. Debashis Nanda himself pressed the IA-3762/2024 for recalling the order dated 29.04.2024 and contended that the plan was not in accordance with the provisions of Regulation 36B(4A) of the relevant regulations. As has been noted



above he himself contended that there being misrepresentation on the part of the SRA to RP, which led to passing the order dated 29.04.2024 has led to said order being non-est. In the totality of the facts and circumstances, the order dated 29.04.2024 being obtained by misrepresentation and fraud the plan which was sought to be approved by a way of IA being in contravention of the law ergo. We dismissed the IA-3577/2023. The IA-3577/2023 being dismissed, in terms of the provisions of Regulation 18 of I&B (CIRP), Regulations 2016, the CoC stands restored.

Taking the holistic view and to substance the object of IBC, 2016, we remit the matter back to CoC to take fresh steps, in the direction of resolution at Insolvency of the corporate debtor. It is left to the commercial wisdom of CoC that what steps it would be taking in the direction. It is made clear that a fresh process is not completed within 60 days from today the corporate debtor would be deemed as dissolved. **IA-3762/2024 & IA-5751/2024 stands disposed of.** It is made clear that it would be for CoC to evolve the way forward in the matter to in exercise its commercial wisdom. However, JSSI Hydraulics Pvt. Ltd. which led to present situation would not be eligible to submit any plan.

List on **17.02.2025** for consideration to pass liquidation order, it received and no plan is approved by CoC, within 60 days.

**IA-2875/2024:** In view of the order dated passed in IA-5751/2024 & IA-3762/2024, **the IA has become infructuous and is accordingly rejected.**

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**