

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

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**IA No.41, 42, 51, 52 & 62 of 2020 in  
CP (IB) No. 204/7/AMR/2019**

**In the matter of KVR Industries Private Limited**

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**Dated 8<sup>th</sup> June, 2020**

The regular court proceedings have been suspended/closed as per Notice dated 22.03.2020 of NCLT, Principal Bench and subsequent follow up orders due to the COVID-19 pandemic. The order in this case is ready. Counsel for both the parties are present in the Video Conference (VC). Order is pronounced as separate sheets through VC. IA Nos. 41, 42, 51, 52 & 62/2020 are disposed. Post the CP on **06.07.2020** for hearing.

Upload the same onto the NCLT website. A copy of the order may also be sent to the Registrar, NCLT as per Circular dated 14.04.2020 for necessary action at his end.

  
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

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IA Nos. 41 of 2020,  
42 of 2020,  
51 of 2020,  
52 of 2020;  
& 62 of 2020 in  
CP (IB) No. 204/7/AMR/2019

**In the matter of M/s KVR Industries Private Limited**

**IA No. 41/2020**

**In the matter of an Application under Sections 60 (5) of the  
Insolvency and Bankruptcy Code, 2016**

M/s PP Bafna Ventures Private Limited,  
Registered Office at No.111,  
World Trade Centre. Tower-A,  
S. No. 1, Kharadi Hs. No. 1B/2B,  
Pune, Maharashtra.

... **Applicant**

**And**

M/s KVR Industries Private Limited,  
#15-171/1, Cheepurupalli Road,  
Rajam – 532 127,  
Srikakulam District, Andhra Pradesh.

... **Respondent**

**Appearance:**

For Applicant: Mr. Niranjan Reddy, Sr. Counsel with Mr. I. V.  
Siddhivardhana & Ms. Divya Datla, Advocates.

For Respondent: Mr. P. Vikram, Mr. Sai Phanindra & Ms. Aahana,  
Advocates.

**IA No. 42/2020**

**In the matter of an Application under Section 60(5) of the  
Insolvency and Bankruptcy Code, 2016**

**Between**

M/s PP Bafna Ventures Private Limited,  
Registered Office at No. 111,  
World Trade Centre. Tower-A,  
S. No. 1, Kharadi Hs. No. 1B/2B,  
Pune, Maharashtra.

... **Applicant**

**And**

M/s KVR Industries Private Limited,  
#15-171/1, Cheepurupalli Road,  
Rajam – 532 127,  
Srikakulam District,  
Andhra Pradesh.

... **Respondent**

*My  
8/6/2020*

**Appearance:**

For Applicant: Mr. Niranjana Reddy, Sr. Counsel with Mr. I. V. Siddhivardhana & Ms. Divya Datla, Advocates.

For Respondent: Mr. P. Vikram, Mr. Sai Phanindra and Ms. Aahana, Advocates.

**IA No. 51/2020**

**In the matter of an Application under Section 60(5) of the  
Insolvency and Bankruptcy Code, 2016**

**Between**

- M/s KVR Industries Private Limited,  
#47-11-3, Dwarakanagar,  
Visakhapatnam – 530 016  
Andhra Pradesh.

... **Applicant**

**And**

M/s PP Bafna Ventures Private Limited,  
No.111, World Trade Centre, Tower A,  
S. No. Kharadi, H. No. 1B/2B, Pune,  
Maharashtra.

... **Respondent**

**Appearance:**

For Applicant: Mr. P. Vikram, Mr. Sai Phanindra & Ms. Aahana, Advocates.

- For Respondents: Mr. Niranjana Reddy, Sr. Counsel with Mr. I. V. Siddhivardhana and Ms. Divya Datla, Advocates.

**IA No. 52/2020**

**In the matter of an Application under Section 60(5) of the  
Insolvency and Bankruptcy Code, 2016**

**Between**

M/s KVR Industries Private Limited,  
#47-11-3, Dwarakanagar,  
Visakhapatnam – 530 016,  
Andhra Pradesh.

... **Applicant**

**And**

M/s P P Bafna Ventures private Limited,  
No. 111, World Trade Center Tower A,  
S.No. 1, Kharadi, H. No. 1B/2B,  
Pune, Maharashtra.

... **Respondent**

**Appearance:**

For Applicant: Mr. P. Vikram, Mr. Sai Phanindra & Ms. Aahana, Advocates.

*PP Bafna*  
*8/6/2020*

For Respondents: Mr. Niranjana Reddy, Sr. Counsel with Mr. I. V. Siddhivardhana & Ms. Divya Datla, Advocates.

**IA No. 62/2020**

**In the matter of an Application under Section 60(5) of the  
Insolvency and Bankruptcy Code, 2016**

**Between**

M/s KVR Industries Private Limited,  
#47-11-3, Dwarakanagar,  
Visakhapatnam – 530 016  
Andhra Pradesh.

... **Applicant**

**And**

M/s PP Bafna Ventures Private Limited,  
No.111, World Trade Centre, Tower A,  
S. No. Kharadi, H. No. 1B/2B,  
Pune, Maharashtra.

... **Respondent**

**Appearance:**

For Applicant: Mr. P. Vikram, Mr. Sai Phanindra & Ms. Aahana,  
Advocates.

For Respondents: Mr. Niranjana Reddy, Sr. Counsel with Mr. I. V.  
Siddhivardhana & Ms. Divya Datla, Advocates.

**Date of Order: 08.06.2020**

**CORAM:**

**Hon'ble Janab Mohammed Ajmal, Member Judicial**

**ORDER**

All the IAs arose consequent upon the order dated 13.02.2020 disposing of the Company Petition i.e. CP (IB) No. 204/7/AMR/2019 (hereinafter referred to as the present Company Petition) and the withdrawal of another Company Petition i.e. TCP (IB) No. 119/9/AMR/2019 (hereinafter referred to as the other Company Petition) on 12.02.2020 which the order dated 13.02.2020 was contingent upon. They were accordingly heard together and shall abide by the orders passed herein.

2. The tortuous path the present Company Petition has traversed need a brief mention. M/s P P Bafna Ventures Private Limited (herein after referred to as the Financial Creditor) of M/s KVR Industries (herein after referred to as the

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Corporate Debtor) filed the Company Petition under section 7 of the Insolvency and Bankruptcy Code (the Code for short) seeking Corporate Insolvency Resolution Process (CIRP) on the allegation of default in payment of a Financial Debt. One Eshwar Enterprises, an Operational Creditor (OC) of the Corporate Debtor (CD) had also filed TCP (IB) No. 119/9/AMR/2019 (the other Company Petition). The Petition was admitted by an order dated 12.02.2020 by this Authority initiating CIRP. At that stage the present Company Petition had been part heard. Since the other Company Petition was admitted, this Authority felt that there was hardly any need to keep the present Company Petition pending. It accordingly by order dated 13.02.2020 directed the Applicant to approach the Interim Resolution Professional (IRP) in terms of Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 for further action in the matter and disposed of the present Company Petition. The Operational Creditor M/s Eshwar Enterprises and the Corporate Debtor reached an out of court settlement and filed IA No. 37 of 2020 (in the other Company Petition) for withdrawal of the said Company Petition. This Authority by an order dated 21.02.2020 allowed the IA No. 37/2020 and permitted withdrawal of the other Company Petition.

3. The basis of the order dated 13.02.2020 in the present Company Petition thus having set at naught, the Financial Creditor accordingly filed IA No. 41 of 2020 seeking restoration of the present Company Petition and IA No. 42 of 2020 seeking restoration of the interim order dated 02.12.2019 of this Authority. The Respondent (CD) filed his counter to both the IAs. At the same time it also filed two applications namely, IA Nos. 51 of 2020 and 52 of 2020 alleging forgery of the signature of the Applicant (FC) in IA Nos 41 and 42 of 2020. Counters were sought and the matter was listed for hearing. On 13.03.2020 the CD filed another application vide IA No. 62 of 2020 praying to receive the forensic examination report of the signatures (of the Applicant) appearing in IA Nos. 41 and 42 of 2020 with the admitted signature of the deponent. Counter thereto have been filed. Meanwhile because of the COVID-19 Pandemic the Court proceedings remained suspended as per the order of the Principal Bench vide letter dated 15.03.2020. The suspension of Court work was extended from time to time in tune with the lockdown promulgated by the Central and State

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Governments. Hearing of urgent applications were permitted to be heard through video conference as per letter dated 03.05.2020 of the NCLT Principal Bench. Accordingly, these Applications were heard through video conferencing. Meanwhile the Applicant (FC) under the signature of Mr. Praful Prakash Bafna filed an Affidavit dated 09.05.2020 reverifying the IA No. 41 of 2020 confirming the contents of the Application averments.

4. The Corporate Debtor vehemently objected to the IAs Nos. 41 & 42 of 2020 on the ground that the signature on the verifying affidavits (in the IAs) did not belong to Praful Prakash Bafna. It accordingly prayed to initiate criminal proceeding against Mr. Praful Prakash Bafana under section 193 of the IPC read with Section 340 and 195(1)(b) of the CrPC. He also prayed (in IA No. 52 of 2020) to order Mr. Praful Prakash Bafna to appear for cross examination. It is accordingly prayed that forgery and perjury having been practiced, IA Nos. 41 and 42 of 2020 could not be allowed. While the matter was being heard, the Financial Creditor filed a memo dated 29.05.2020 (by e-mail on 30.05.2020) seeking withdrawal of the IA Nos. 41 and 42 of 2020 with liberty to file a fresh Interim Application recapitulating the contents of the Interim Application Nos. 41 of 2020. Copy was served on the other side and a counter running into several pages was filed. The filing of the memo by the Financial Creditor had a fresh twist to the already murky proceedings. It is contended by the Corporate Debtor that on the face of the applications seeking criminal prosecution and cross examination, the Financial Creditor cannot be allowed to wriggle out of conundrum resulting from the multiple IAs as above. As if the drama was not enough the Financial Creditor filed another IA on 01.06.2020 effectively reiterating the prayers made in IA No. 41 of 2020 which, it had sought under the memo dated 29.05.2020. Since the present IAs were pending this Authority by order dated 02.06.2020 directed not to number the IA.
5. It is submitted by the learned counsel for the Financial Creditor that withdrawal of the application in IA Nos. 41 & 42 of 2020 being voluntary could not be stalled by the Corporate Debtor. The memo in effect cures a supposed defect in the IAs concerned and the withdrawal thereof would only hasten the disposal of the Interim Applications. The Interim Applications are intended for restoration of hearing of the present Company Petition. At the same time it is also submitted that the Corporate Debtor could pursue his application/allegation

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of forgery and perjury independent of the withdrawal, the same being matters of the Tribunal's records and could not be tampered with. The learned counsel for the Corporate Debtor on the other hand submitted that the basis and genesis of the applications being shrouded in suspicion and doubt could not be permitted to be withdrawn nor can be allowed.

6. The Financial Creditor made the Applications IA Nos. 41 and 42 of 2020 soon after the order dated 21.02.2020 allowing the IA No. 37 of 2020 was passed. The Order of disposal of the present Company Petition and direction to the Financial Creditor to approach the IRP was dependent upon the order dated 12.02.2020 in the other Company Petition. That order dated 12.02.2020 was recalled consequent upon the permission to withdraw in IA No. 37 of 2020. What if, the Financial Creditor had not filed the restoration Applications in IA Nos. 41 & 42 of 2020! Would the Authority have sat upon the order dated 13.02.2020 thereby preventing the Financial Creditor from enforcement of its right available under section 7 of the Code. The answer to this question, in my considered opinion, would be no. The order dated 13.02.2020 was passed without any intervention from either of the parties. It was a *suo motu* order as the Authority felt that once CIRP had been initiated, no fruitful purpose would be served by keeping the present Company Petition pending. Every Applicant has the prerogative of prosecuting his application or withdrawing there from. Therefore, the memo dated 29.05.2020 could not be objected to by the Corporate Debtor. It would be for the Authority to consider it and pass appropriate orders. But by doing so, the allegations and insinuations raised as to the genuineness of the signature of the person swearing the verifying affidavit would not be washed away. Whether or not the signatures were genuine would come within the domain of the competent Criminal Court, forgery and perjury being punishable offences. In the same vein it would follow that no order of prosecution of the person verifying the affidavit can be ordered by this Authority. That would be outside the realm of the jurisdiction conferred on this Authority. Therefore, I refrain from making any comment and passing any orders on the merits of IA Nos. 51 and 52 of 2020. That however would not preclude anybody including the Corporate Debtor to raise the matter of forgery and perjury before a competent forum. While allowing the withdrawal of IA Nos. 41 and 42 of 2020, I am not inclined to grant any liberty to the Applicant

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(FC) to file another application for the same prayer as in IA No. 41 of 2020. The Applicant (FC) having withdrawn from pressing the prayer therein could not be allowed to reagitate the matter by another application for whatever reasons, be it of substance or form or other technicalities. Therefore I am not inclined to grant the Applicant (FC) liberty to file another Application for the self-same prayer. Accordingly, I have no reason before me to allow withdrawal of the Application and at the same time grant liberty to file another. The withdrawal simpliciter can however be permitted. The reverifying affidavit has no bearing on the issues raised in the IA Nos. 51 & 52 of 2020. Therefore, it needs no consideration.

7. Before closing let us pause and ponder. Would the Applicant be left without a remedy, ostensibly for no negligence on its part? Law abhors vacuum. Hon'ble Dipak Misra, J. (as his Lordship then was) in *Nakula Swain v. Jogendra Das*: 81 (1996) CLT 765 observed that litigations are required to be adjudicated on merits. The Hon'ble Apex Court in *Robin Thapa v. Rohit Dora* (Civil Appeal No. 4507 of 2019 decided on 8 July, 2019) held, "Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits."
8. The Applicant thus cannot be left in the lurch without its case being decided on merits. More so, when it has not been remiss in prosecuting the present Company Petition and had no role in passing of the order dated 13.02.2020. It is well settled that there cannot be a right without a remedy (*per* *State of Andhra Pradesh v. K. Ranganathan*: (1990) 4 SCC 636). The Petitioner had a right to file the Company Petition and thus was entitled get his Petition decided on merits. Which however was cut short by order dated 13.02.2020 and this Authority felt its remedy lay before the IRP.
9. After all, rules of procedure are but handmaidens of justice (*Mr. Shaik Salim Haji Abdul v. Mr. Kumar & others*: AIR 2006 SC 396). The Hon'ble Court in *Sardar Amarjit Singh Kalra v. Pramod Gupta*: (2003) 3 SCC 272 observed that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizens under personal, property and other laws.

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Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. In the same vein the Hon'ble Court in N. Balaji v. Virender Singh: (2004) 8 SCC 312 observed that the procedure would not be used to discourage the substantial effective justice but would be so construed as to advance the cause of justice.

10. The Honourable Supreme Court in Collector, Land Acquisition v. Mst. Katiji: AIR 1987 SC 1353 ruled that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. The principle has also been echoed in Laxmibai v. Bhagwantbuva (Civil Appeal No. 2058 of 2003 decided on 29.01.2013).
11. This Authority by order dated 12.02.2020 admitted the other Company Petition against the same Respondent/Corporate Debtor. The order dated 13.02.2019 was made *suo motu* after the order of admission was passed. The said order of admission was set at naught by withdrawal of the Company Petition under Section 12A of the Code. Therefore, necessary corollary would have been that the order dated 13.02.2020 passed in this case was accordingly *suo motu* recalled, its basis having become non-existent. The Applicant however filed an application for recall of the order dated 13.02.2020 to restore the Company Petition for hearing it on merits. Now the Application having been not pressed, what could be the fate of the Company Petition! Whether the same should be left unattended in view of the order dated 13.02.2020 or should the Authority take some action for redressal of the Company Petitioner on merits. As already indicated the Company Petitioner cannot be left in the lurch for none of its dereliction. An Application for restoration of the Company Petition is sought as a matter of prudence and practice, so that disposal of Company Petition, as in the present case, is not ignored and the Petitioner is left without a remedy. Therefore, taking into consideration the principle of law discussed *supra*, in my considered opinion the Company Petition needs to be restored to file and relegated to date of hearing i.e. 11.02.2020 for further action in the matter. While ordering so it would not be out of place to mention that the allegation of forgery and perjury raised in IA Nos. 51 and 52 of 2020 shall not be affected by the orders passed herein. Further, this Authority would not be in a position to comment on the propriety or otherwise thereof. That would amount to venturing into the jurisdiction not conferred on it and encroaching upon the

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jurisdiction of the Criminal Court which only can take a decision in the matter in a duly constituted legal proceeding. The Respondent may approach the appropriate authority for redressal of the grievances raised in IA Nos. 51 and 52 of 2020. To act otherwise would be prejudicial and may bear upon the criminal adjudication system provided under the Companies Act, 2013 and other related laws. Materials placed in IA No. 62 of 2020 are in the nature of evidence. Those can only be appraised in a criminal trial. Acceptance thereof in the present proceeding would not only be irrelevant but redundant. Hence ordered.

### ORDER

IA Nos. 41 & 42 of 2020 are dismissed as not pressed. Without prejudice to the matters raised therein, IA Nos. 51 and 52 are disposed of with the observation that the Respondent (Applicant therein) may approach the appropriate forum for redressal. IA No. 62 of 2020 is dismissed being infructuous. Disposal of IA Nos. 51 & 52 of 2020 and dismissal of IA No. 62 of 2020 shall not affect or influence the institution/initiation of any criminal investigation/proceedings relating to the allegation of falsification of records, perjury and forgery in IA Nos. 41 and 42 of 2020. The investigating agency enquiring or judicial authority trying into the allegations, if any, shall not be influenced by the observations and orders passed herein. The present Company Petition is restored to file and is relegated to the stage of hearing as on 11.02.2020. The same is posted to 06.07.2020 for hearing and further orders. No costs.

  
MOHAMMED AJMAL  
(MEMBER JUDICIAL)