

**NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**Under Section 60(5) of Insolvency and  
Bankruptcy Code, 2016**

**I.A. NO. 1073 OF 2020**

Filed by

**Ms. Rekha Kantilal Shah,**

**Liquidator**

Fibertech Infracon P. Ltd.

...Applicant

versus

**Reliance Commercial Finance Ltd.**

...Respondent No. 01

**Suraksha Asset Reconstruction Ltd.**

...Respondent No. 02

In the matter of

**C.P. (IB) No. 396 OF 2018**

**Reliance Commercial Finance Ltd.**

Reliance Centre, 6<sup>th</sup> Floor, South Wing,  
Off. Western Express Highway, Santacruz  
(East) Mumbai – 400 005

...Financial Creditor

**versus**

**Fiber Infracon P.Ltd.**

Flat No. 604, 5<sup>th</sup> Floor, Honey Archana  
Apartment, Above Axis Bank,  
Near Med Nagpur, 400 009

...Corporate Debtor

**Order Pronounced on: 10.11.2020**

**Coram:**

**Hon'ble H.V. Subba Rao, Member (Judicial)**

**Hon'ble Shyam Babu Gautam (Member Technical)**

**Appearance:**

**For the Liquidator:** Mr. Devarajan Raman

**For the Respondent No. 1:** Mr. Subir Kumar

**Per: Hon'ble H. V. Subba Rao, Member (Judicial)**

**ORDER**

1. This is an Interlocutory Application filed by the Liquidator Ms. Rekha Shah (hereinafter called as the 'applicant') of Fibertech Infracon Private Limited (hereinafter called as the 'Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called the "Code"). The Insolvency Resolution Process of the Corporate Debtor was commenced on 17.01.2019 and this Tribunal allowed the Liquidation on 05.12.2019. the Resolution Professional was not keen to continue, the applicant in the present application was appointed as liquidator. The Resolution Professional handed over the charge to the liquidator on 24.12.2019.
2. The professional appearing for the applicant mentioned that the perusal of documents and the index of charge filed with MCA revealed that prior to the order of admission to the CIRP on 05.12.2019, Reliance Commercial Finance Ltd. (hereinafter referred to as 'Respondent No. 01') who was the original petitioner and who had initiated the CIRP of the Corporate Debtor had assigned the debt to Suraksha Asset Reconstruction Pvt. Ltd. (hereinafter referred to as 'Respondent No. 02') on 29.09.2017 and registered with sub registrar of assurances on 10.01.2018. This was filed with the MCA on 03.05.2019.
3. The professional further mentioned that it is evident from the foregoing that Respondent No. 01 was not eligible to initiate CIRP as the debt was assigned much before the process was initiated. This fact is not available in any of the documents handed over by the Resolution Professional to the Applicant Liquidator. It also appears from the record that this fact was not brought to the notice of this Tribunal during the hearing prior to the admission order.
4. The applicant in the process, commenced the liquidation and invited claims through a public announcement to which Respondent No. 01 filed its claim on 07.01.2020. This claim was verified and admitted on 08.02.2020 and later on 12.02.2020 this

claim was rejected by the applicant as their claim was incorrect in view of the assignment of the debt to Respondent No. 02. The Respondent No. 02, on being informed by the applicant on 24.04.2020 about the background, expressed surprise and submitted the claim without relinquishing security interest on 05.05.2020. But as per the regulations, this should have been exercised within 30 days of the Liquidation Commencement date.

5. The applicant further mentioned that in view of this, she is unable to take the process of liquidation ahead and is handicapped without any funds to carry on the process. Therefore, she seeks directions on the way forward and also for directing the Respondents to make payment towards liquidation cost as the applicant is handicapped in conducting the liquidation process due to unavailability of expenses and fees. Also, the applicant has till 12.06.2020 has incurred expenses totalling Rs. 13,67,474/- of which outstanding amount to be paid comes to a total of Rs. 10,33,338/-. Therefore, this application has been filed by the liquidator seeking directions for payment of fees and expenses, as set out in Annexure F of the application, and liquidation funds to run the liquidation process, as set out in Annexure G of the application, either by Respondent No. 01 or Respondent No. 02.
6. The counsel for the respondent No. 01 on the contrary has denied all the contentions and averments by the applicant in toto. The counsel reiterated that by virtue of the Resolution Agent Agreement dated 30.09.2017, the Respondent No. 02 has authorised and appointed Respondent No. 01 as an agent and Constituted attorney for collection of the amounts due to the Respondent No. 02 by the borrowers pertaining to the loan accounts as mentioned in the assignment deed dated 29.09.2017, and rectification deed dated 06.08.2018. The respondent No. 02 further, vide the said Resolution Agent Agreement has also authorised the Respondent No. 01 to take legal actions against the default committed by the borrowers.
7. The counsel for the respondent No. 01 further mentioned that Section 65(1) of the Code cannot be said to even remotely be

applicable in the present case as there is no fraudulently or malicious intention of the Respondent No. 01 behind initiation of the present proceedings. He further mentioned that the Respondent No. 01 has, with bonafide intentions initiated the present proceedings for resolution of insolvency. Also, this Tribunal has upheld the default committed by the corporate debtor while putting the company into insolvency resolution process. Also, no false information was furnished by Respondent No. 01 and therefore, Section 75 of the Code is inapplicable as well to the present circumstances.

8. The counsel mentioned that it was only inadvertently and due to oversight error that the Resolution Agent Agreement dated 30.09.2017 executed between the Respondent No. 01 and Respondent No. 02 vide which the Respondent No. 01 has the authority to initiate legal proceedings to recover the loan amounts on behalf of the Respondent No. 02 remained to be brought on record. He further submitted that the order of rejection of claim filed by the Respondent No. 01 in reverification by the liquidator on the ground that the claim submitted by the Respondent No. 01 is not a legitimate claim, devoid of merits and passed in haste without giving a fair opportunity to the Respondent No. 01 to make their submissions and bring such relevant documents in support of its claim on record. Stating this, the counsel prayed for dismissal of this present application.
9. The applicant in the rejoinder to the reply by Respondent No. 01 has alleged that the Respondent No. 01 has not with an intent to maximise the value of the corporate debtor filed the petition for initiation of CIRP. The intent is clear i.e. to earn commission on recovery which by the definition of Section 65(1) amounts to malicious intent and therefore, deserves to be penalized. Also, the Respondent No. 02 was shocked when came to know about the initiation of CIRP of the corporate debtor.

**FINDINGS**

We have perused all the documents submitted by the parties concerned. We have heard the arguments of the parties. It becomes clear that there was an agreement between the respondents of which neither the liquidator nor this Tribunal was aware of.

Had this fact been brought before the notice of this Tribunal at the time of hearing the main company petition, in all likely hood the petition would have been dismissed for the locus of Respondent No. 01 not coming under the definition of the Financial Creditor. Thus, the omission to bring on record the assignment agreement and the Resolution Agency Agreement by Respondent No. 01 and now bringing it on record at a later stage puts suspicion that it is merely an afterthought. The said information was material and therefore, should have been brought to the notice of this Tribunal. Also, the contention that this fact was not brought to the notice of this Tribunal is only due to oversight, inadvertent and unintentional, cannot be accepted.

In view of the above, as there are huge costs incurred by the liquidator, which are quantified by her in the application, we believe that the Respondents are duty bound to repay the same. Also, the funds required to run the liquidation process are to be provided by the Respondents, because ultimately, they are going to be the beneficiaries of the process.

Accordingly, IA 1073 of 2020 is allowed and the Respondents have to bear all the costs of liquidation and pay the fees and expenses which are borne by the liquidator. IA 1073 of 2020 is hereby disposed of with the above directions.

Sd/-

**SHYAM BABU GAUTAM**  
**Member (Technical)**

Sd/-

**H.V. SUBBA RAO**  
**Member (Judicial)***/Sneha B./*