

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 129. IA/282(AHM)2021 in
CP(IB) No. 717 of 2019

Order under section 66 r.w. sec 14 IBC

IN THE MATTER OF:

Hiten R Abhani IRP of Shivshakti
Barrels Pvt. Ltd.

....Applicant

V/s.

Jaivik Samratsingh Parihar & Anr.

....Respondents

Order delivered on: 02/01/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA/282(AHM)2021
in
CP(IB) No. 717 of 2019**

[An application under section 66 read with section 14 of the Insolvency and Bankruptcy Code, 2016]

In the matter between:

Hiten R Abhani, IRP of
M/s. ShivShakti Barrels Pvt. Ltd.
Having its address at:
705, Shapath II, Opp. Rajpath Club,
S. G. Highway Road,
Bodakdev, Ahmedabad-380015.

.....Applicant

Versus

1. Shri JaivikSamratsingh Parihar

Having its address at:
Shivdasnagar Society,
Bh. Sheesha Bajaj Showroom,
Near Bhavans Circle, Makarpura Road,
Vadodara-390011.

2. Shri PreritSamratsingh Parihar

Having its address at:
39/463, Gujarat Housing Board Navjivan,
Ajwa Road, Vadodara-390019.
(Being the suspended Board of
Directors of M/s. Shivshakti Barrels Pvt. Ltd.)

.....Respondents

In the matter of:

CP(IB) No. 717/9/NCLT/AHM/2019

[An application filed under section 9 of the IBC, 2016]

In the matter between:

M/s. Korea Trade Insurance Corporation

CIN No. 102-82-06816

14, Jongno, Jongno-gu, 110-729,
Seoul, South Korea

Address for serving in India at:

Unit No. 605, 6th Floor, Global Foyer,
Building, Sector-43, Gurugram-122009
Haryana.

....Operational Creditor

Versus

M/s. Shivshakti Barrels Private Limited.

Having an address at:

Opposite Gujarat Metal Cast,
Village-Dunia Halol Godhra Road,
Halol, Gujarat-389350.

....Corporate Debtor

Order pronounced on : 02.01.2023

Coram: DR. MADAN B. GOSAVI, MEMBER (J)

KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

For the Applicant : Mr. Chaitanya Patel, Ld. Adv.

For the Respondent : Ms. Natasha D. Shah, Ld. Adv.

: Mr. Mandeep Singh, Ld. Adv. [for Federal
Bank]

ORDER

[PER : DR. MADAN B. GOSAVI, MEMBER (J)]

1. This application under section 66 read with section 14 of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) is filed by Mr. Hiten R Abhani- the Interim Resolution Professional (“IRP”) of Corporate Debtor- M/s. Shivshakti Barrels Pvt. Ltd., against two Directors of the Corporate Debtor, namely, Mr. Jaivik Samratsingh Parihar and Mr. Prerit Samratsingh Parihar.

2. It is alleged by the IRP/applicant that the respondents, being two Directors of the Corporate Debtor had transferred on 10.03.2021 and 19.03.2021 a sum of Rs. 42,51,563/- from Federal Bank, bearing Account No. 18105500000036 and sum of Rs. 17,11,351/- from Bank of Baroda, bearing Current Account No. 01980200001459 and thereby committed fraudulent transaction within the meaning of section 66 of the IBC, 2016. According to the IRP, the said amount is transferred by the respondents during the period of moratorium declared under section 14 of the IBC, 2016.

3. Both respondents are served with the notice. They appeared and filed the affidavit in reply. They denied the allegation of fraudulent transactions made by the IRP. They explained the transaction in question (in para 8 and 9 of the affidavit in reply).

4. They contended that the money was transferred from the accounts of the Corporate Debtor in a normal course of business to keep the Corporate Debtor’s status as a going concern by making payments to their small suppliers in due course to regulate the business. It is also contended that the payments

made to the employees and labor contractors for the month of February 2021 are reflected in the accounts of March 2021. According to them, no attempt was made to transfer any money with malicious intentions. To support their explanation, they produced on record copies of the statement of accounts and other details.

5. We heard learned counsel for the IRP and learned counsel for the respondents. We perused the material on record.

6. There is no dispute on the factual aspect that on 10.03.2021 a sum of Rs. 42,51,563/- is transferred from the cash credit account, bearing Account No. 18105500000036 of the Corporate Debtor maintained in Federal Bank. It is also not in dispute that on 19.03.2021 a sum of Rs. 17,11,351/- is transferred from the current account, bearing Account No. 01980200001459 maintained by Corporate Debtor in Bank of Baroda.

7. The question is whether the above transfers can be termed as the fraudulent transaction ?

8. The respondent explained that the above monies were transferred to its small creditors and employees to keep the status of the Corporate Debtor as MSME and as a going concern.

9. We have examined the statement of accounts relating to both above transactions. The statement of accounts is relied on by both the IRP as well as respondents. It is not in dispute that from 09.03.2021 to 19.03.2021, a total sum of Rs. 59,62,914/- was transferred to the accounts of various traders or towards payments of salaries of the employees of the Corporate Debtor (Annexure- A-3). There is no evidence to show that any amount is

transferred in any account of the respondent personally or any related party of the Corporate Debtor. It is not the allegations of even IRP in this application. From 10.03.2021 to 19.03.2021 certain sum of money is transferred and withdrawn from both accounts. However, a careful perusal of the entries therein shows that the amount so transferred or withdrawn, was transferred and withdrawn during the daily course of business of the Corporate Debtor (statement of accounts are annexed as Annexure-5 of the application).

10. In view of this evidence, it was our query to the learned counsel for the IRP as to why and how the IRP has considered the above transactions as fraudulent ? Learned counsel for the IRP submitted that because all above transactions are made after the Corporate Debtor is admitted in CIRP.

11. It is not in dispute that on 10.03.2021, the Corporate Debtor is admitted in CIRP and the moratorium under section 14 was declared by this Adjudicating Authority. Annexure-A2, i.e., the postal track consignment report, shows that the order of admission of the Corporate Debtor in CIRP was communicated on 18.03.2021. The respondents have stated that once they received the above order and came to know that the Corporate Debtor is admitted in CIRP, they did not make any transaction from the bank account and there is no dispute to this fact also.

12. Upon our close scrutiny of the transactions in question show that various amounts of small value are transferred to some of the creditors of the Corporate Debtor. For ready reference, we reproduce summary transactions of both banks' accounts as below

(Annexure-5 of application). Those, statements of accounts are undisputed.

Shivshakti Barrels Pvt. Ltd.

Summary of Transactions :

Bank Name	Amount
Federal Bank	42,51,563
Bank of Baroda	17,11,351
	59,62,914

Bank Federal Bank
Acc no. : 18105500000036

Date	Value Date	Particulars	Tran Type	Tran Id	Ch ue Details	Withdrawals
11-03-2021	11-03-2021	FN/SHP/VFBK982 1547626/VFBK982 1547626_E PFO/INDIAIDE	TRF	S15918919		7,675
11-03-2021	11-03-2021	FN/SHP/12481258 611/12481258611/I BIBO WEB PRIVATE L	TRF	S16590011		599
11-03-2021	11-03-2021	FN/JADAV DIPESH/4612851	TRF	S18014901		81,176
12-03-2021	12-03-2021	NFT/SWAMI SHREE/FDRLH21 071290908/KOTA K	TRF	S20430167		1,07,234
12-03-2021	12-03-2021	NFT/PARESH GOKU/FDRLH210 71291860/SBI	TRF	S20443710		62,818
12-03-2021	12-03-2021	NFT/MAHENDRA PA/FDRLH210712 97085/BANK OF	TRF	S20596560		8,115
12-03-2021	12-03-2021	NFT/RAJESH PANC/FDRLH2107 1297838/DENA BANK	TRF	S20621030		16,143
12-03-2021	12-03-2021	NFT/VINESH PARM/FDRLH210 71299933/DENA BANK	TRF	S20705789		11,822
12-03-2021	12-03-2021	NFT/RIKESH MACH/FDRLH210 71301613/BANK OF	TRF	S20735164		10,270
12-03-2021	12-03-2021	NFT/SUBHASBHA I /FDRLH21071302 073/SBI	TRF	S20742860		11,111
12-03-2021	12-03-2021	NFT/PRAKASHKU MA/FDRLH210713 02545/CEN TRAL	TRF	S20752098		11,418
12-03-2021	12-03-2021	NFT/HAVNATHSI NH/FDRLH210713 03017/SBI	TRF	S20761521		11,525

12-03-2021	12-03-2021	NFT/NITINKUMAR /FDRLH21071303 583/SBI	TRF	S20772020		11,142
12-03-2021	12-03-2021	FN/BOBBY ROADLINES/4888 861	TRF	S20802920		43,000
12-03-2021	12-03-2021	BG Processing Fee	TRF	S21803566		20,650
12-03-2021	12-03-2021	FN/JAIVIK S PARIHAR/5196431	TRF	S22709768		30,000
13-03-2021	13-03-2021	NFT/AKSHAY JAGT/FDRLH2107 2478499/BANK OF	TRF	S26734493		10,850
13-03-2021	13-03-2021	NFT/SANDIP V PA/FDRLH210724 78676/ICICI BANK	TRF	S26776347		30,000
17-03-2021	17-03-2021	NFT/INDUS ENGIN/FDRLH21 076729830/RATN AKAR	TRF	S42563412		1,20,000
17-03-2021	17-03-2021	RTG/KARNAVA/F DRLR5202103170 0731050/HD FC BANK	TRF	S42586163		10,34,063
17-03-2021	17-03-2021	NFT/KARNAVATI I/FDRLH21076731 899/HDFC BANK	TRF	S42596420		4,720
17-03-2021	17-03-2021	FN/BOBBY ROADLINES/7191 061	TRF	S42608218		1,85,500
17-03-2021	17-03-2021	FN/SHP/20210317 153411503368/PA YTM/NORT HAKROSS TECH	TRF	S42726410		8,340
17-03-2021	17-03-2021	FN/SHP/20210317 153423449768/PA YTM/NORT HAKROSS TECH	TRF	S42746967		1,05,767
17-03-2021	17-03-2021	NFT/KHUSHBU ENG/FDRLH2107 6768328/BANK OF	TRF	S43355249		42,299
18-03-2021	18-03-2021	NFT/PARESH GOKU/FDRLH210 77920692/SBI	TRF	S47259819		1,90,346
18-03-2021	18-03-2021	RTG/OMKAR I/FDRLR52021031 800936088/HDFC BANK	TRF	S47687307		2,05,335
18-03-2021	18-03-2021	RTG/SHREE U/FDRLR5202103 1800938448/AXIS BANK	TRF	S47725656		7,32,282
18-03-2021	18-03-2021	RTG/PERFECT/F DRLR5202103180 0012430/SBI	TRF	S49120314	51008158	4,29,099
18-03-2021	18-03-2021	Charges for RTGS Customer Payment :FDRLR520210318 0	TRF	S49120314		24
19-03-2021	19-03-2021	RTG/SHIVSHA/F DRLR5202103190 0099364/BAN K OF	TRF	S52401894		6,45,000
19-03-2021	19-03-2021	NFT/NIRMAN PETR/FDRLH2107 8102072/BANK OF	TRF	S52473404		63,240
GRAND TOTAL						42,51,563

Shivshakti Barrels Pvt. Ltd.

Bank name Bank of Baroda
Acc No. 01980200001459

Date	Description	Amount of debit
10-03-2021	Charges for PORD Customer Payment :000593984910	29
10-03-2021	RTGS-BARB202103101069887281-RP AND SONS-KOTAK	3,00,000
10-03-2021	ATM	1,024
10-03-2021	Charges for	6
10-03-2021	NEFT-BARBY21069464818-RAJPOOT	71,638
11-03-2021	ATM	15,000
12-03-2021	Charges for Charges for PORD Customer Payment :0005958	6
12-03-2021	NEFT-BARBZ21071708936-CHINTAMANI EQUIPMENTS	42,840
15-03-2021	EBANK:WIB/1250718838/Transfer of Paksol Balance	5,00,000
15-03-2021	DCARDFEE/1593/MAR21 to FEB22	177
15-03-2021	ACH Debit/VODAFONE/51 816265	412
15-03-2021	PRCR/AMBE PETROLEUM/Baroda	220
19-03-2021	EBANK:WIB/1251434593/Transfer to Current Account	7,80,000

17,11,351

13. It is not the say of the IRP that the respondents have transferred and withdrawn any amount for their personal use or transferred any amount to the related parties.

14. In the case of Regen Powertech Pvt. Ltd. Vs. Wind Construction Private Limited and Ors. in Company Appeal (AT) (CH) (Ins) No. 349/2022, the Hon'ble NCLAT held that :-

33. Be it noted, this 'Tribunal', significantly, points out that, whenever 'Fraud' on a 'Creditor' is perpetrated in the course of 'carrying on Business', it does not necessarily follow that the 'Business' is being carried on with an 'Intent to Defraud' the 'Creditor'

34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the

'Company' would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent Intent'. To put it emphatically, a more compelling 'Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance of probability'. Apart from that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder, a 'Creditor', who was defrauded, will have 'recourse' to an 'alternative remedy', under 'Civil Law'.

15. If we apply the above ratio to the facts of this application, we hold that transaction in dispute cannot be called as a “fraudulent transactions” within the meaning of section 66 of the IBC, 2016. Hence, we pass the following orders:

ORDER

- I. Application filed by the IRP under section 66 read with section 14 of the IBC, 2016 stands rejected.
- II. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

KAUSHALEDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)