

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

I.A (IBC) No.907 /KB/2021

In
C.P. (IB) No. 140/KB/2021

In the Matter of:

An application Under section 60(5) and 65 Insolvency and Bankruptcy Code, 2016 and read with Rule 11 of the National Company Law Tribunal Rules, 2016.

And

In the Matter of:

Electroparts (India) Private Limited

....Financial Creditor

-Versus-

Videocon Infinity Infrastructure Private Limited

.... Corporate Debtor

-And-

In the Matter of:

Infinity Infotech Parks Limited

... Applicant

-Versus-

Electroparts (India) Private Limited & Anr.

....Respondents

**Date of Hearing : 18/04/2022
Date of pronouncing the order: 18 /07/2022**

Coram:

**Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)**

Counsel appeared physically/through video conference :

For IRP	Mr. Krishnendu Datta, Adv. Mr. R.K.Gupta, Adv. Ms.Swaralipi Deb Roy, Adv. Ms. Varsha Himatingka,Adv. Mr. Sanjit Kumar Sharma, IRP in person
For applicant in IA/907/2021	Ms. Ratnanko Banerji, Sr. Adv. Mr. Shaunak Mitra,Adv. Ms. Neha Somani, PCS
For Financial Creditor	Mr.Joy Saha, Sr.Adv. Mr. Aniruth Purusottaman, Adv. Ms. Debaleena Ganguly,Adv.

ORDER

PER: Harish Chander Suri, Member (Technical):

1. This Court convened through video conferencing.
2. The Interlocutory Application (IBC)No. No.907 /KB/2022 has been filed by the Infinity Infotech Parks Limited, which is a 50% shareholder of the Corporate Debtor namely Videocon Infinity Infrastructure Pvt. Ltd. It is submitted by the applicant that the Financial Creditor, Electroparts (India) Pvt.Ltd.,has obtained an order of CIRP from this Adjudicating Authority by way of practicing blatant fraud. The order of CIRP in respect of the Corporate Debtor was passed by this Adjudicating Authority on 14.09.2021 (Annexure-A page 22-23 of this application).
3. It is further submitted that order of admission was obtained on the basis of fraudulent and manufactured documents for a fictitious and imaginary transaction in collusion with unknown third parties claiming to represent the Corporate Debtor without any authority, who fraudulently admitted liability though there was none. It is further submitted that the order of CIRP is a nullity, since the claimed date of default was 15.12.2020 which is hit by section 10A of the

Code, which prohibits any application from being filed in respect of any date of default within the period from 25.3.2020 to 24.3.2021.

4. It is further submitted that the Applicant owns and holds 5000 equity shares of Rs.10/- each in the Corporate Debtor, Videocon Infinity Infrastructure Private Limited. The applicant is one of the two promoters of the Corporate Debtor, which was incorporated as a joint venture between the applicant and Videocon Industries Ltd. for the purpose of joint development of business projects. Subsequently, the Applicant had transferred its entire shareholding in the Corporate Debtor to its then subsidiary, Infinity Finance Limited.

5. In the circumstances, Infinity Finance Limited and Videocon Industries Limited had entered into a shareholders' Agreement on March 26, 2012 which provided for 50% shareholding to be held by the Infinity Infrastructure Finance Limited and Videocon Industries Ltd. in the Corporate Debtor and the management and control of the Corporate Debtor would be conducted jointly and equally by the two. The day to day affairs and management would be looked after by two representatives or directors, one each to be nominated by each of the groups.

6. Clause 13 of the shareholders agreement also explicitly provided that decisions pertaining to borrowing and lending shall be taken jointly by both the parties. Infinity Finance Ltd. was merged with the Applicant by an order dated December 12, 2017 passed by the National Company Law Tribunal, Kolkata Bench in C.P.(CAA) No.396/KB/2017. By virtue thereof, the Applicant held 50% shareholding in the Corporate Debtor.

7. It is further submitted that the business of the Corporate Debtor did not fructify into anything material though steps had been taken to enter into an agreement with Videocon Realty and Infrastructure Limited for development of an electronic and biotech park a leasehold property in Jalpaiguri. No board meetings or general meetings of the Corporate Debtor were convened or held after March 31, 2017 respectively and

no statutory returns, forms or documents have been filed after 2016-17. The applicant has enclosed copy of the MCA Master Data as Annexure-D at page 72.

8. It is further submitted that only two directors of the Corporate Debtor since 2016 were Goutam Sengupta, nominee of Videocon Industries Ltd. and Ajay Kumar Jalan (nominee of the Applicant). Goutam Sengupta resigned as a director on April 19, 2018. After this, the Applicant had written to Anuj Jain who was then the IRP appointed in respect of Videocon Industries Limited's CIRP on November 26, 2018 for appointment of a nominee director by Videocon Industries Ltd. on the board of the Corporate Debtor in terms of the shareholders agreement. However, no response was received to such communication. The Applicant's nominee director Ajay Kumar Jalan also tendered his resignation as a director and ceased to be a director of the Corporate Debtor on and with effect from June 7, 2019

9. It is further submitted that the applicant was shocked to learn on September 17, 2021 from an email from one of its Ex-directors, Ajay Kumar Jalan issued by Respondent No.2 herein as IRP of the Corporate Debtor, that CIRP had been initiated in respect of the Corporate Debtor. (Annexure-G to the application).

10. From the order dated 14th 2021, it transpired that Section 7 application had been filed and proceeded with collusively and that the order had been obtained by the Applicant by practicing fraud on this Adjudicating Authority. It appears from the order that the Section 7 application was filed by the Respondent No.1 pursuant to a board resolution dated April 15, 2020. The applicant submits that this is indication of the fraud practiced on this Adjudicating Authority because the alleged transaction with the Corporate Debtor was on June 1, 2020 and thus, there was no occasion for Respondent No.1 to pass any Board Resolution on April 15, 2020 to authorize filing of proceedings against the Corporate Debtor.

11. The applicant further submitted that from the order it appears that Respondent No.1 alleged that the Corporate Debtor had defaulted in payment of Rs.30 crores on

December 15, 2020. The order stated that the Applicant had purportedly narrated a series of alleged transaction involving a company, Quadrant Televentures Limited (Quadrant) borrowing Rs.90.01 crore from two companies, Infotel Digicomm Private Limited and Infotel Business Solutions Limited, by two separate agreements dated May 1, 2017. This purported loan receivable from Quadrant (Quadrant loan receivable) was thereafter allegedly assigned by the Infotel Group to a Videocon Group entity, Domebell Electronics India Private Limited (Domebell) in the year 2009. It further appears to be the R-1's case in the application that Domebell had thereafter entered into a novation agreement with Hyundai Electronics India Limited (Hyundai) in May, 2018 for further assignment of the Quadrant loan receivable in favour of Hyundai and that Hyundai had thereafter purported to assign the same in favour of R-1 herein on November 1, 2019.

12. The applicant has further submits that Domebell, Hyundai and Electroparts (Respondent No.1) are all either part of the Videocon Group (the flagship company of the group being Videocon Industries Limited, one of the joint venture partners of the Corporate Debtor and/or inextricably interlinked and connected to the Videocon Group.

13. The applicant has submits that Quadrant, which is a listed entity on BSE, in its Annual Report for 2019-20 has disclosed that its promoters are Quadrant Enterprises Private Limited and Tekcare India Private Limited. These two Directors of Quadrant Enterprises Private Limited and Tekcare India Private Limited are Directors in various Videocon Group companies and are involved in the management of Videocon group companies.

14. It is submitted that Domebell and Hyundai are companies owned and controlled ultimately by the Dhoot family, who are admittedly the promoters of Videocon group.

15. It is submitted that Respondent No.1 was originally incorporated by Mr. Venugopal Dhoot and his wife Mrs. Ramabai Dhoot. Venugopal Dhoot is the principal

promoter of Videocon group and is publicly acknowledged and seen to be the alter-ego of Videocon group. The shareholding of R-1 is owned and controlled by the Dhoot promoter family and entities under their control. Furthermore, there is a declaration filed under section 90 of the Companies Act, 2013, acknowledging that the significant beneficial owner of 32.37% shares each held by Solitaire Appliances Pvt. Ltd. and Waluj Components Pvt. Ltd., is Saurabh Pradipkumar Dhoot, a promoter of Videocon group.

16. It is submitted that the Quadrant loan receivable was allegedly assigned in favour of the Corporate Debtor by Respondent No.1 for an alleged consideration amount of Rs.30 crores. The date of the alleged transaction is mentioned to be June 1, 2020. The alleged transaction is not in the ordinary course of business of the Corporate Debtor which is a real estate joint venture, not engaged in business of lending. Additionally, the Corporate Debtor's last filed balance sheet for 2016-17 makes it clear that it has no running business or any significant assets to speak of. The assets are shown to be only of Rs. 1.56 crores, out of which the major chunk of Rs.1.26 crores is on account of "Preliminary Expenses" and "Pre-operative expense pending allocation". There was absolutely no basis for the Corporate Debtor to have undertaken a liability of Rs. 30 crores payable in six months when the Corporate Debtor had no means whatsoever.

17. **There could have been no agreement dated June 1, 2020 between the Corporate Debtor and R-1, inter-alia, because the Corporate Debtor did not have ANY director as on that date and nobody was or could have been authorised to enter into any transaction or agreement with any party, let alone R-1.**

18. It is submitted that R-1 has alleged that the Corporate Debtor had purportedly attended meetings and had allegedly admitted its liability by way of purported balance confirmations. There was nobody who had authority to represent the Corporate Debtor for any purpose after the resignation of Ajay Kumar Jalan in June, 2019 and any alleged balance confirmations relied on by R-1 are procured and fabricated by

fraudulent means. In paragraph 4(g) of the order dated September 14, 2021, there is a reference to balance confirmation dated April 1, 2020, which is an impossibility since according to R-1, the Corporate Debtor became involved as the alleged “incoming lender” only on June 1, 2020.

19. The alleged claims of R-1 forming subject matter of the Section 7 application could not have been the basis for filing of the Section 7 application due to the prohibition contained in Section 10A of IBC. Even assuming without admitting that any agreement was executed between R-1 and Corporate Debtor on June 1, 2020 and the default was allegedly committed by Corporate Debtor on December 15, 2020 as claimed, no claim on the basis of such alleged default could form the subject matter of any application under Section 7 of IBC. The Section 7 application was prohibited by Section 10A and the same is a nullity.

***Case ref: Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd.,
(2021) 3 SCC 224***

20. It is submitted that Corporate Debtor had allegedly been represented by one Mr. Soumik Ghosal, Advocate. No person, let alone Mr. Soumik Ghosal was or could have been authorised to represent the Corporate Debtor in any manner. The Corporate Debtor had no board of directors after June, 2019. No board meeting of the Corporate Debtor has been held after March 31, 2017 and no general meeting has been held after September 26, 2017. There have been no notices circulated for any board or general meetings of the Corporate Debtor after the aforesaid dates.

21. From the order it further appears that:

Corporate Debtor had allegedly admitted its liability and sought for 6 months’ time to repay the same in monthly instalments. Since there was nobody actually authorized to represent the Corporate Debtor, no such admission could have been made on behalf of the Corporate Debtor and neither could any such submissions have been made or any concession sought. The name of one Mr. Ashwini Kumar is mentioned in paragraph 19 of the order as allegedly claiming to be “authorised signatory” of the Corporate Debtor that too, without being

able to produce any board resolution passed by the board of directors of the Corporate Debtor. **It is also recorded in the order that the counsel purportedly appearing on behalf of the Corporate Debtor had submitted that the Corporate Debtor was about to sell some assets to discharge its so-called liability. Such submission is absurd in view of the fact that the Corporate Debtor has no assets to speak of apart from some minor entries in the last balance sheet of 2016-17.** It is further recorded that notice of the proceedings was given to the corporate debtor. The registered office of the corporate debtor at SECTOR-V, BLOCK BP SALT LAKE CITY KOLKATA - 700091 is the common office address of KAIL Ltd., a Videocon group entity. The registered office is shut down since on or before June 2019. (Mutation Certificate - “O” – pg. 194). Anyhow, the Ashwini Kumar referred to in the order is not known to the Applicant in any capacity. Mr. Ajay Kumar Jalan, ex-director of the corporate debtor, and the last director has confirmed in writing to the Applicant that even during his tenure as Director, no resolution was passed to authorize anybody by the name of Ashwini Kumar to represent the Corporate Debtor in any manner. (“P” – pg. 195).

It also appears from the order that the Corporate Debtor had purported to file a reply affidavit (unauthorizedly and by the said Ashwini Kumar, who is an unknown and possibly fictitious person) admitting the entire alleged liability. This is most shocking since there was no direction to file any Reply and it is absurd to suggest that a Corporate Debtor having no defence to a claim will promptly come forward and file a reply and invite a CIRP order to be passed against itself.

It is submitted that all the aforesaid facts demonstrate the egregious and blatant fraud practiced on this Tribunal.

Supplementary Affidavit filed by the Financial Creditor :

22. The alleged board resolution of VRIL (a third party) dated September 28, 2021 has evidently been procured as an afterthought. The development agreement between VRIL and the alleged corporate debtor never translated into anything material and the allegations in the body of the purported resolution that there is “hope of development of the project” is totally baseless and misconceived. The purported settlement proposal as recorded in the alleged resolution is deliberately cryptic and vague. On the one hand, there is mention of cheques being given to the alleged Financial Creditor as “security” whereas on the other hand, there is a reference to VRIL absorbing the liability of the alleged corporate debtor (**page 6**).

23. It is submitted that in exhibit “D” being the purported extracts of board meeting of the alleged Financial Creditor dated September 29, 2021 (**page 8**), there is not only a mention of purported draft consent terms to be executed with authorized signatory for and on behalf of “erstwhile management” of the alleged corporate debtor but there is also a reference to cheques of Rs.30 crores issued by VRIL which even on the alleged Financial Creditor’s own showing were not issued as on that date.

24. It is submitted that in exhibit “E” (**page 9**) there is mention of a “pending offer” from VRIL to “clear liability” of the alleged corporate debtor. Firstly, even from the supplementary affidavit it is evident that there was no such offer that was pending as on September 29, 2021. Secondly, if there was any genuine proposal to clear the liability of the alleged corporate debtor, there could be no question of recovery of any amount from the alleged corporate debtor or taking any action against the alleged corporate debtor. However, the alleged minutes are totally contradictory. On the one hand, it talks of clearing the corporate debtor’s liability whereas on the other hand it talks of “breach of contract” by corporate debtor and taking steps against corporate debtor for recovery of entire amount, even after settlement by VRIL. This is absurd and illogical and mala fide. **It is evident that**

the whole objective behind this alleged new arrangement is only to avoid any adverse scrutiny from this Tribunal regarding the fraudulent nature of the Section 7 proceeding and to overcome the bar of Section 10-A by manipulating and inventing a future date of default against the alleged CORPORATE DEBTOR.

25. It is submitted that regarding exhibit “F” (page 11), the same is also discrepant and is ex-facie a manufactured document. Notably, in an attempt to somehow ante-date the alleged new arrangement (to a date prior to 07.10.2021 i.e. date of filing of I.A. 907 by the Applicant herein), the alleged letter being exhibit “F” is alleged to be hand delivered. This is falsified by the fact that the letter was issued by VRIL from Aurangabad addressed to the alleged Financial Creditor at Ahmednagar which are at more than 150 kilometres distance from each other.

26. It is submitted that as to exhibit “G” (page 13) being the **alleged consent terms**, the alleged Financial Creditor has forged and fabricated the said document. At the outset, it is reiterated that the corporate debtor has had no director since June, 2019 and thus, there is no person who is or could have been authorized to enter into any such settlement or to execute any consent terms. There is also no question of acknowledging any debt by the alleged corporate debtor for the reasons more fully stated in I.A.(IB) No.907/KB/2021. Notably, though the alleged consent terms are shown to be affirmed and executed on 06.10.2021, there is a reference to cheque dated 01.10.2021 under agreed schedule of payment. This goes to show that there is no genuine or bona fide settlement at all (without prejudice to the fact that the alleged corporate debtor could not be represented by anybody for lack of authority). Shockingly, the alleged corporate debtor has also agreed to be liable to pay “cheque bouncing bank charges”. Furthermore, the whole purport of the alleged consent terms is totally contradictory to the alleged settlement proposal of VRIL as alleged accepted by the alleged Financial Creditor. **It is relevant to note that the alleged CORPORATE DEBTOR has no active business, no assets to speak of and no means of paying any money let alone Rs.30 crores plus interest @ 36% per**

annum. As stated above, it appears that this entire purported transaction has been engineered to divert the attention of this Tribunal and with the mala fide intention of manipulating a subsequent date of default against the alleged corporate debtor so as to avoid the rigors of Section 10-A.

27. It is submitted that the fraudulent nature of the document is further evidenced by the fact that the purported stamp in all the pages of the alleged consent terms bear the name “Videocon Infrastructure Private Limited”. There is no entity in existence by such name. It is ex-facie apparent that the said stamp has been hurriedly procured solely for the purpose of use in the alleged consent terms. **At the bottom of page 15 of the supplementary affidavit, even the name of the alleged corporate debtor has been wrongly typed as “Videocon Infrastructure Private Limited”.** The purported signature of the person allegedly signing on behalf of the alleged corporate debtor is also illegible and deliberately no name of the person is mentioned so as to avoid adverse scrutiny. In addition, though the identification details of the person signing the alleged consent terms on behalf of the alleged Financial Creditor are provided, no such identification proof is given qua the person allegedly signing for the alleged corporate debtor.

28. It is submitted that the purported notarization of the alleged consent terms is ex-facie procured and is not genuine. The purported notarization is not in accordance with law. There is no name of the notary public mentioned. There is also no identification of the notary public or for any registration number. Significantly, neither the alleged corporate debtor nor the alleged Financial Creditor appeared to have any link at New Delhi and thus there was no reason for the alleged consent terms to be notarized in New Delhi. Curiously, against the heading “Place” there is a blank space.

Further Facts noticed on inspection of the records:

1. Section 7 Application – Signatory in Ahmednagar – Application notarized in Gurgaon
2. Alleged service of Section 7 Application as well as the Supplementary Affidavit was done by the Financial Creditor on the Corporate Debtor on a fake e-mail ID vvvip4321@gmail.com. MCA Master Data annexed on pg. 25-26 of the Section 7 Application shows the registered e-mail ID of the Corporate Debtor as info@videoconinfinity.com.
3. Alleged Novation Agreement on pg. 35-41 of the Section 7 Application – not notarised
4. Vakalatnama issued by Mr. Rajkumar Nandlal Dhoot, Personal Guarantor to Mr. Soumik Ghosal, Advocate. There is no Vakalatnama of the Corporate Debtor and in any case, as stated above, CD had no Director or other authorized person who could have issued any Vakalatnama.

JUDGMENTS RELIED UPON BY THE APPLICANT

1. *Beacon Trusteeship Limited v. Earthcon Infracon (P) Ltd., 2020 SCC OnLine SC 1233 : Relevant paragraphs - 7, 8 and 9*
2. *Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd., (2021) 3 SCC 224 dated 9.2.2021*

29. It is submitted that the alleged Financial Creditor be held guilty of practising and committing fraud on this Tribunal and as per Section 65 of the Code, maximum penalty be imposed on the alleged FC and the CIRP be terminated on such grounds.

30. It is submitted that no “settlement” as alleged in the Supplementary Affidavit be allowed to take place, since the same is only a mala fide ruse to avoid adverse scrutiny by the Tribunal on the wholly fraudulent action of the alleged Financial Creditor in instituting the section 7 petition and obtaining the CIRP admission order. Furthermore, the alleged settlement is evidently a sham exercise,

designed to manufacture a subsequent date of default against the Corporate Debtor that would not be hit by section 10A of the Code.

31. It is very strange that the Financial Creditor and the Corporate Debtor had obtained orders of CIRP fraudulently and in complicity with each other by filing a collusive petition and later on settled the matter by payment of Rs.30 Lacs, which cheques although were given on behalf of the Corporate Debtor by some unknown person and are stated to have not been encashed by the Financial Creditor. Both the parties have given a somewhat shady picture which does not bring out a real truth in this matter. This matter needs to be further investigated.

32. We, therefore, pass the following orders:-

a) The entire transaction as narrated in the Section 7 application is plainly imaginary, concocted and fraudulent. The CD does not appear to have had any genuine liability towards the alleged FC and the entire documentation has evidently been prepared by the alleged FC in collusion with Videocon Group entities. The alleged documents disclosed in the Supplementary Affidavit of the alleged FC, far from helping its case, further demonstrate the fraudulent nature of the documents.

b) In the circumstances, the alleged FC is guilty of practicing and committing fraud on this Tribunal and therefore, as per Section 65 of the Code, penalty of Rs.50 lakh is imposed on the alleged FC and the CIRP stands vitiated and terminated due to the fraud committed. In any event, even apart from the aspect of fraud as discussed above, the Section 7 petition was not maintainable due to the prohibition in Section 10A of the Code.

c) There is no question of allowing any “settlement” to take place based on the alleged documents disclosed in the Supplementary Affidavit of

the alleged Financial Creditor, since the same is evidently a sham and a mala fide ruse to avoid adverse scrutiny by this Tribunal on the wholly fraudulent action of the alleged FC in instituting the section 7 petition and initiation of CIRP based thereon by practicing fraud on the Tribunal. The story of settlement also clearly appears to be an afterthought.

d) Apart from the consequences under Section 65 of the Code, by reason of which the CIRP stands vitiated and terminated and penalty imposed on the alleged Financial Creditor as stated above, in view of the glaringly fraudulent actions of the alleged Financial Creditor as discussed above, it appears that the same would have far reaching implications going even beyond this case and therefore, it would be proper for a full investigation to be conducted into the transaction set up by the alleged Financial Creditor in the Section 7 petition. In view of the same, the Registry of this Tribunal is directed to send a copy of this order to the Secretary, Ministry of Corporate Affairs, Central Government for further action at their end.

33. With the aforesaid directions, IA No. 907/KB/2021 is disposed of.

34. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, the 18th day of July, 2022

PJ