

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A.(IBC)/NO.539(KB)OF 2021

Connected With

C.P.(IB) NO.-546/KB/2019

In the Matter of:

M/S. TATA HITACHI CONSTRUCTION MACHINERY COMPANY PRIVATE
LIMITED

.....Operational Creditors/Applicant

V/s

M/S EARTH MOVER CONSULTANCY PRIVATE LIMITED
(CIN:U27100JH1998PTC008560)

.....Corporate Debtor/Respondent

AND

In The Matter Of:

*Application to the Adjudicating Authority under Section 49 of IBC, 2016 for necessary
direction to the promoters/directors and ex-employee of Corporate Debtor*

AND

Pramod Kumar Singh

.....Resolution Professional/Applicant

Vs.

Mr. Aziz Husain & Ors.

.....Respondents.

Coram:

- Mrs. Bidisha Banerjee, : Member (Judicial)
- Mr. Balraj Joshi, : Member (Technical)

Counsel/Authorised Representative appeared physically/through video conference:

For the Liquidator:

Mr. Arani Guha, Advocate

Mr. Pramod Singh, Liquidator-in-person

Order reserved on:05.06.2023

Order pronounce on:27.07.2023

Per: Bidisha Banerjee, Member (Judicial)

1. This is an application preferred by the Resolution Professional of Corporate Debtor in CP No.(IB) No.-546/KB/2019 to seek the following reliefs:
2. Brief facts leading to the application:-
 - a) This Adjudicating Authority vide its order dated 21/10/2019 passed an order for commencement of Corporate Insolvency Resolution Process of Earth Mover Consultancy Private Limited, under Section 9 of Insolvency and Bankruptcy Code 2016 (“I&B code”) and appointed Mr. Pramod Kumar Singh (IBBI/IPA-002/IB-N00678/2018-2019/12039) as Interim Resolution Professional (IRP) of Earth Mover Consultancy Private Limited. Further vide its Order dated 09th Dec, 2019 confirmed the appointment of Interim Resolution Professional as Resolution Professional. The COC also at its meeting held on 09th Dec, 2019 appointed the Interim Resolution Professional as Resolution Professional.
 - b) The IRP took all the necessary steps as required under IBC, such as publication of announcement of CIRP of Earth Movers Consultancy Private Limited, verification of Claims, submission of Claim to Adjudicating Authority, Calling of first COC meeting well within the time as prescribed under Law and valuation of assets. That some fraudulent and preferential transaction made by

the Respondents in the name of the company were noted in the Forensic Audit report.

3. In the third CoC meeting held on 31st January, 2020 COC by 100% vote resolved to go for Liquidation of Corporate Debtor, before inviting expression of interest from prospective resolution applicant. The Resolution Professional, Mr. Pramod Kumar Singh, filed an application before this Adjudicating Authority under Section 33 (20) of IBC and for liquidation of Corporate Debtor.
4. The Respondent Nos.1, 2 and 3 are the main promoters and suspended directors of Corporate Debtor. All the respondents are related with each other and various other ventures were opened by them to expand their business.
5. The CoC appointed Forensic Auditors M/s. DANSPARK & Co., Chartered Accountants to find out the possible misappropriation of funds or mismanagement in the Company.
6. The Forensic Audit report, revealed that the Corporate Debtor Company has filed its last Audited Accounts for the Financial year 2011-12 and the same is available on the MCA Portal. Further Tax Audit Report for the Financial Year 2014-15 were found but without Audit Report, and no returns were filed with ROC.
7. The Forensic Audit was made on the basis of records as available from the management of the Company and it further revealed that following assets have been disposed of either in cash or any other mode without routing the sale proceeds in the account of corporate debtors and no proper utilization of sale process has been found

in the books of accounts, no proper entries made in the Books of accounts of the Company. The depiction being as under:

S. No.	Description of Assets	Value as on 31/03/2015 (INR)
1.	Flat at Kolkata	68,00,761
2	Disposal of Ex-200	91,68,290
3.	Excavator	30,56,140
4	TATA JD	51,48,531
5	Stock	15,05,76,211
6.	Advance	5,41,00,000
7.	Amount given for getting Foreign Loan	81,39,000
8.	Advance given to Related Party	97,98,000
9.	Debtors Fake entry or already received	9,19,13,580
	TOTAL	33,87,00,513

8. Further the Corporate Debtor Company was found to have done following preferential transactions:

- i. Transferred funds by way of advance to Material Handling Consultancy Pvt. Ltd., one of its group company and Rs.97.98 lacs were outstanding. The status of the said Company is 'Strike off' as on date.
- ii. In October 2015, an amount of Rs.16,00,000/- has been transferred to one Faraan Shafee shown as salary in the books of accounts of the Company when the Company was in a standstill position and there was no trace of the said person.

- iii. As per the report, in the Financial Year 2015-16, huge cash was withdrawn and Rs.40.25 lacs were paid in cash and booked as salary and bonus but no supporting documents were provided by the management of the Company.
 - iv. In FY 2014-15 various short-term funds have been used for the long term purpose and the same is explained in the Forensic Audit report.
9. The applicant claims that the impugned transactions are between the related party of the Corporate Debtor, and are fraudulent in nature.
10. None appeared for the respondents ever, despite repeated notice and opportunity.
11. Hence, in the interest of justice one more opportunity is given to the respondents to appear and justify, failing which this Tribunal will ensure that:
- i. The Respondents are physically produced on the next date of hearing when they would be required to justify their acts or actions; and/or
 - ii. Get their properties attached.
12. List this matter on **18.08.2023**.
13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on this, the 27th Day of July, 2023

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