

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT V**

**I.A. 971 OF 2022**

**IN**

**C.P. (IB) No. 2392 of 2019**

Under Section 73(b) of the Insolvency &  
Bankruptcy Code, 2016

**Ms. Rekha Shah**

**...APPLICANT**

**vs.**

**Mr. Sudhir D. Chaturvedi & Ors.**

**...RESPONDENT**

**In the matter of:**

**Stressed Assets Stabilisation Fund**

**...ORIG. PETITIONER**

**vs.**

**Adya Oils and Chemicals Ltd.**

**...CORPORATE DEBTOR**

**Order Dated: 18.12.2023**

**Coram:**

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Sanjiv Dutt, Member (Technical)

**Appearance (Physically):**

For the Applicant: Mr. Devarajan Raman a/w Adv. Shaila Tawde &

Ms. Rekha Shah

For the Respondent: Adv. Minesh K. Shah

**ORDER**

1. The above application bearing I.A. No. 971 OF 2022 is filed by Ms. Rekha Shah (hereinafter referred to as the “**Applicant**”) seeking direction against Mr. Sudhir D. Chaturvedi & Ors. (hereinafter referred to as the “**Respondent**”) under Section 73(b) of the Insolvency & Bankruptcy Code, 2016 (hereinafter called as “**the Code**”), praying for following reliefs:

*“This Hon’ble Tribunal may be please to*

- i. To forward/refer the IA to the Central Government to examine/investigate and take steps against the respondents in terms of S.73(b) of the Code;*
- ii. To forward/refer the IA to the Board to examine/investigate and take steps against the respondents in terms of S.73(b) of the Code;*
- iii. Any other order or direction that this Hon’ble Tribunal may deem fit and proper.”*

**Brief Facts of the Case**

2. The present Application is filed u/s 73(b) of the IBC, 2016 by the Liquidator of the Corporate Debtor appointed by this Tribunal vide liquidation order dated 04.03.2020, against the erstwhile directors of the Corporate Debtor i.e. 1) Mr. Sudhir Dinanath Chaturvedi, 2) Deepak Balakrishna Chaturvedi and 3) Sunil Santoshilal Chaturvedi seeking examination/investigation of the Respondents by the Central Government or the Board.

3. The case of the Applicant (the Liquidator of the Corporate Debtor) is that the Respondents (erstwhile directors of the Corporate Debtor) had purchased certain pieces of land from the Tribal people which could not be legally transferred as per the law. The Block Nos. 80 & 81 were mutated back to the government due to gross negligence and misconduct of the Respondents to take necessary steps by getting Non-agricultural (NA) order. The Respondent had made false representation to the IDBI Bank that the pieces of land were free from any defect and had availed loan by defrauding the creditor punishable under Section 73 (b) of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor availed a term loan of Rs.700Lakhs from IDBI Bank vide loan agreement dated 22.12.1998 by way of first mortgage and charge on all immovable properties consisting of Block Nos. 81 & 83 to 87 (Old Block Nos.) situated at village Mangle, Tal. Karjan, Distt. Vadodara, thereby defrauding the Creditors.

4. The particulars and status of the pieces of land are as under:-

New Block No.	Old Block No.	Sale Deed No.	Date of Sale	Name of Seller	Name of present owner as per the revenue record
77	81	75	02.02.1999	Ganpatsinh P. Parmar	Adya Oils and Chemicals Ltd.
79	83	78	02.02.1999	Sanatan G. Shukla	Adya Oils and Chemicals Ltd.

80	84	77	02.02.1999	SindhaAnopben M.	Shri Sarkar
81	85	74	02.02.1998	Uked Anoop Rathod	Shri Sarkar
82	86	76	02.02.1998	Rathod Dahya Kala	Arjun S. Solanki
83	87	155	04.03.1999	Pravinchandra R. Joshi	Adya Oils and Chemicals Ltd.

5. The non-compliance by the Respondents (erstwhile Directors of the Corporate Debtor) for the pieces of land are as under:-

New Block No.	Non-compliance
77	S.63 AA of the Bombay Tenancy and Agricultural Lands Act, 1948 and NA permission for use of the land for

	Industrial Purpose.
79	S.63 AA of the Bombay Tenancy and Agricultural Lands Act, 1948 and NA permission for use of the land for Industrial Purpose.
80	S.43 and S.63 AA of the Bombay Tenancy and Agricultural Lands Act, 1948.
81	S.63 AA of the Bombay Tenancy and Agricultural Lands Act. & S.73 AA of Bombay Land Revenue Code 1879.
82	S.63 AA of the Bombay Tenancy and Agricultural Lands Act. & S.73 AA of Bombay Land Revenue Code 1879.

6. It is also submitted that the total amount of the term loan availed by the Corporate Debtor was Rs. 700 Lakhs and the total cost of project was Rs. 1,544 Lakhs. The building is about 2435 Sq mts and based on the total spent on the building and on the construction is about Rs.17,500 per sq mts which is way above the cost prevalent during the years 2000-2003.
7. Therefore, the conduct of the Respondents needs examination and investigation by the Central Government or the Board and appropriate steps in terms of Section 73(b) of the Code for the fraud committed by them.
8. While countering the above arguments, the Respondent No. 1 has filed its reply dated 16.06.2023. The Respondent has submitted that the prayers made by the Applicant are not in consonance with the functions of the Liquidator as specified under Section 35 of the IBC, 2016 but are within the purview of the Financial Creditor or the Resolution Professional. Hence, the Liquidator is travelling beyond the scope of her duties and functions as stated in the Act.
9. The Respondent submits that the tribal land can be transferred after following the due procedure as per the law. The Respondent denied that the Block Nos. 80 & 81 were mutated back to the government due to gross negligence and misconduct in taking necessary steps of getting Non-Agriculture (NA) order. It is submitted that the Corporate Debtor had purchased the land by paying due consideration and getting the same registered with proper authority and by paying appropriate stamp duty. For setting up phase 1 of the manufacturing unit, a term loan was taken from Financial Creditor for a parcel of land which was converted to Non-Agriculture (NA)

after obtaining permissions. It was also part of the project sanction note that only part of land was required for the present phase and that extra land was acquired by the Corporate Debtor for two other purposes i.e. future expansion and to ensure pollution clearance.

10. The respondent (erstwhile Directors of the Corporate Debtor) further submits that the status of lands was within the knowledge of the Financial Creditor. As the Financial Creditor approached the DRT when the phase 1 of the project was not operational, the Corporate Debtor further roped in one investor viz Souma Resorts Private Limited (SRPL) to operate the plant and pay IDBI (erstwhile Financial Creditor) its dues. A settlement through DRT was thus finalized. The payments were made to IDBI bank (erstwhile Financial Creditor) directly through SRPL as part of settlement. Therefore, the IDBI was always kept informed and apprised of the situation over a period of 15 years.
11. In response to the contention that the term loan of Rs. 7 crores was availed of by way of first mortgage and charge over all immovable properties, the Respondent submits that the first mortgage and charge in favour of IDBI was created after the Board of the Corporate Debtor had conducted all the steps advised by the IDBI officials, empanelled lawyers and company secretary to the satisfaction of IDBI. The respondent (erstwhile Directors of the Corporate Debtor) further submits that prior to disbursement, if there had been a single search report that the mortgage property is not clear, then the matter could not have reached the present stage.
12. The respondent denies that except for new Block No. 83 (earlier Block No. 87) there was non compliance under the *Bombay*

*Tenancy and Agricultural land* Act on part of the Corporate Debtor. The respondent submits that the manufacturing unit was to be set up in Block No. 83 alone (earlier Block No. 87). The project report submitted by the Corporate Debtor, appraisal note submitted by the IDBI officials to their sanctioning authority for releasing loan sanction letter, all state excess land was acquired by the Corporate Debtor for various reasons. Only one parcel of land was to be used for manufacturing units in phase 1 upon compliance of the provisions. Had provisions not been complied then neither Financial Creditor nor the Respondent would have accepted the mortgage. The manufacturing unit was to be setup in Block 83 alone. The project report was submitted by the Corporate Debtor to the IDBI officials and subsequently, the IDBI officials also took note of the excess land and submitted the appraisal note to their sanctioning authority for release of loan.

13. The Respondent also denies that any false representations were made to IDBI for availing a loan that makes offense punishable u/s 73(b) of the IBC. The Respondent submits that there were several correspondences, including through lawyers that clearly state that excess land had reverted to the state government. Thus these relevant facts were in the knowledge of the IDBI officials. The instances are:
  - i. Request of Respondent No.1 for restructuring the Corporate Debtor dues post walking out of the investor in 2009-10.
  - ii. Details submitted to M/s Mayra and Khatri & M/s. Basavraj Masangi and Co., appointed by SASF for valuation of Corporate Debtor assets on 05.12.2012 and 24.11.2015 respectively.

- iii. Corporate Debtor's reply dated 21.12.2012 through their lawyer in response to notice dated 22.10.2012 issued under section 13(2) of the SARFAESI Act.
- iv. Title search report dated 16.02.2016 submitted by M/s. Shrivastav & Associates.

The Respondent further submitted that it is not even the case of the IDBI Bank that fraud has been done while mortgaging land.

14. Further, in response to the contention that the cost of construction is Rs.17,500/- per sq. mtr. i.e. above the cost prevalent during the year 2000-2003, the Respondent submits that the cost of the project was submitted to the IDBI. As per the provisions of article VI of the loan agreement dated 22.12.1998, the IDBI appointed Chartered Accountant to audit company's books of account and certify the application of funds raised for the project. The firm submitted the certificates during the implementation of the project monthly. Further, as per the provisions of article VII of the loan agreement, the IDBI carried out technical, financial and legal inspections during construction and operation period of the project. Therefore, the IDBI was well aware of the cost of the project and had accepted the same while disbursing the loan amount. Hence, the plea of the Applicant deserves to be rejected.
15. It is submitted that the Respondent Nos. 2 & 3 should not form part of this Application as the loan account of Corporate Debtor was declared NPA in 2003 and company was in liquidation and having only one secured creditor viz IDBI Bank now SASF. The Respondent No. 1 had introduced an investor who negotiated an OTS with SASF and paid the dues directly to them. However, SASF

failed to meet its obligation to the investor leading the investor to leave the Corporate Debtor. Therefore, the Respondent no.1 again stepped in to revive the Corporate Debtor in 2009 and negotiated restructuring of its dues with SASF. The Respondent No. 1 additionally pumped Rs. 60 lakhs towards the first two instalments to SASF. The Respondent No. 1 with the intent to revive the company appointed Mr. Deepak & Mr. Sunil as professional executive directors on 30.09.2010 and 11.11.2010 who later resigned on 05.10.2015 when the company was on standstill.

16. It is submitted that no allegations were raised by the Board during the pendency of CIRP or Liquidation proceedings. Moreover, no allegations were raised between the Financial Creditor and the Corporate Debtor in more than two decades of relationship.

**Findings:**

17. Heard both the learned counsels and perused the record of the case. After having appreciated the facts and circumstances of the present case and in view of the findings recorded in IA 883 of 2022 and In view of Section 73 of IBC which is reproduced hereunder :-

**“Section 73: Punishment for false representations to creditors.**

*73. Where any officer of the corporate debtor—  
(b) prior to the insolvency commencement date, has made any false representation, or committed any fraud, for that purpose,  
he shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less*

*than one lakh rupees, but may extend to one crore rupees, or with both.”*

18. The present IA is **allowed** and the case is directed be forwarded to the Central Government to examine / investigate for initiating the appropriate steps against the Respondents in respect of the Section 73(b) of the Code. Copy of the order be forwarded to IBBI for requisite information and necessary action.

SD/-

**Sanjiv Dutt**  
**Member (Technical)**  
/Abhay/

SD/-

**Reeta Kohli**  
**Member (Judicial)**