

**NATIONAL COMPANY LAW TRIBUNAL, BENCH-1,
HYDERABAD**

IA (IBC)/1100/2022

In CP (IB) No.275/9/HDB/2021

Application under Section 66 read with section 60(5)(c)
of the Insolvency and Bankruptcy Code, 2016

Between

Mr. Dommeti Surya Rama Krishna Saibaba,
Resolution Professional for
Kumar Aquatech Agencies Private Limited
Reg. No. IBBI/IPA-003/2018-19/12106,
Flat No: 104, Kavuri Supreme Enclave,
Kavuri Hills, Madhapur, Hyderabad -500033

...Applicant/Resolution Professional

And

Suspended Board of Directors:

1. Mr. Kadiyala Sankar Babu
Director- Suspended Board of M/s. Kumar Aquatech
Agencies Private Limited Under CIRP
904/10A, Jaffer Alibagh, Near Water Tank,
Somajiguda Hyderabad – 500082

...Respondent 1

2. Mr. Durga Prasad Nimmalapudi
Director -Suspended Board of M/s Kumar Aquatech
Agencies Private Limited Under CIRP
4-106, Kalyana Mandapam Veedhi, Rajavolu,
Rajahmundry, Andhra Pradesh – 533124

...Respondent 2

Date of order: 18.10.2023.

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant : Smt. Mummaneni Vazra Laxmi, Counsel.
For the Respondent No.1 : Mr. P. Satyanarayana Murthy, Counsel.
For the Respondent No.2 : Mr. Ch. Srinivasulu, Counsel.

PER: BENCH

1. This is an Application filed by the Applicant/Resolution Professional under Section 66 read with section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 seeking the Respondents to contribute to the assets of the Corporate Debtor to the tune of Rs. 9,74,14,192/- for making transactions defrauding creditors, misuse of Company funds and being involved in fraudulent or wrongful trading in Corporate Debtor.
2. **Gist of the application:**
 - a. It is averred that the Corporate Debtor M/s Kumar Aquatech Agencies Private Limited is going through the Corporate Insolvency Resolution Process by orders of this Tribunal dated 03.06.2022 (Order made available on 14.06.2022) and appointed the Applicant as the Interim Resolution Professional and the Moratorium was declared.
 - b. It is averred that the Interim Resolution Professional issued public announcement calling for claims and after verification of the claims constituted the CoC as per Section 21 of IBC and the CoC submitted report to this Tribunal as per Regulation 17 of the CIRP Regulations, 2016 and conducted first CoC meeting on 06.07.2022 and in that meeting members with 100% voting decided to continue the Applicant herein as Resolution Professional (RP) of the Corporate Debtor.

- c. It is averred that the Corporate Debtor Kumar Aquatech Agencies Private Limited company incorporated on 26 November, 2013 with Corporate Identification Number is (CIN) U51909TG2013PTC091280 and is engaged in trading and dealing with all kind of aqua feeds (Shrimp & Prawn), fish feeds, aqua medicines, fish medicines, agriculture, horticulture, floriculture and aquaculture products.
- d. It is averred that initially FBWC limits for Rs. 9.75 Crores were sanctioned to the Corporate Debtor by the lenders on 25.10.2016 and cash credit limits at the existing level were renewed on 30.04.2018 and CC limits at the existing level renewed on 16.09.2019 for a period of 4 months i.e., up to 15.01.2020. Due to covid-19 pandemic restructuring of existing limits was sanctioned on 18.01.2021 and the limits are restructured on 26.03.2021, the last sanctioned credit facilities are for Rs. 10.70 Crores.
- e. It is averred that the Financial Creditor State Bank of India appointed M/s Sarath & Associates Chartered Accountants to conduct forensic audit of the Corporate Debtor and the main purpose of the forensic audit is to examine the books of accounts of the Corporate Debtor and to verify trail and end use of the funds disbursed by the banks for the period covering FY 2017-18,2018-19,2019-20,2020-21,2021-22 and to examine undervalued, preferential extortionate transactions as per the provisions of IBC, 2016 and the forensic auditor submitted their report on 17.05.2022.

- f. It is averred that after review of the Forensic Audit Report the following facts are noticed:
- a) An amount of Rs. 9,74,14,192/- was transferred to various persons/companies/partnership firms during the period 13.12.2016 to 23.01.2017 and there is no information about these transactions as the Respondents did not furnish the Books of Accounts to the Auditors in spite of several requests/reminders made by the auditors therefore these are suspicious transactions and are non-cooperative and not submitted the required information.
 - b) The account of the Corporate Debtor as declared as fraud by State Bank of India on 23.05.2022 based on the forensic auditor's report and also filed a complaint with Central Bureau of Investigation (CBI) New Delhi on 16.07.2022.
- g. It is averred that on 15.09.2022 the applicant sent an email requesting the respondent to submit the proof if the transactions are genuine such as Agreements, Books of Accounts, Invoices, delivery challans with receipt with Lorry Number, GST returns etc., supporting such transactions but till date there is no reply from the Respondents.
- h. It is averred that the suspended Board of Directors and other associated with Corporate Debtor are not cooperating with the Resolution Professional and several mails were sent as on by the Resolution Professional to the Suspended Board of Directors but the required information is not being provided by them as required under IBC 2016 for smooth implementation of the CIRP process and the

Resolution Professional filed application IA No 861 of 2022 u/s 19(2) of the IBC, 2016 and the said IA was allowed by this Tribunal on 30.08.2022 directing the Respondents to cooperate with the Resolution Professional and there is no response or cooperation from the respondents till date.

- i. It is averred that Section 66 of Insolvency and Bankruptcy Code, 2016 deals with Fraudulent or Wrongful Trading as follows:

66. Fraudulent trading or wrongful trading. -

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor, and

(b) such director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

Explanation. - For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the

same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

- j. It is averred that the alleged acts of the Respondents in diverting Rs.9,74,14,192/- by transferring to various persons /companies /partnership firms during the period 13-12-2016 to 23-01-2017 are done with an intent to defraud the creditors of the Corporate Debtor.

3. Counter Affidavit filed by the Respondent No.1:

- a) It is averred that the averments made by the Applicant are false and baseless.
- b) It is averred that the Respondent No.1 is the director of the M/s Kumar Aquatech Agencies appointed on 15.10.2019, Managing Director of the Company is only for namesake. The Respondent No.1 never signed any of the documents mentioned by the Applicant Resolution Professional.
- c) It is averred that in reply to Para 3 of the application that the Respondent states that originally the loan was sanctioned to a tune of Rs. 9.75 Crores, whereas the said loan was restructured for Rs. 10.70 Crores by the Financial Creditor and it appears to be that a loan should have been sanctioned during covid period vide A/c. No. 39604937085 based on the RBI Circular in the month of 2020.
- d) It is pertinent to mention that the respondent has not signed the respective loan documents though he is director at that point of time. The Financial Creditor Bank has to furnish the loan sanction letter along with documents signed by the directors of the company

and that after perusal of the petitioner documents which are said to be submitted by the Financial Creditor has not mentioned regarding the above said Loan No-39604937085 in the CBI compliant filed by the Financial Creditor. The related documents to this loan may reveal the fraud played by the Ex-Directors to this Hon'ble Court for proper adjudication of claim.

- e) It is averred that the Financial Creditor Bank has to furnish the loan sanction letter and restructure of loan amount documents to this Tribunal so that the fraud played by the persons will come into daylight and for proper adjudication of claim.
- f) It is averred that in reply to Para No.4 the Financial Creditor State Bank of India has initiated investigation based on whistle blower and CP gram complaint and should have been submitted the investigation report and has come to conclusion that the funds have been siphoned, due to which the Financial Creditor appointed M/s Sarath Associates to examine the undervalued preferential extortionate transactions that took place in the books of corporate Debtor. From the said report it is clear that the respondent is no way involved in the said suspicious transactions during the period i.e., 13.12.2016 to 23.01.2017, as well as the Covid loan sanction which is in the month of August 2020.
- g) It is averred that the loans were disbursed to the Corporate Debtor company by the Financial Creditor, they have not obtained signatures of the previous directors and the guarantors or they have not obtained signatures as done in the case of disbursement of

COVID Loan on 01.09.2020 vide A/c No. 39604937085 at the time of sanctioning of loan the Financial Creditor well aware that the director of the company is this respondent, but still they did not obtain this respondent signature on the said COVID loan documents because he is not having financial credit worthiness since he was not having Income Tax Returns by the time COVID loan was sanctioned.

- h) It is averred that the returns for the financial year 2018-19 i.e. assessment year 2019-20 was file on 27.11.2020, prior to this the respondent did not file IT Returns and after restructure he did not file the IT Returns, to satisfy the criterion of the Financial creditor the Ex-Directors implicated the respondents with the help of Financial Creditors wisely obtained signatures on the restructured loan documents on 26.03.2021 and before declaring the said account as NPA i.e., in the month of May 2021. From this it is very clearly evident that the Financial Creditor is hand-in-glove with the ex-directors as well as guarantors of the both corporate debtor and corporate creditor as both are related parties as per the documents submitted to the ROC.
- i) It is averred that in reply to Para No.5(a) the petitioner himself has agreed that an amount of Rs. 9,74,14,192/- has been transferred during the period of 13.12.2016 to 23.01.2017 and during that period this respondent is not a director of the Company, but still the petitioner has made frivolous allegations against this respondent and knowing fully well that this respondent is no way

responsible to the said transactions during the said period as he is not the director at that point of time. It is pertinent to mention that the Financial Creditor bank has not furnished the proper and relevant documents to the petitioner to know the true and correct picture of the fraudulent transfers as pointed out in the forensic audit report.

- j) It is averred that in reply to para 5(b) as stated that the respondent is only a namesake director, and the entire operations of the Corporate Debtor are being monitored as well as carried out by the previous directors and guarantors.
- k) It is averred that in reply to para 5(c) stated that the Financial Creditor is in collusion with the previous directors as well as guarantors of the company, high handedly included the names of this respondent (Suspended director) and another in the complaint lodged with the CBI, dated 16.07.2022, deliberately not included the names of the former directors as well as the guarantors who were actually involved in the operations of the company during that period.
- l) It is averred that the Financial Creditor is misleading this Tribunal and it is also misleading the CBI by mentioning the wrong CPGRAMS complaint no. AS 69391. Whereas the real complaint No. is 67939. The IT returns copies of the company M/s Kumar Aquatech Agencies Private Limited are not signed by this respondent on physical copies. Validation of E-filing of returns of the M/s Kumar Aquatech Agencies Private Limited was also done

by the same person namely Mr. Akkana Satyanarayana who is related to the previous management.

m) It is averred that the Financial Creditor who are hand in glove with the Corporate Debtor and corporate creditors previous management has committed the fraudulent and wrongful trading as per sec. 66 of the Insolvency and Bankruptcy Code 2016. The same was agreed and accepted by the petitioner herein in para no.9 of the petition about the diversion of funds to the tune of Rs. 9,74,14,192/- during the period 13.12.2016 to 23.01.2017 when the respondent is nowhere related to the corporate debtor.

4. Counter Affidavit filed by the Respondent No.2:

- i) It is averred that the averments made by the Applicant are false and baseless.
- ii) The Respondent No.2 has reiterated the same facts which was mentioned in the Counter affidavit of Respondent No.1.
- iii) It is averred that with respect to the Forensic Audit, it is true that the suspended Directors could not support the Forensic Auditors by providing the relevant documents and data. Therefore, the Forensic Auditor adopted an unethical method just to conclude the reporting for the sake of Forensic Audit, by totalling the payments as records in the bank statement.

5. Additional Affidavit filed by the Respondent No.2:

- i. It is averred that the applicant relying on the forensic audit report which was prepared by the auditors appointed by the Financial Creditor, State Bank of India prior to declaration of moratorium U/s.

14 of the Code i.e., admission of the Corporate Debtor into CIRP was not maintainable in law and on facts of the case. Relying on the Forensic Audit Report given by the Financial Creditor, which was solely prepared with malafied intention.

- j. The code to conduct the forensic audit independently and want to form the opinion U/s. 25(2)(j) of the code read with Section 66 of the code during the CIRP or liquidation process, instead he has relied on the forensic audit report prepared before the admission of the CIRP on the request of the Financial Creditor.
6. Written Submissions filed by the Respondent No.2, reiterated the same facts which was mentioned in the Counter.
7. Written Submissions filed by the Liquidator/Applicant, the applicant has reiterated the same facts which was mentioned in the application.
8. This is an application filed by the Resolution Professional under section 66 r/w section 60(5)(c) of the IBC, 2016, on the basis of the Forensic Auditors Report conducted by M/s Sarath & Associates.
9. We have gone through the Forensic Audit Report, copy of which is filed from Pg.No.33 to 72 in the application and we find that the said Forensic Audit Report is inconclusive and does not provide the details on the basis of which this Tribunal can pass an order for classifying the transactions as fraudulent transactions.

The forwarding letter of the said Forensic Audit Report is reproduced below which clearly indicates that this report is inconclusive and lack detailed information required for declaring transaction as fraudulent transactions:

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Date 16.05.2022

To
The DGM (B&O)
State Bank of India
Administrative Office
Secunderabad

Dear Sir,

*Sub: Submission of information about forensic audit of M/s
Kumar Aqua Tech Agencies Private Limited.*

*As per the oral discussion happened with respected bank authorities, we are agreeing to submit the supplementary audit report based on the additional information provided by the Borrower. **However, we didn't receive any information from the borrower and request you to consider the final report dated 24.06.2022, submitted by us as a final report** and we are here by reproduced the major points mentioned in the final forensic audit report as follows:*

- 1) The borrower is non-cooperative for conducting the audit and not submitted the required information.*
- 2) Payments of Rs. 9,74,14,1921/- made by the company to various Persons/ Firms/ Companies during the period 13.12.2016 to 23.01.2017 **and the same were appearing to be suspicious.***
- 3) **Due to non-submission of information, we are unable to verify the genuineness& Source of Infused capital of Rs. 4 Crores.***
- 4) MOD of the collaterals are not appearing in the Encumbrance Certificate.*

*Thanking You,
For Sarath and Associates*

10.The Resolution Professional also has not provided any further details and seeks to pass an order directing the respondents to contribute to the assets of the Corporate Debtor an amount of Rs. 9,74,14,192/- for making transactions defrauding creditors, misuse of Company funds and being involved in fraudulent or wrongful trading in Corporate Debtor, merely on the basis of the said Forensic Audit Report.

- 11.**Liquidator has filed another IA No 999/2023 for issuance of order dissolving the Corporate Debtor under section 54(2) of IBC 2016, in which they have submitted that members of SCC in the meeting held on 11.04.2023 decided that this IA No. 1100/2022 under section 66 will be perused by the Financial Creditor, SBI, and the amount received if any shall be distributed among the stakeholders in the priority laid down in the section 53 of IBC 2016.
- 12.**We also observe that Financial Creditor has filed a complaint with CBI, New Delhi on 16.07.2022 based on the Forensic Audit Report against the Suspended Board of Directors.
- 13.**In view of the above facts, we decide that this application cannot be considered, merely on the basis of a Forensic Audit Report which itself is inconclusive and does not carry much value to decide the case. Therefore, **this IA No. 1100/2023 is dismissed and disposed of**, with no costs.

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

Swapna