



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

I.A 539 of 2022
In
CP (IB) No.02/BB/2020
Under Sections 60 (5) of Insolvency and Bankruptcy Code, 2016
R/w. Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF I.A 539 OF 2022

Ms. Shirley Mathew

RP of Mylari Agro Products Limited

... Applicant/RP

Versus

1. Mr.Mahesh

Ex-Director of Mylari Agro Products Limited

... Respondent No.1

2. Mr. Vaddarahally Puttaswamygowda Prakash

Ex-Director of Mylari Agro Products Limited

... Respondent No.2

Order delivered on: 15.02.2024

Coram: 1. Hon'ble Shri. K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For RP : Ms. Aishwarya Prasad

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application has been filed by **Shirley Mathew**, Resolution professional (hereinafter referred as 'RP/Applicant'), on 11.03.2022, U/s. 60(5) of the IBC, 2016 R/w. Rule 11 of the National Company Law Tribunal Rules, 2016 against **Mr.Mahesh and Mr. Vaddarahally Puttaswamygowda Prakash.**, (hereinafter referred 'Respondents'), seeking to declare the consignment forwarding agents agreement entered into with Shree Sai Marketing dated 19.03.2021 and distribution agreement with RVI Enterprises dated 09.04.2021 as null and void. It is further requested to direct the respondents to pay a sum of Rs. 15,64,445/- to



the RP as contribution to the assets of the Corporate Debtor and restrain the respondent from representing the Corporate debtor or acting on behalf of the Corporate debtor and to grant ad-interim ex-parte relief in this regard or alternatively seeking to direct the respondents to disclose all sums received by them in connection with the agreements dated 19.03.2021 and 09.04.2021 and pay such amounts to the RP as contribution to the assets of the Corporate debtor.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the applicant are as follows:

(i). This Adjudicating Authority admitted the C.P.(IB)No.02/BB/2020 vide Order dated 08.03.2021, by initiating CIRP in respect of the Corporate Debtor and appoint Mr. S. Viswanathan as IRP. Vide order dated 30.11.2021, IRP was replaced and the applicant was appointed as RP. Thereafter, the RP took charge of the Corporate Debtor.

(ii). The applicant received a letter dated 20.01.2022, from one Shree Sai Marketing, by way of an e-mail dated 21.02.2022, stating that it had entered into an Agreement effective from 19.03.2021 allegedly entered into by Shree Sai Marketing and the Corporate debtor, which was also annexed along with the letter. As per the said letter dated 20.01.2022 Shree Sai Marketing had paid Rs. 50 Lakhs to the Corporate debtor by way of a cheque bearing No.000002 dated 18.03.2021 drawn on HDFC Bank. Furthermore, it has been stated in the said letter dated 20.01.2022 that Shree Sai Marketing sold finished goods of the Corporate Debtor on a credit basis pursuant to oral requisition from the Corporate Debtor. In the said letter it has been stated that pursuant to the Agreement between Shree Sai Marketing and the Corporate debtor, the Corporate debtor had received a sum of Rs.15,64,445/- from retailers and distributors and Shree Sai Marketing in advance and the Corporate debtor was liable to pay a total amount of Rs. 21,64,445/- to Shree Sai Marketing. However, none of these amounts have been credited to the Corporate debtor as per the bank statements of the Corporate debtor and it appears that these sums were paid directly to the respondents. The alleged Agreement dated 19.03.2021 was executed by the Respondent No.1 on behalf of the Corporate debtor after initiation of the CIRP of the Corporate debtor. The former directors of the Corporate debtor, despite having no authority to do so, appointed Shree Sai Marketing as the



distributor of the Corporate debtor during the CIRP of the Corporate debtor and it appears that they illegally permitted them to sell finished products of the Corporate debtor on a credit basis, and they have illegally received the proceeds from such sales.

(iii). The entire agreement dated 19.03.2021 is null, void and illegal, and not binding on the Corporate debtor, and the respondents are liable to compensate the Corporate debtor a sum of Rs. 15,64,445/- in respect of sums received for the illegal sales of the products of the Corporate debtor. The agreement dated 19.03.2021 allegedly entered into between the Corporate debtor and Shree Sai Marketing is produced as Annexure B. This was brought to the notice of the COC during the 6th meeting of the COC was held on 15.02.2022 wherein it was inter-alia decided to file an application under section 19(2) of the Code for non-cooperation against the former directors of the Corporate debtor.

(iv) Furthermore, On 19.01.2022 one RVI Enterprises submitted a claim for an operational debt in Form B under Regulation 7 of the CIRP Regulations which is produced as Annexure D. As per the claim and the documents filed therewith it appears that RVI Enterprises allegedly entered into a Distribution Agreement dated 09.04.2021 with the Corporate debtor which was executed by the respondent no.1 and a sum of Rs. 10,00,000/- was paid by RVI Enterprises to the Corporate debtor as security deposit. This sum is not reflected in the bank account of the Corporate debtor and has been received directly by the respondents. This agreement was executed by the respondents, after initiation of the CIRP of the Corporate debtor, acting on behalf of the Corporate debtor, despite having no authority to do so. The entire agreement is null and void, and is not binding on the Corporate debtor.

(v) In terms of Section 17(1)(b) of the Code, the powers of the Board of directors or the partners of the Corporate debtor, as the case may be, shall stand suspended and be exercised by the IRP. As such, the respondents had no authority whatsoever to execute the agreement dated 19.03.2021 and the agreement dated 09.04.2021 (hereinafter "Agreements") on behalf of the Corporate debtor, and the same are null and void and not binding on the Corporate debtor. It is submitted that in



terms of section 19(1) read with section 23(2) of the Code, the suspended directors of the Corporate debtor are bound to extend all assistance and cooperation of Resolution Professional as may be required by her in managing the affairs of the Corporate debtor and in collection of necessary information. By entering into the agreements, without the authorisation or consent the RP or the erstwhile IRP, the respondents have illegally interfered with the conduct of the CIRP of the Corporate debtor, and have obstructed the RP from duly discharging her obligations as RP of the Corporate debtor under the Code. Furthermore, the mala-fides of the Respondents are evident from the fact that they have received payments directly from Shree Sai Marketing, RVI Enterprises and other retailers while purporting to act on behalf of the Corporate debtor after initiation of the CIRP of the Corporate debtor.

(vi) Since the aforesaid Agreements were entered into by the respondents purporting to act on behalf of the Corporate debtor after initiating of CIRP of the Corporate debtor, the same are not binding on the Corporate debtor, and the RP has sought an order from this Hon'ble Tribunal declaring that such Agreements are null and void. However, if the Hon'ble Tribunal directs the RP to honour the Agreements as binding on the Corporate debtor, then in the alternative, and without prejudice to the above, the RP is seeking a direction to the respondents to disclose details of all amounts received in connection with the Agreements and to pay all such amounts to the RP as contribution to the assets of the Corporate Debtor.

3. Notice in the present application was issued on 22.12.2022. On 01.05.2023 it is observed by this Tribunal that the notice was returned for the reasons 'Door locked - intimation served' and 'No such person at the address' and there was no response for the notice sent by email. Therefore, the Tribunal directed the applicant to adopt substituted mode of service by way of paper publication in two daily newspapers and the same was complied and the copy of paper publication was filed vide diary no. 4041 dated 02.08.2023. Since no one had appeared on behalf of the respondents on 15.02.2023, 17.03.2023, 01.05.2023, 07.06.2023, 28.07.2023 and after paper publication of notice on 28.08.2023 and



15.09.2023, the Respondents were set ex-parte on 15.09.2023. It is observed by the Tribunal that inspite of availing substantial time the respondents did not appear nor filed any objection. Hence on 05.12.2023, the matter was reserved for orders.

4. Heard learned Counsel for the Applicant. We have carefully perused the pleadings on record.
5. It is noticed that after the initiation of CIRP on 08.03.2021, the Respondents who were the Erstwhile Directors of the Corporate Debtor entered into Consignment Agreement with Shree Sai Marketing (hereinafter referred to as "SSM") on 19.03.2021, which they were not authorized to do. SSM has made a claim before the RP for a refund of an amount of Rs.21,64,445/- to SSM since the Corporate Debtor had already received a sum of Rs.15,64,445/- in advance from the retailer distributor and SSM as per the Agreement and the claim was made by including commission of Rs.6 Lakh. It is contended that the amounts were never credited to the Corporate Debtor and the Respondents had directly received the money and siphoned this amount. Similar such unauthorized Agreement was entered with RVI Enterprises (herein after referred to as "RVIE") dated 09.04.2021 after the initiation of the CIRP. RVIE has also made a claim for an amount of Rs.10 Lakh before the RP stating that the same was paid to the Corporate Debtor as security deposit after the distribution Agreement dated 09.04.2021 was made by the Respondents, i.e. the Erstwhile Directors of CD. Again, this sum was also not credited to the Corporate Debtor and was received directly by the Respondents.
6. After considering the above submissions, it is abundantly clear that the Respondent Nos.1 & 2 herein who were the Erstwhile Directors of the Corporate Debtor have unauthorizedly entered into the Agreement with these two Parties after the initiation of CIRP on 08.03.2021 without the knowledge of the RP. Therefore, we are inclined to agree with the submissions of the RP and grant the prayer made in this Application by declaring the Consignment Forwarding Agents Agreement and Distribution Agreement with SSM and RVIE as null and void in the eyes of Law. Further, we direct that the Respondents to disclose to the RP all



the sums received by them in connection with these two unauthorised Agreements made on behalf of the Corporate Debtor; and refund the amount forthwith to the RP as a contribution to the Assets of the Corporate Debtor. This amount to be refunded will be inclusive of the specific amounts, for which claims have been made by SSM and RVIE, being the amounts on account of advance paid/security deposit etc., as stated above; along with any other amount collected as a consequence to the above mentioned invalid agreements. The Respondents are directed to make compliance of this Order within a period of 45 days from this Order.

7. Accordingly, **I.A. No.539 of 2022 in C.P.(IB)No.02/BB/2020** is hereby **disposed of** with the above directions.

-Sd-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-

K.BISWAL
MEMBER (JUDICIAL)