

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT – VI

ITEM NO. 803

IA/2788/ND/2022

IN

(IB) 2661/ND/2019

IN THE MATTER OF:

Mr. Pawan Garg V/s. Mr. Amandeep Singh Saran and Ors

Order under Section 66 of Insolvency and Bankruptcy Code, 2016

Order delivered on 14.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,

HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA/2788/ND/2022 in (IB) 2661/ND/2019 stands allowed.

SD/-

(Rahul Bhatnagar)

Member Technical

SD/-

(Bachu Venkat Balaram Das)

Member Judicial

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-VI

IA/2788/ND/2022
IN
(IB) 2661/ND/2019

IN THE MATTER OF:

M/S HBN DAIRIES AND ALLIED LIMITED

... Financial Creditor

Versus

VIRAMAN BUILDCON AND DEVELOPERS PVT. LTD.

... Corporate Debtor

AND IN THE MATTER OF:

Mr. PAWAN GARG
RESOLUTION PROFESSIONAL
VIRAMAN BUILDCON AND DEVELOPERS PVT. LTD

... (Resolution Professional / Applicant)

Versus

Mr. AMANDEEP SINGH SRAN
Residence at: -
6173, SF Plot No 6 Road No. 73,
West Punjabi Bagh New Delhi,
India 110026

.... Respondent No. 1

Mr. MANJEET KAUR SRAN
Residence at: -
6173 ff Plot No.6, Road no.73,
West Punjabi Bagh, New Delhi,
India 110026

....Respondent No.2

M/s HBN HOME COLONIZERS PVT LTD
Through Resolution Professional
At: Business Unit No. 531,
5th Floor, HBN Office D Mall,
Plot D, District Centre,
Paschim Vihar New Delhi
Pincode- 10087

....Respondent No.3

M/S HBN CREDIT COOPERATIVE SOCIETY
At: -B-53, Block-1, Community Centre,
Janakpuri New Delhi-110038

.... Respondent No. 4

SHUVAM COLONIZERS PVT. LTD
Through its Directors
HBN SUN RISE CITY MANSA ROAD
BATHINDA PB 151001 IN

....Respondent No. 5

HBN HOSPITALITY PVT LTD
Through its Directors
Business Unit No. 526D,5th Floor,
HBN Office D Mall, Plot D,
District Centre, Paschim Vihar
New Delhi West Delhi DL 110087 IN

.... Respondent No. 6

EASY VENTURES (INDIA)PVT LTD
Through its Directors
LEO, 503/A-Wing, Kohinoor Premises
Co-operative Society Ltd., Plot No, 479,
24th Road, Khar (W)
Murnbai MH 400052 IN

....Respondent No.7

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT: -

For the Applicant: Mr. Kunal Godwani, Adv.

For the Respondent: Mr. Ajay Monga, Adv. along with Mr. Vidush, Adv

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 14.09.2023

1. The present Application under Section 25(2)(j) read with Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') has been filed by the Applicant/Resolution Professional (Mr. Pawan Garg) of the Corporate Debtor i.e., M/s Viraman Buildcon and Developers Private Limited for reporting fraudulent transactions done by the Respondents amounting to Rs. 11,28,30,000 (Rupees Eleven Crore Twenty-Eight Lakhs Thirty Thousand). The applicant is seeking following reliefs:
 - a. Allow the present Application;
 - b. Pass an Order under section 66 of IBC declaring that business of the Corporate Debtor had been carried out with the intent to defraud creditors of the Corporate Debtor or for fraudulent purpose, and pass orders making Directors of the Corporate Debtor and the Respondent No. 3- 7 either through their directors or IRP or RP or Liquidator liable to make such contributions to the assets of the Corporate Debtor as it may deem fit. Pass an order for fine and punishment for falsification of books of Corporate Debtor/ false representation to Creditors of Corporate Debtor in terms of Section 71 and 72 of the Insolvency and Bankruptcy Code, 2016;
 - c. Pass any such order as the Hon'ble Tribunal may deem fit.
2. That the details and material facts leading to the filing of the present application are stated as under

- I. That this Tribunal vide order dated 12.01.2022 admitted the petition and initiated the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. The Applicant was appointed as the Interim Resolution Professional (IRP) in the instant case.
- II. That in the first meeting of CoC held on 25.03.2022 the IRP was appointed as RP with 100% voting shares. The same was confirmed by this Tribunal vide order dated 05.04.2022.
- III. That the Resolution Professional, vide engagement letter dated 11.04.2022 engaged IWS Gaurav J & Co. Chartered Accountants, as transaction auditor, for determination of the Avoidable Transactions as per Section 43,45, 50 and 66 of the Insolvency and Bankruptcy Code, 2016
- IV. That the transaction audit was carried out with the information available with Applicant, and information available in the public domain.
- V. That as per the report of the Transaction Auditor, following transactions fall under section 66 of the Code:-

S.NO.	PARTICULARS	AMOUNT (IN LAKHS)
1.	HBN Home Colonizers Private Limited	698.78
2.	HBN Credit Cooperative Society	323.02
3.	Shuvam Colonizers Private Limited	51.52
4.	HBN Hospitality Private Limited	30.00
5.	Easy Ventures (India)Private Limited	25.00
	TOTAL	1,128.30

- VI. That from the perusal of the above tabular chart, it is clear that the ex-directors of the Corporate Debtor, had fraudulently transferred an amount of Rs. 1,128.30 Lacks to the various other Respondents (3 to 7).
- VII. That it is appropriate to mention that the below mentioned companies have common directors, except Easy Ventures (India) Private Limited, and as such, are being managed by same people. It is further pertinent to mention that name of the 4 Respondent Companies (i.e., Respondent No 3, 5, 6 & 7) have been struck off from the Register of Companies. the status and directorship pattern of the Respondents No. 3 - 7 are mentioned below:

S.NO.	PARTICULARS	STATUS	DIRECTORS
1.	HBN Home Colonizers Private Limited	Strike off (under CIRP)	-AMANDEEP SINGH SRAN -MANJEET KAUR SRAN
2.	HBN Credit Cooperative Society		
3.	Shuvam Colonizers Private Limited	Strike off	-AMANDEEP SINGH SRAN -MANJEET KAUR SRAN
4.	HBN Hospitality Private Limited	Strike off	-AMANDEEP SINGH SRAN -MANJEET KAUR SRAN
5.	Easy Ventures (India) Private Limited	Strike off	-VINOD SINGH -SUKHWINDER GILL -AZIMUDDIN KHAN

VIII. That the Corporate Debtor has diverted substantial amount of money into HBN Colonisers Private Limited against which an Insolvency petition under Section 9 of IBC registered as IB-82/ND/2018 titled as Tricotite Electrical Industries Pvt. Ltd. V. HBN Home Colonisers Pvt' Ltd, has been filed before the Adjudicating Authority i.e. NCLT, Bench - 4 New Delhi. The Adjudicating Authority had initiated CIRP against the HBN Home Colonisers Pvt. Ltd. vide order dated 24.07.2019. In the said matter the NCLT has appointed Mr. Rakesh Kumar Jain as the IRP, who was later confirmed as RP.

IX. The ledger extract in the books of Corporate Debtor is reproduced below

S.NO.	PARTICULARS	AMOUNT(IN LAKHS)
1.	Opening Balance as on 01.04.2014	692.50
2.	Add: Debited Through Bank Account	9.85
3.	Less: Credited Through Bank Account	3.30
4.	Less: Credited Through Book Adjustment	.27
	Balance as on 12.01.2022	698.78

X. That the above-mentioned amount has been transferred by the ex-directors of Corporate Debtor to the Respondent no.3, without charging any interest. It is appropriate to state that the said amount has till date not been returned back to Corporate Debtor. The Ex Directors/management of the Corporate Debtor had diverted the sale proceeds and other funds to HBN Group concern,

XI. That the ledger extract of the Corporate Debtor with Respondent No 4 is mentioned below:

S.NO.	PARTICULARS	AMOUNT(IN LAKHS)	REMARKS
1.	Opening Balance as on 01.04.2014	-1.26	
2.	Add: Debited Through Bank Account	176.74	Amount received towards the plot booking or sale of land , debited to HBN Credit Cooperative Society
3.	Add: Debited through Bank Account(Yes Bank)	154.97	Yes Bank Account no.- 016583800002782
4.	Less: Credited Through Bank Account(Yes Bank)	-6.60	Yes Bank Account no.- 016583800002782
5.	Less: Credited Through Book Adjustment	-.83	Property Tax
	Balance as on 12.01.2022	323.02	

XII. That from the pursual of the aforementioned extract, it is clear that the Ex-Director of the Corporate Debtor had diverted plot booking and sale of land receipt to Respondent No. 4, along with other transfer through Yes Bank. The Ex-Director and key managerial of the Corporate Debtor had not charged any interest amount charged to the society (Respondent no.4), further the same was never received from Respondent no.4. It is appropriate to state that the winding up process of the Respondent no.4 was initiated on 05.05.2019 under the

Provisions of MSCS Act,2002 on complaints of illegal activities and irregularities against the society.

- XIII. The ledger extract of the Corporate Debtor with Respondent No 5 is mentioned below:

S.NO.	PARTICULARS	AMOUNT(IN LAKHS)
1.	Opening Balance as on 01.04.2014	2.24
2.	Add: Debited Through Bank Account	49.26
	Balance as on 12.01.2022	51.52

- XIV. That from the above mentioned extract it is clear that the ex-management of the Corporate Debtor had transferred an amount of Rs.51 .52 (in Lakhs) and had not even charged any interest . The said amount has till date not been returned to the Corporate Debtor by Respondent no.5.
- XV. The ex-management of the Corporate Debtor had transferred Rs. 30 lacs to the Respondent no.6, on same day of receipt of credit from Kusum Devon Indore Private Ltd. The very purpose of the transfer could not be ascertained. It is appurtenant to mention that the aforementioned amount has been transferred by the ex-directors of Corporate Debtor to the Respondent no.6, without charging any interest. It is appropriate to state that the said amount has till date not been returned back to Corporate Debtor
- XVI. That the Corporate Debtor has transferred Rs. 25.00 lacs to Easy Ventures (India) Pvt. Ltd as part of loan processing fee but no loan was ever disbursed to the Corporate Debtor on 12.05.2014.

- XVII. That from the observations made in the Transaction Audit Report, it can be clearly established that the Corporate Debtor has entered into several fraudulent transactions whereby prejudicially affecting the rights and interests of the lenders/creditors of the Corporate Debtor and thereby attracting liability fixed under section 66 of the code
- XVIII. That the Respondents are liable to return the wrongful and illegal gains made by them which caused great losses to the creditors. It is a fit and proper case where necessary directions may be issued and action be taken in accordance with Law.
3. This Tribunal vide order dated 23.08.2022 directed the applicant to serve notice to the Respondents. The applicant served the copy of the application to all the Respondents and filed affidavit of service dated 12.09.2022 along with proof of service. However, despite service of notice no one appeared for any of the Respondent(s). Therefore, the Respondents were set ex-parte vide order dated 07.12.2022.
4. We have heard the submissions made by the applicant and have gone through the documents on record filed by the applicant. The present application has been filed under section 66 of Insolvency and Bankruptcy Code, 2016. The said section is reproduced as under: -

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 minimising 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.

5. Unlike other Avoidance Transactions where there is lookback period of two years in case of related party and one year in other cases ,there is

no lookback period as far as fraudulent transactions under section 66 of the code are concerned.

6. In the present case, the applicant has reported fraudulent transactions conducted by the Respondents, amounting to Rs. 11,28,30,000 (Rupees Eleven Crore Twenty-Eight Lakhs Thirty Thousand). Respondent No. 1 and 2 are former Directors of the Corporate Debtor. It is observed that Respondent No. 3 to Respondent No. 6 were managed by the same management and had common directors. Furthermore, it is noted that the Corporate Debtor, instead of utilizing funds for its primary business objectives, diverted the funds to the HBN Group Concern. No loan documents were available to explain why these loans were provided without charging any interest. It is also apparent that providing loans to other parties was not the business purpose of Corporate Debtor. We are therefore satisfied that the Transaction Auditor's report has rightly classified these transactions as fraudulent in accordance with the provisions of section 66 of the Code.
7. Regarding Respondent 7, it is observed that, according to the Corporate Debtor's books of accounts, no loan was ever disbursed to the Corporate Debtor. Thus, it raises questions about the validity of charging Rs. 25 Lakhs as a loan processing fee. Additionally, Respondent No. 7 has never submitted any balance sheet to the Registrar of Companies and is currently struck off. Consequently, we are satisfied that the aforementioned transaction qualifies under section 66 of the Companies Act, 2013.

8. Accordingly, we allow the prayer of the applicant and direct Respondent no 1 and 2 to make total contributions of Rs. 11,28,30,000/- to the account of the Corporate Debtor within two months from the date of the order failing which necessary legal actions may be taken.
9. Accordingly, IA 2788/ND/2022 stands allowed.
10. The Learned Registrar is directed to send a copy of the order to the parties concerned.

SD/-

(Rahul Bhatnagar)
Member (T)

SD/-

(Bachu Venkat Balaram Das)
Member (J)