NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
COMPANY APPEAL (AT) (CH) (INS) NO.461/2023
(IA NO.1444/2023)

IN THE MATTER OF:

STATE BANK OF INDIA,
Stressed Asset Management Branch**,**
2, D.No. 3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda,
Hyderabad – 500 027
Represented by its Authorised Officer **… APPELLANT**

V

1. **DOMMETI SURYA RAMA KRISHNA SAIBABA,**
   Liquidator of M/s. Kumar Aquatech Agencies Pvt. Ltd.
   Reg. No. IBBI/IPA-003/2018-19/12106,
   Flat No. 104, Kavuri Supreme Enclave,
   Kavuri Hills, Madhapur, Hyderabad – 500 033, TS

2. **MR. KADIYALA SANKAR BABU,**
   Director- Suspended Board of
   M/s. Kumar Aquatech Agencies Pvt. Ltd. under
   CIRP 904/10A, Jaffer Alibagh, Near Water Tank,
   Somajiguda, Hyderabad – 500 082

3. **MR. DURGA PRASAD NIMMALAPUDI**
   Director – Suspended Board of
   M/s. Kumar Aquatech Agencies Pvt. Ltd. under
   CIRP 4-106, Kalyana Mandapam Veedhi, Rajavolu,
   Rajahmundry, Andhra Pradesh - 533124 **...RESPONDENTS**

PRESENT :

For Appellant : Mr. Pranava Charan, Advocate
For Respondents : Mr. Anoop Prakash Awasthi, Advocate for R3

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

1. The Appellant, State Bank of India, through its Stressed Asset Management Branch, puts a challenge to the Impugned Order dated 18.10.2023, that was passed by the learned Adjudicating Authority of the NCLT Hyderabad Bench-I in IA No. 1100/2022 as preferred in CP (IB) No. 275/9/HDB/2021, by which the application that was preferred by the Liquidator under Section 66 of I & B Code, 2016, was rejected.

2. The brief facts are that the Resolution Professional had preferred the IA being IA No. 1100/2022, before the learned Adjudicating Authority, wherein the Liquidator has prayed for that, the Respondents therein, that is, the Suspended Directors of the Corporate Debtor, may be directed to contribute to the assets of the Corporate Debtor, for an amount of Rs. 9,74,14,192/- for making good the funds taken away from the Company through various transaction defrauding the creditors and misuse of the company funds and for being involved in the fraudulent and wrongful trading with the Corporate Debtor's assets.

3. The Corporate Debtor (CD) was admitted into the CIRP Process, by an order that was passed by the learned NCLT on 03.06.2022, the Interim Resolution Professional (IRP) was appointed and a moratorium was declared, consequent to which the public announcement was made calling for the claims from creditors. After verification of claims, IRP constituted Committee of Creditors (CoC), as

per Section 21 of the I & B Code, 2016, and filed his report regarding constitution of CoC as per Regulation 17 of the CIRP Regulations. Further IRP conducted 1st meeting of CoC on 06.07.2022 where CoC decided to continue IRP as Resolution Professional (RP). The CD, engaged in the business of trading of Aqua Feeds, was sanctioned a credit limit of Rs. 10.70 crores. Th Appellant, prior to commencement of CIRP, had engaged M/s. Sarath & Associates to conduct a Forensic Audit of the books of accounts of Corporate Debtor to verify trail and end use of the funds disbursed by the banks for the period covering FY 2017-2018, 2018-2019, 2019-2020, 2020-2021 & 2021-2022 and to submit the Report. The forensic auditor submitted his report on 17.05.2022 which showed an amount of Rs. 9,74,14,192/- transferred to various persons/companies/partnership firms during 13.12.2016 to 23.01.2017, without any information as the Respondents did not produce books of accounts. It was declared as a fraud account by FC/SBI and complaint was registered with CBI on 16.07.2022.

4. On appointment as Resolution Professional, the Resolution Professional, Respondent-1 (herein) tried to elicit the required information in connection with the said report, but he also got no co-operation from the Suspended Board of Directors. Finally with the available information the Resolution Professional/Liquidator filed the Application IA No. 1100/2022 before the learned Adjudicating Authority.

5. According to the application that was preferred by the Resolution Professional, a total amount of Rs. 9,74,14,192/- was alleged to be transferred to

various persons, Companies and Partnership firms, during the period from 13.12.2016 to 23.01.2017, without there being any details available pertaining to the aforesaid transactions and without being reflected in the Books of Accounts submitted to the Auditors as per the forensic report. The Resolution Professional had contended in the said application that the amount represents the funds diverted from the Corporate Debtor and mis utilised and the related transaction have been done by Respondent 2 & 3 with intent to defraud the creditors of the Corporate Debtor. The Resolution Professional had further contended before the learned Adjudicating Authority that the said transactions carried with an intention to defraud the coffers of the Corporate Debtor would be falling well within the ambit of the fraudulent trading or wrongful trading as it is contemplated under Section 66 of the I & B Code, 2016.

6. Accordingly, the Resolution Professional (RP), filed the Application IA No. 1100/2022, under Section 60(5) to be read with Section 66 of the I & B Code, 2016, before the learned Adjudicating Authority, praying for the following reliefs.

> *"a. Pass an order/orders directing the Respondents to contribute to the assets of the CD an amount of Rs. 9,74,14,192/for making transactions defrauding creditors, misuse of Company funds and being involved in fraudulent or wrongful trading in Corporate Debtor*
> *b. Pass any other order/s in view of the circumstances of the case, the Hon'ble Authority may deem fit."*

7. The said application preferred by Resolution Professional was taken up for consideration by the learned Tribunal and the learned Tribunal vide Impugned Order dated 18.10.2023, rejected the said Application, that is, IA No.1100/2022, on the ground that, whatsoever the fraudulent transactions that, have been referred to and complained of by the Appellant/Applicant in his application i.e., IA No. 1100/2022, pertaining to the transactions that were carried between the period from 13.12.2016 to 23.01.2017, based upon the findings of the Forensic Audit Report which itself was not final. Further, the learned Tribunal while considering the implication of Section 66 of the I & B Code, 2016, to be read with Section 60(5) of the I & B Code, 2016, and on considering the contentions raised by Respondents, to the application i.e., the Suspended Directors of the Corporate Debtor, had ultimately come to the conclusion that, no such relief which has been prayed for could be granted because the Forensic Auditors Report itself has not yet attained finality and it is an inconclusive document and it will be premature to consider the Forensic Audit Report, for the purpose of considering the relief prayed for in IA No. 1100/2022.

8. The relevant paragraphs of the Impugned Order, that is, para 9 and para 10 are extracted below:-

> *"9. We have gone through the Forensic Audit Report, copy of which is filed from Pg.No.33 to 72 in the application and we find that the said Forensic Audit Report is inconclusive and does not provide the details on the basis of which this Tribunal can pass an order for classifying the transactions as fraudulent transactions.*

The forwarding letter of the said Forensic Audit Report is reproduced below which clearly indicates that this report is inconclusive and lack detailed information required for declaring transaction as fraudulent transactions:

Date 16.05.2022

To
The DGM (B&O)
State Bank of India
Administrative Office
Secunderabad
Dear Sir,

Sub : Submission of information about forensic audit of M/s. Kumar Aqua Tech Agencies Private Limited.

As per the oral discussion happened with respected bank authorities, we are agreeing to submit the supplementary audit report based on the additional information provided by the Borrower. ***<u>However, we didn't receive any information from the borrower and request you to consider the final report dated 24.06.2022, submitted by us as a final report</u>*** *and we are here by reproduced the major points mentioned in the final forensic audit reports as follows:*

1) *The Borrower is non-cooperative for conducting the audit and not submitted the required information.*
2) *Payments of Rs. 9,74,14,1921/- made by the company to various Persons/ Firms/ Companies during the period 13.12.2016 to 23.07.2017* ***<u>and the same were appearing to be suspicious.</u>***
3) ***<u>Due to non-submission of information, we are unable to verify the genuineness & Sours of infused capital of Rs. 4 Crores.</u>***

> 4) *MOD of the collaterals are not appearing in the Encumbrance Certificate.*
>
> *Thanking you,*
> *For Sarath and Associates*
>
> *10. The Resolution Professional also has not provided any further details and seeks to pass an order directing the respondents to contribute to the assets of the Corporate Debtor an amount of Rs. 9,74,14,192/- for making transactions defrauding creditors, misuse of Company funds and being involved in fraudulent or wrongful trading in Corporate Debtor, merely on the basis of the said Forensic Audit Report.*"

9. The Appellant has contended that learned Tribunal has passed the Impugned Order without going through the forensic audit report, that the order is a non-speaking order, that the report could not be completed because of non-cooperation of the Suspended Board and even though they were directed to cooperate with Resolution Professional by the learned Adjudicating Authority, no reason was sought for as to why they chose not to cooperate, that the learned Adjudicating Authority did not consider the qualifying statements made by Auditors regarding falsification of accounts, that the transactions being fraudulent in nature, should be dealt with an iron hand and suspended board of management should recoup the funds diverted from the Corporate Debtor and hence the Impugned Order may be set aside and remanded back to learned Adjudicating Authority for fresh consideration.

10. We are in an disagreement with the arguments of the learned counsel for the Appellant that, the order is not based upon a sound reasoning, for the reason

being that if the application under Section 66 of the I & B Code, 2016, is being attempted to be considered exclusively based upon the Forensic Auditor's Report, the same has to be established on its own merit and its genuineness on the strength of supporting documents and evidence which has not been produced to be by the Tribunal.

11. In the absence of such supporting documents and evidence, we are of the view that, the Forensic Auditors Report alone, in its present shape, cannot be extracted to be applied for the purposes of deciding an application under Section 66 of the I & B Code, 2016, for the purposes of determining the fraudulent act, as it was alleged therein in the application. The plea of the Appellant herein and the Resolution Professional before the learned Adjudicating Authority is that because of non-cooperation of Suspended management, supporting evidence could not be produced. In such a case, only criminal investigation can unearth the evidence and learned Adjudicating Authority in para 12 of the Impugned Order has rightly noted that the FC has filed a complaint with CBI, New Delhi on 16.07.2022.

12. Hence, the rejection of the Application holding thereby that the Forensic Audit Report being an incomplete report, cannot be read in evidence so as to decide the application IA No. 1100/2022 under Section 66 of the I & B Code, 2016 is not bad in the eyes of law, because that document itself was a document, which was indeed not complete and lacked supporting evidence and documents which was remarked upon by the learned Tribunal and in fact, admitted by the

Appellant and as far as the argument, of the Appellant that the Impugned Order lacks sound reasoning is concerned, the same has not been substantiated. Hence the Impugned Order qua the Appellant would not suffer from any vices as such, which would call for an interference in the exercise of our Appellate Jurisdiction, and therefore the **Company Appeal (AT) (CH) (Ins) No.461/2023,** lacks merit and the same is accordingly 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

18.08.2025
GKJ/MS/RS