

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2578 OF 2021

Under Section 66(1) of Insolvency &
Bankruptcy Code, 2016

Shri Manoj Kumar,
The Resolution Professional

...Applicant

V/s

Shri Chew Sow Yong & Others

...Respondent

In the matter of

C.P.(IB) No. 2336/MB/2018

M/s Sixth Sense Inc.

. Operational Creditor

Vs.

M/s. Chuo Senko Advertising India
Private Limited

...Corporate Debtor

Order delivered on: 01/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : None

For the Respondent No.4 : Mr. P.S. Thakre, PCS

For the Respondent No.4 : Mr. Rohit Gupta a/w Pooja
Zaveri, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 2578/2021 is filed by the Resolution Professional, Sh. Manoj Kumar, (“Applicant”) of M/s. Chuo Senko Advertising India Private Limited (Corporate Debtor) in the matter of Corporate Insolvency Resolution Process (“CIRP”) in terms of Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking an order of this Tribunal against Sh. Chew Sow Young, Sh. Haruhiko Shin, and Sh. Tarun Khanna (referred collectively as “Suspended Directors of the Corporate Debtor”, and individually referred to as Respondent No. 1, 2 & 3 respectively); Sh. Mandeep Malhotra (“Former Director of the Corporate Debtor” or “Respondent No. 4); M/s. Tata Capital Financial Services Limited (“Respondent No. 5); and M/s. Muthoot Finance Limited (“**Respondent No. 6**”) **seeking following relief –**

- A. Pass an Order U/s. 66 (1) of the Code directing the R4 and R5, jointly or severally, to remit the amount of ₹ 6,94,67,852/- to the Corporate Debtor’s account which is diverted fraudulently through R5;
- B. Pass an Order U/s. 66 (1) of the Code directing the R4 and R6, jointly or severally, to remit the amount of ₹ 1,46,44,278/- to the Corporate Debtor’s account which is diverted fraudulently through R6;
- C. Pass an Order U/s. 66 (1) of the Code directing the R4 to remit the amount of ₹ 34,76,238/- to the Corporate Debtor’s account which is diverted fraudulently through different entities;

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- D. Pass an Order U/s. 66 (1) of the Code directing the R4 to remit the amount of ₹ 63,64,110/- to the Corporate Debtor's account which is diverted fraudulently through various suspense accounts;
- E. Pass an Order U/s. 66 (1) of the Code directing the R4 to remit the amount of ₹ 1,60,00,000/- to the Corporate Debtor's account which is diverted fraudulently through M/s. Digi Communications Private Limited;
- F. Pass an Order U/s. 66 (1) of the Code directing the R4 to remit the amount of ₹ 2,28,52,411/- to the Corporate Debtor's account which is diverted fraudulently through un-identified Persons / Entities; and
- G. Pass an Order U/s. 66 (2) of the Code directing the R1, R2 and R3, jointly or severally, to remit the total amount of ₹ 12,93,28,651/- to the Corporate Debtor's account which is diverted fraudulently by the R4 in the case the R4 and / or R5 and / or R6 fails to adhere their respective directions.
2. The above-named Respondents no. 1 to 3 (hereinafter referred as the **R1 to R3**) are stated to be the Officials / Directors (with suspended powers) of the Corporate Debtor and in charge of the affairs of the Corporate Debtor before the commencement of the Corporate Insolvency Resolution Process (hereinafter referred as **the CIRP**) as against the Corporate Debtor; and the above-named Respondent No. 4 viz. Shri Mandeep Malhotra (hereinafter referred as **the R4**) was holding office of the Director for the period from 11.01.2016 till 23.01.2017 and resigned from the position of the Director on 23.01.2017. However, the R4 kept authorising payments on behalf of the Corporate Debtor even after resigning

from the post of Director. Respondent No. 5 viz. M/s. Tata Capital Financial Services Limited (hereinafter referred as **the R5**) is engaged in the business of providing financial assistance, and is stated to have entered into fraudulent transaction with the Corporate Debtor and with the R4. Respondent No. 6 viz. M/s. Muthoot Finance Limited (hereinafter referred as **the R6**) is engaged in the business of providing financial assistance, and stated to have entered into fraudulent transaction with the Corporate Debtor and with the R4.

3. The CIRP as against the Corporate Debtor stood commenced w.e.f. 24.09.2019 vide an Order of this Tribunal, and Shri Deepak Kumar Agarwal as Interim Resolution Professional (hereinafter referred as **the IRP / Erstwhile RP**) for initiation of the CIRP against the Corporate Debtor, and IRP caused public announcement in two newspapers namely Free Press Journal and Nav Shakti of the Mumbai Edition on 13.10.2019 inviting claims from the Creditors.

- 3.1. The IRP received only claim by the Original Petitioner and no other Stakeholder, till date, filed a claim either with the IRP or with the Applicant. Accordingly, the IRP formed a Committee of Creditors of the Corporate Debtor (hereinafter referred as **the CoC**) only consisting of the Operational Creditor i.e. Original Petitioner with 100% voting share with it in terms of Regulation 16 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016.

- 3.2. In a meeting of the CoC held on 24.01.2020 the CoC resolved to replace the IRP with the Applicant and thereafter the

Application in that regard, under provisions of S. 27 of the Code, filed before this Bench by the CoC on 25.02.2020. The said Application got adjudicated by this Hon'ble Bench only on 11.05.2021 wherein this Bench confirmed the appointment of the Applicant as the Resolution Professional of the Corporate Debtor pursuant to the provision of the S. 27 of the Code, excluded the lapsed time amid Pandemic from the statutory period of the CIRP and directed the Applicant to complete the CIRP within 90 days w.e.f. 11.05.2021.

3.3. Subsequently, the period of the CIRP was sought to be extended, which was allowed by this Tribunal vide Order dated 20.07.2021 granting an additional time of 90 days w.e.f. 09.08.2021 to complete the CIRP. The Applicant made an appointment of 'M/s. Mukesh Raj & Co., Chartered Accountants, New Delhi (hereinafter referred as **the Forensic Auditor**) vide an engagement letter dated 11.06.2021 to examine the books of accounts of the Corporate Debtor.

4. It is the case of the Applicant that he, prior to appointment of the Forensic Auditor had a look over the transactions of the Corporate Debtor and it was noticed by the Applicant that there were major transactions carried out by the Corporate Debtor through its Bank accounts during the period of Mar. 2017 till Oct. 2018. In the opinion of the Applicant the said transactions do not appear as normal business transactions and the amount involved in those transactions were quite hefty. However, only basing the bank entries the Applicant could not gather the conclusive proof regards to the fraudulent nature of the said transactions.

- 4.1. It is also stated that the Applicant tried to make contact with the R1 to R3 who are the Directors (with the Suspended Powers) of the Corporate Debtor and also tried to gather information from them. However, since the R1 and R2 are foreign nationals and reside outside India the Applicant was / is not in position to meet personally to them and grab information from their end.
- 4.2. Further, when the Applicant contacted the R3 who is an Indian resident; it was informed to the Applicant from R3 that he is an ex-employee of the Corporate Debtor and was made a director by fraud without informing to him even after resigning from the Corporate Debtor and joined to the new corporate. He further informed that he came to know only after receiving the notice from the creditors. He further informed that he did not deal with any correspondence on behalf of the Corporate Debtor. He has no record, information and documents of the Corporate Debtor. Accordingly, the Applicant could not gather any conclusive evidences about the transactions *supra*.
- 4.3. It is pertinent to note that the Applicant has already filed an Application with this Bench bearing number IA 1449 / 2021 under provisions of the S. 19 (2) of the Code seeking directions against the R1 to R3. The said Application is pending for adjudication.
- 4.4. As per the provisions of the Code, the look back period for ascertaining the transactions as Preferential, Undervalued, Extortionate transactions, as the case may be, is from 23.09.2017 till 24.09.2019. However, the Forensic Auditor and the Applicant, both, faced a difficulty to examine the books of

accounts of the Corporate Debtor beyond 31.03.2016 since, there are no audited accounts available after 31.03.2016. Even on the MCA Portal the last annual filing was made till 31.03.2016 i.e. much prior to the commencement of the CIRP. However, the Applicant and the Forensic Auditor could gather the information from the Tally Back-up and entries of the Bank Statements of the Corporate Debtor's account. The Corporate Debtor holds an account with HDFC Bank Limited, Navrang Pura, Ahmedabad Branch bearing an Account No. 00060310003293 and having Customer ID 104428 (hereinafter referred as **the Bank Account**).

5. The Applicant has made the following case in this application –
- 5.1. A hefty amount of ₹ 6,94,67,852/- to the R5 i.e. Tata Capital Financial Services Limited. Out of the afore-mentioned total amount an amount of ₹ 3,87,27,862/- towards 'Designing – purchase' and ₹ 3,07,39,990/- has been paid in Advance. The said payments were made from 06.03.2017 till 21.05.2018. Upon enquiry from the Bank in relation to these transactions, it transpired that the said transactions were authorised by the R4 in favour of the R5. Moreover, interestingly, it is also noticed that the R4 was a Director of the Corporate Debtor for the period of 21.01.2016 till 15.02.2017 and the afore-mentioned transactions were authorised by the R4 even after he ceased to operate office of the Director of the Corporate Debtor. Further, the Forensic Auditor and even the Applicant demanded the supporting documents with respect to the afore-mentioned transactions with the R5. However, both the R4 and R5 failed to provide any supporting documents in this regard. In view of these facts, the Applicant has concluded that the R4

committed a Fraud to deceive the Creditors by transferring amount from the Corporate Debtor's account to the R5 without any business transactions.

5.2. A hefty amount of ₹ 1,46,44,278/- has been transferred from the Bank Account to the R6 i.e. Muthoot Finance Limited. The transactions for this much amount were carried out within a small period of time from Dec. 2017 till May 2018. The aforementioned transactions were authorised by the R4 and even this time also after he ceased to operate the office of the Director of the Corporate Debtor.

5.2.1. On the enquiry regarding the afore-mentioned transactions with the R6, the Applicant was provided with a copy of an Agreement dated 09.08.2017 (hereinafter referred as **the alleged agreement / Agreement**) allegedly entered between the R6 and the Corporate Debtor. The copy of said agreement was provided to the Forensic Auditor. The Forensic Auditor also examined the records of the Corporate Debtor in this respect. The said agreement was signed by one Shri Vivek Goel on behalf of the Corporate Debtor as Authorised Signatory. Moreover, interestingly, when the Applicant dig out the records of the Corporate Debtor it was noticed by the Applicant that Shri Vivek Goel was never either a Director nor even an Employee of the Corporate Debtor. However, Shri Vivek Goel is an employee of one different entity named M/s. AMP Communications Private Limited, in which R4 viz. Shri Mandeep Malhotra was holding the office of the Director of AMP during the period for 25.08.2015 till 21.09.2020.

5.2.2. In view of these facts, the Applicant concluded that Shri Vivek Goel signed the alleged agreement only on the instructions of the R4, and pursuant to the said Agreement, R4, through Bank Account, transferred the afore-mentioned hefty amounts to the R6. As per Applicant this act of the R4 is nothing but the act of defrauding the Creditors of the Corporate Debtor.

5.2.3. R6, being the financial services provider, should have, before entering into the Agreement, verified the authority of Shri Vivek Goel to sign on behalf of the Corporate Debtor. But on the other hand, the R6 has not done so which is being done in regular day to day business of the R6. Hence, this act of the R6 invokes suspicion over the intention of the R6 and in respectful submissions of the Applicant R6 acted mala-fide along-with the R4 to enter into afore-mentioned transactions.

5.3. The Corporate Debtor has made certain payments to some different entities during the period of Aug. 2017 till Oct. 2018. It is pertinent to note that the said payments were also authorised by the R4. The details of the payments made are as follows :

Period	Ledger Name	Bank Name	Payments
31.08.2017 to 26.12.2017	Adcom Solutions & Communications Private Limited	HDFC BANK LTD	₹ 9,37,041
10.10.17 to 29.12.2017	ARISTOTLE CONSULTANCY PRIVATE LIMITED	HDFC BANK LTD	₹ 1,10,000

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11.10.2017	FCM TRAVEL SOLUTION MUMBAI	HDFC BANK LTD	₹ 74,892
19.3.18 to 10.8.2018	Aapoorti Marcom	HDFC BANK LTD	₹ 3,31,452
19.3.2018	A S RAWAT & ASSOCIATES	HDFC BANK LTD	₹ 66,878
19.3.2018 to 9.10.2018	Celestial Brands	HDFC BANK LTD	₹ 5,12,401
19-Mar-18	MOHAN PHOTOSTATES	HDFC BANK LTD	₹ 53,787
13-Apr-18	D.S. Momaya &Co	HDFC BANK LTD	₹ 19,140
05-Jun-18	Heart Throb Outdoor Advertising	HDFC BANK LTD	₹ 99,904
09-Oct-18	Colortip International	HDFC BANK LTD	₹ 17,943
09-Oct-18	Geovista Technologies Pvt Ltd	HDFC BANK LTD	₹ 12,52,800
	TOTAL PAYMENTS		₹ 34,76,238

5.3.1. The Applicant tried to make contact with these different entities and also to the R4 in this regard, However, neither the R4 nor these entities could provide any document to prove the genuineness of these transactions. R4 committed a Fraud to deceive the Creditors by transferring amount from the Corporate Debtor's account to these different entities without any authentic business transactions.

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5.4. An amount of ₹ 63,64,110/- has been transferred through the Corporate Debtor's account within the period of Jul. 2017 till Apr. 2018, and debited to Suspense Account. However, on enquiry from the Bank, the Applicant could locate some of beneficiary name. The details of transactions are as follows -

Date	Particulars	Payments	Name of Beneficiary as per Bank
13-07-2017	HDFC BANK LTD	₹ 1,59,993	[Blank]
27-07-2017	HDFC BANK LTD	₹ 7,85,536	[Blank]
31-08-2017	HDFC BANK LTD	₹ 2,20,375	BB APPLIENCES
31-08-2017	HDFC BANK LTD	₹ 3,32,951	[Blank]
29-09-2017	HDFC BANK LTD	₹ 3,32,951	[Blank]
13-11-2017	HDFC BANK LTD	₹ 2,18,327	[Blank]
11-12-2017	HDFC BANK LTD	₹ 76,997	Ankit Karnwal
03-01-2018	HDFC BANK LTD	₹ 2,40,652	Yukti Multimedia Pvt. Ltd
10-01-2018	HDFC BANK LTD	₹ 3,20,750	B B DIVERGENT

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			DISPLAY
12-01-2018	HDFC BANK LTD	₹ 6,00,000	SIXTH SENSE INC.
15-02-2018	HDFC BANK LTD	₹ 2,20,000	ARYAN INDIA
09-03-2018	HDFC BANK LTD	₹ 1,00,000	AUTO STRIPING INDIA PRIVATE LIMITED
09-03-2018	HDFC BANK LTD	₹ 30,664	ARISTOTLE CONSULTANCY PRIVATE LIMITED
09-03-2018	HDFC BANK LTD	₹ 89,900	VISION GRAPHICS
09-03-2018	HDFC BANK LTD	₹ 1,00,000	AAPOORTI MARCOM SOLUTION
09-03-2018	HDFC BANK LTD	₹ 89,900	RAJAT ADVERTISING AGENCY
02-04-2018	HDFC BANK LTD	₹ 21,59,514	[Blank]
13-04-2018	HDFC BANK LTD	₹ 1,85,600	CELESTIAL BRANDS
13-04-2018	HDFC BANK LTD	₹ 1,00,000	AUTO STRIPING

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			INDIA PRIVATE LIMITED
TOTAL PAYMENTS		₹ 63,64,110	

5.4.1. It is pertinent to note that these transactions also were authorised by the R4 and the same also when he ceased to hold the office of the Director of the Corporate Debtor. Accordingly, R4 has diverted the afore-mentioned total amount of ₹ 63,64,110/- to suspense account and thereafter the same has diverted to the R4's personal account.

5.5. R4 has authorised the total payments of ₹ 13,28,04,886/-, out of which the afore-stated payments are only to the tune of ₹ 9,39,52,475/-. Hence, it is noteworthy that there is no trace about the amount of ₹ 3,88,52,411/-. The said amount has been paid through the Bank Account of the Corporate Debtor and the payments were authorised by the R4. Further, out of this amount the Applicant could trace the way of ₹ 1,60,00,000/- which was transferred to M/s. Digi Communications Private Limited (**Digi**) on 21.12.2016 in two tranches of ₹ 80,00,000/- each. In this regard the Applicant sent a communication / E-mail to Digi on 24.08.2021. However, till date there is no response from this entity. However interestingly the latest status of Digi is shown as "Strike-off" over the Official Website of Ministry of Corporate Affairs. All these above facts are evident that the said amount of ₹ 1,60,00,000/- has been transferred mischievously to Digi and the R4 must have diverted the said amounts to its personal accounts.

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- 5.6. The amount of ₹ 2,28,52,411/- is remained un-identified and the Applicant is not in position to identify the persons / entities to whom the said amount has been transferred.
6. The Respondent No. 5 filed reply dated Stating that the Corporate Debtor being engaged in the business of marketing and advertising consultancy services, approached Respondent No. 5 for permission to set up kiosks, flyers etc. in the vicinity of Respondent No. 5 branches across India on such terms and conditions with respect to the fees and scope as stipulated under agreement dated 14.02.2017, and the agreement was valid for the period from 1.12.2016 to 1.12.2019. Accordingly, based on usage of the branches, Respondent No. 5 was raising invoices from February 2017 upto April 2018 for an aggregate sum of Rs. 7,06,79,284/- for services rendered by it during the period from 1.12.2016 to 31.3.2018 to the Corporate Debtor as per the rate matrix agreed to in the said Agreement. The Corporate Debtor deducted tax at source thereon amounting to Rs. 12,11,424/-, and these invoices included levy of service tax, cess thereon and GST, which was duly deposited with the Government and reported in the tax returns filed with the department.
7. We have heard the Counsel and perused the material available on record.
- 7.1. On perusal of the trial balance appended to the Forensic Auditor's Report, we notice that the Corporate Debtor is stated to have earned revenue in FY 2017-18 amounting to Rs. 3,37,64,223.06/-, of which Rs. 2,81,66,409/- came from Advertising through Outdoor Media. The corresponding purchases amounts to Rs. 1,96,52,456/- as per the profit loss account. The Forensic Audit Report is silent whether the

service revenue and purchases reported in the Service tax/GST returns filed for the year 2017-18 were taken into consideration, as these returns comprehensively contains the details of gross amounts pertaining to input/output tax liability of a taxable person. Further, TDS returns filed by the Corporate Debtor would have revealed more information, so as to ascertain the nature and quantum of transactions with the parties, alleged to have been paid fraudulently by the Corporate Debtor under the signature of R 4. Nonetheless, no determination is permissible on the basis of surmises & conjectures u/s 66 of the Code, as the person making allegation is under obligation to prove that there was presence of dishonest intent on the part of the persons, who are sought to be called as Contributors. Also, on comprehensive reading of the contents of Audit Report, we find that the accounts of the Corporate Debtor, on the basis of which the allegation of fraudulent business has been made, are incomplete.

7.2. Though, it is undisputed fact that R 4 was not signatory at the relevant point of time, however, he being the director till January, 2017 and others i.e. R 1 & R2 being non-resident directors, no adverse inference could be drawn from the mere fact that the payments came to be made by the Corporate Debtor under the signature of R 4.

7.3. From the perusal of reply of R 5, we come to the conclusion that R 5 was paid against the invoice(s) raised by them in ordinary course of business towards hoarding charges, which is corroborated from the nature of income reflecting in the trial balance for the year ended on 31.03.2018 also. Further, the Applicant has failed to bring on record any evidence to suggest

that the payment, in turn, reached to R 4 from R 6. Hence, we feel no case is made out in so far as R 5 is concerned.

7.4. As regards R 6, we find that R 6 is also another reputed company similarly engaged in the business of financial services, as R 5 is. R 6 had shared one agreement duly executed on behalf of the Corporate Debtor in relation to similar services, as were offered by R 5 to the Corporate Debtor. The Applicant has doubted this transaction simply on the basis of fact that this agreement was executed one by Mr. Vijay Goel, who happens to be an employee of a company in which R 4 is director. However, the Applicant has ignored the ledger statement of Corporate Debtor in the books of R 6, shared by R 6 explaining the details of invoices and the payments received by R 6 against the same. Since, the payments were made from the bank account of the Corporate Debtor to R 6, a man of ordinary prudence would not have any reason to doubt that the person under whose authority agreement was executed with the Corporate Debtor is not authorised to do so. Accordingly, we are of considered view that R 6 was paid against the invoice(s) raised by them in ordinary course of business towards hoarding charges, which is corroborated from the nature of income reflecting in the trial balance for the year ended on 31.03.2018 also. Further, the Applicant has failed to bring on record any evidence to suggest that the payment, in turn, reached to R 4 from R 6. Hence, we feel no case is made out in so far as R 6 is concerned.

7.5. As regards payments made to other creditors amounting to Rs. 34,76,238, we hold similarly for the reasons stated above, as the payees are identifiable and the nature of these payments

have not been ascertained from the GST/Service Tax input claims/TDS returns.

7.6. As regards suspense transaction amounting to Rs. 63,64,110/-, we find that the Trial Balance for the year ended on 30.9.2019 reflects net suspense balance of Rs. 7,75,927/- on credit side, meaning thereby, there was net unaccounted liability payable by the Corporate Debtor, the details of which could not be ascertained. We find that there are debit and credit transactions in the suspense ledger, and the applicant has based his case on the basis of debit transactions only without considering the credits in the suspense account. Since, the net result of suspense account results into a liability, we do not find any merit in the contention of the applicant that an order u/s 66 ought to be passed in this relation.

7.7. As regards payment of Rs. 1,60,00,000/- which was transferred to M/s. Digi Communications Private Limited (**Digi**) on 21.12.2016 in two tranches of ₹ 80,00,000/- each, we find that the payee thereof no longer exists. As the latest status of payee is claimed to be reflecting as “Strike-off” over the Official Website of Ministry of Corporate Affairs. The Suspended management, including R 4 has not co-operated, and this payment has been made under this Signature, we are of considered view that this amount can be held to be fraudulent in nature in view of absence of explanation from R 4 or any of the suspended directors forthcoming in this relation considering the non-existence of payee of this Amount. Since, the amount was paid under the authorisation of R 4, we hold that R 4 shall contribute to the Corporate debtor this sum within 30 days alongwith interest @ 10% p.a. from the date of

payment to Digi till the amount is refunded to the Corporate Debtor.

7.8. As regards the amount of ₹ 2,28,52,411/- remaining unidentified, we find that Applicant had identified the Bank transactions, and reconstructed the books of account of the Corporate Debtor till 30.9.2019, as can be deduced from the copy of Trial Balance placed as part of the Forensic Audit Report. As explained at para 7.6, such trial balance reflects net sum of unidentified transaction in credit. Accordingly, we are of considered view for the reasons stated in para 7.6 above, this transaction is based on surmises & conjectures and does not meet the necessary conditions stipulated u/s 66 of the Code. with hold these payments to be fraudulent in nature in view of absence of explanation from R 4 or any of the suspended directors forthcoming in this relation considering the non-identification of payee of this Amount. Since, the amount was paid under the authorisation of R 4, we hold that R 4 shall contribute to the Corporate debtor this sum within 30 days.

8. In view of the foregoing, we allow partly IA 2578 of 2021 and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)