

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 118/JPR/2020**  
**In CP No. (IB)- 157/7/JPR/2019**

**IN THE MATTER OF:**

**STCI FINANCE LIMITED**

...Petitioner/ Financial Creditor

**VERSUS**

**BOHRA INDUSTRIES LIMITED**

...Respondent/ Corporate Debtor

**MEMO OF PARTIES**

**IA No. 118/JPR/2020:**

**MR. RAMESH MANTRI**  
8, Upasana, Bal Nikunj, Ambabari,  
Jaipur- 302023 (Rajasthan)

...Applicant

**VERSUS**

**MR. NARESH VERMA,**  
*(Erstwhile RP of M/s Bohra Industries Limited)*  
416/7 & 8, First Floor, Opposite  
Karkarduma Metro Station, Sadguru  
Market, Near Shiv Mandir, Delhi- 110092

...Respondent No. 1

**MR. SUNIL BHANDARI**  
*(Suspended Director of M/s Bohra Industries Ltd.)*  
82, Madhuvan Near General Post  
Office, Udaipur- 313001 (Rajasthan)

...Respondent No. 2

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**MR. SATYA NARAYAN MAHESHWARI**  
*(Suspended Director of M/s Bohra Industries Ltd.)*  
 457, Ambamata Yojna Udaipur-  
 313001 (Rajasthan)

...Respondent No. 3

**MR. HEMANT KUMAR BOHRA**  
*(Suspended Director of M/s Bohra Industries Ltd.)*  
 220, Main Road, Ashok Nagar,  
 Udaipur- 313001 (Rajasthan)

...Respondent No. 4

**MR. SANDHYA BHATIA KUMAR**  
*(Suspended Director of M/s Bohra Industries Ltd.)*  
 79C, Pratap Nagar, Udaipur- 313001  
 (Rajasthan)

...Respondent No. 5

**COUNSEL FOR APPLICANT(S)** : Prashant Agarwal, CA.  
**COUNSEL FOR RESPONDENT(S)** : Amol Vyas, Adv.

**Order Pronouncement On: 08.12.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present application bearing *IA No. 118/JPR/2020* has been filed by *Mr. Ramesh Kumar Mantri* ('Applicant') who is the shareholder of *M/s Bohra Industries Limited* ('Corporate Debtor') under Section 60 of IBC, 2016 and Section 213 of the Companies Act, 2013 read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- a. *Stay the corporate insolvency resolution process of Corporate Debtor with immediate effect as some fraudulent or wrongful trading has been carried by the Corporate Debtor and its suspended directors before the commencement of CIRP against which no application has been ever filed by the RP u/s 66 or any other section of IBC, 2016*
- b. *Direct the RP to take these observations on record and appoint forensic/ transaction auditor(s) to verify the transactions of Corporate Debtor*

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*and file application u/s 66 of IBC and under other applicable sections of the code.*

*c. To direct the central government to refer the said matter to the SFIO for further investigation into the Affairs of the Corporate Debtor and its suspended directors, as expeditiously as possible.*

2. It is seen that in the present matter, an application was filed under Section 7 of the Code by the Financial Creditor namely *STCI Finance Limited* seeking initiation of the CIRP of the Corporate Debtor namely *Bohra Industries Limited* and the same was admitted by this Adjudicating Authority vide Order dated 07.08.2019 wherein *Mr. Naresh Verma* was appointed as Interim Resolution Professional ('IRP') and later confirmed as Resolution Professional ('RP').
3. The present application has been filed on the following set of facts:
  - 3.1. It is submitted that the Corporate Debtor came out with its Initial Public Offer ('IPO') of 45,72,000 equity shares at face value of Rs. 10 each fully paid, at cost of Rs. 55 per equity share (including a share premium of Rs. 45 per equity share) aggregating to Rs. 25,14,60,000/- (Rupees Twenty-Five Crores Fourteen Lakhs Sixty Thousand Only) to the public. The issue was kept open from March 23, 2017 to March 27, 2017 and the overall issue was oversubscribed. The object of the issue was to purchase the machinery and equipments for expansion, working capital requirements and general corporate purposes.
  - 3.2. The requirement of funds was assessed at Rs. 7,00,00,000/- (Rupees Seven Crores Only) to purchase machinery and equipments for Supply-

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Side Platform ('SSP') Expansion as per page No. 127 of Red Herring Prospectus ('RHP'). Incremental working capital requirement for the year 2017-18 was assessed as Rs. 1,217.20 lakhs which will be met through the net proceeds of IPO as per page No. 131 of RHP. In the annual report for the year 2017-18, the utilization of proceeds raised from IPO as on 31.03.2018, as mentioned, is produced below:

*“Company has raised the funds total Rs. 25,14,60,000/- towards purchase of machinery and equipments for SSP Expansion, working capital requirements, general corporate purpose, issue expenses. Further, company has fully utilized its IPO proceeds as on 31.03.2018 as purchase of machinery and equipment for SSP expansion Rs. 7,00,00,000/-, working capital requirements for Rs. 12,00,00,000/-, general corporate purpose Rs. 4,14,60,000/- and issue expenses Rs. 2,00,00,000/-.”*

3.3. The status of working capital of Bohra Industries Limited as per audited financial statement has been tabulated in the Application and reiterated below for reference:

PARTICULARS	Amount Rs. In Crore				
	31.03.2018	31.03.2017	Increase/ Decrease in working capital	Amount of IPO utilised	Difference
Current Assets	133.76	133.73			
Current Liabilities	77.19	70.99			
Net Working Capital	56.57	62.74	-6.17	12	-18.17

3.4. It was noted that IPO proceeds were to be utilized as Rs. 12 Crores in working capital and same has been confirmed in Director's report

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which states that Rs. 12 Crores has been utilized in working capital. While on assessment of audited financials of Corporate Debtor, it depicts that working capital has been reduced by Rs. 6.17 Crores and thereby Rs. 18.17 Crores have been utilized for purposes other than as mentioned in IPO and the same has been confirmed by directors in the audited financials and in annual report for the year ended 31.03.2018.

3.5. It is submitted that the Corporate Debtor was continuously earning profits in past many years till the year ending on 31.03.2017 when Rs. 25.15 Crores were raised through IPO. In the year 2017-18, the company earned profit after tax of Rs. 7.41 Crores out of total revenue of Rs. 126.22 Crores. In the year 2018-19, the company had published its 6 months financials wherein profit after tax was Rs. 1.69 Crores out of total revenue of Rs. 35.69 Crores but for other half year ending on 31.03.2019, the total revenue of the Corporate Debtor was 60.04 Crores while net material consumed was Rs. 82.72 Crores which is not possible in any normal circumstances and the Corporate Debtor incurred loss of Rs. 41.97 Crores. To more surprise, for the half year ended on 30.09.2019, there was loss of Rs. 24.27 Crores out of total revenue of Rs. 1.66 Crores only.

3.6. The signatories failed to understand plausibility that in the first half of a year, when the Company did turnover of Rs. 35.69 Crores it earned profit of Rs. 1.69 Crores but in the second half of same year, the



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CP No. (IB)- 157/7/JPR/2019

Corporate Debtor does turnover Rs. 60.04 Crores and incurs loss of Rs. 41.97 Crores. The reason for such huge loss within a period of 6 months raised questions on the honesty and integrity of management of the company. Thereafter, for the year ending on 30.09.2019, the Company incurred incurs loss of Rs. 24.27 Crores out of total revenue of Rs. 1.66 Crores Only.

3.7. The Applicant submits that from the scrutiny of financial statements available on public domain and from above-observations, it seemed like Corporate Debtor had planned its actions one year before the commencement of CIRP and carried its business with intent to defraud creditors and public investors to pave the road for initiation of Corporate Insolvency Resolution Process. Under Section 18(1)(a) of IBC, 2016, it was the duty of IRP to collect all information relating to the assets, finances and operations of the Corporate Debtor for the previous 2 years. The IRP/ RP also failed to conduct transnational forensic audit to review the period as per the provisions of the IBC, 2016 and further to ascertain Preferential Transaction under Section 43, Undervalued Transaction under Section 45, Extortionate Transaction under Section 49 and Fraudulent Transaction under Section 66 of the IBC, 2016 and failed to file such application seeking suitable directions against the person liable to carry such transactions.

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4. On 12.03.2020, this Adjudicating Authority directed the Applicant to implead the ex-directors also as a party to this application and revise the application accordingly. As per the direction of this Authority, the Applicant has filed additional affidavit to bring on record the amended memo of parties vide Diary No. 2954/2022 dated 07.10.2022.

5. The Respondent No. 1 has filed two sets of reply vide Diary No. 595/2023 dated 03.03.2023 and vide diary No. 987/2023 dated 17.04.2023 which are being considered jointly as below:

5.1. It is contended that the Applicant at the time of filing of the application was holding 1,84,000 equity shares, therefore, the Applicant holding less than 10% of the share capital is not entitled to file the present application. Furthermore, even after the approval of Resolution Plan by this Adjudicating Authority vide its Order dated 13.10.2021 and after successful implementation of the resolution plan, 95% of the shareholding of the Non-Promoters Group has been written off and for every 20 shares held by the non-promoter group, only one fully paid equity share has been retained and remaining 19 paid up equity shares have been written off. In view of the aforesaid, the present Applicant holds 9200 equity shares of *Bohra Industries Limited*. Therefore, even at the present stage also, the requirement of holding 10% of the paid up share capital is not met and as such, the application is not maintainable.

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5.2. Firstly, the CIRP against the Corporate Debtor has already ended with the successful implementation of the resolution plan. Secondly, the RP after the implementation of the Resolution Plan has become functus officio and therefore, no direction can be issued to the RP. Thirdly, the prayer seeking investigation into the affairs of the Corporate Debtor on the ground of breach of agreement by the Corporate Debtor, cannot be granted in view of the fact that the management of the Corporate Debtor is now with the Successful Resolution Applicant and as per the plan, approved by this Adjudicating Authority, all violations or breach of any agreement of the Corporate Debtor has been condoned and no such agreement is in existence. Furthermore, as per the Schedule-IV of the Resolution Plan, all the liabilities whether crystalized or not, stood extinguished and discharged on the effective date and with the effect from the appointed date. Furthermore, as per Schedule-V, Clause-2, directions have been issued to all the government authorities to waive the non-compliances of the Corporate Debtor prior to the effective date.

5.3. The Respondent No. 1 was appointed as a RP and after the implementation of Resolution Plan and dissolution of the monitoring committee, the Respondent No. 1 has no role to play in the Corporate Debtor. Rather, the word Corporate Debtor is also no more in existence as in the petition, after the implementation of the resolution plan, the concept of Corporate Debtor has come to an end.

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- 5.4. It is stated that the present application filed in the year 2020 was never seriously prosecuted by the Applicant and a bare perusal of the order dated 24.01.2023 would show that the notices on the said IA was issued for the first time only on the said day and prior to that the Applicant never bothered to get the notices issued to the Respondent. Therefore, the present application having become infructuous, deserves to be dismissed.
- 5.5. It is submitted that the Applicant has incorrectly stated that the current asset for the year ended 31.03.2017 and 31.03.2018 as Rs. 133.73 Crores and 133.76 Crores respectively. The aforesaid statement runs contrary to the audited balance sheet duly annexed with the Application. It is relevant to point out that the proceeds from the IPO were received by the company during the financial year 2016-17 itself and not in the year 2017-18. Further, a bare perusal of the balance sheet for the year ending 31.03.2018 would show that the net working capital was Rs. 56.57 Crores, which included Rs. 37.6 Crores net working capital for the financial year ending on 31.03.2017 and Rs. 18.97 Crores being the increase in the working capital (Rs. 12 Crores was utilized from the IPO proceeds and balance of Rs. 6.97 Crores was utilized from the internal accruals). It is further submitted that for the financial year ending on 31.03.2017, the net working capital was not Rs. 62.74 Crores as alleged in the application, rather the same was only Rs. 37.6 Crores and

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Rs. 25.14 Crores i.e., the IPO proceeds was mentioned as cash at bank as per Note No. 19 of the balance sheet for the year ending 2016-17.

5.6. It is submitted that the IPO funds have been duly shown in the books for the financial year 2016-17 and the balance sheet also confirms that the current asset for the financial year ending on 31.03.2017 was Rs. 133.73 Crores, which included the IPO fund. After deducing the IPO fund, the current asset for the financial year ending on 31.03.2017 was Rs. 108.59 Crores. From the above comparison, it is apparent that working capital as current asset has been included from Rs. 108.59 Crores in 2016-17 to Rs. 133.76 Crores in 2017-18. Therefore, the allegation of the Applicant about the reduction in the working capital availability, even after the IPO funds, is incorrect. It would be relevant to note that Rs. 12 Crores has been increased in the working capital through IPO proceeds, besides Rs. 7.40 Crores has been added as profit earned by the Company during the year so the total available working capital stood at Rs. 19.40 Crores.

5.7. It is also contended that as per the audited balance sheet of the relevant year, the cost of purchasing the raw material has increased substantially. The same is visible from the chart produced by the Applicant wherein for the period ending on 30.09.2018 (relevant period 01.04.2018 to 30.09.2018), the amount of cost material consumed is Rs. 17.02 Crores, whereas the cost of material consumed for the next six months

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(01.10.2018 to 31.03.2019) is Rs. 75.4 Crores. The Respondent during the course of CIRP was informed by the erstwhile management that the phenomenal increase in the cost of material consumed is attributable to the primarily high overhead cost such as moisture, process loss etc. resulting in the very high purchase price of the basic raw material for the year 2018-19 whereas the sale price in the year 2017-18 was quite high to give enough cushion for the high purchase price of raw material for the relevant year. The increase in the amount of the moisture has resulted in lower sale price for the sale made in the year 2018-19.

5.8. A bare perusal of the analysis report would show that the moisture content in the sample was quite high which has resulted in the reduction of  $P_2O_5$ . It is noted that minimum  $P_2O_5$  requirement for making SSP is 30%. Since the SSP was lower than the standard percentage, the Corporate Debtor cannot sell the same as it is a criminal offence under FCO & EC Act to sell the fertilizer where the content is less than the standard percentage.

6. The Applicant vide Diary No. 2074/2023 dated 22.08.2023 filed its Written Submissions has relied on Section 213(b) of the Companies Act, 2013 to state that on an application made by any other person or otherwise, the Authority may order for the investigation into the affairs of the company. Moreso, it is contended that at the time of filing of this application, the CIRP of the Corporate Debtor was ongoing, hence, the Applicant prayed for stay

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of CIRP. The Applicant was only praying for the investigation into the affairs of the company and its suspended directors starting from the date of issue of IPO, until the commencement of CIRP of the Corporate Debtor. This period falls outside the scope of CIRP of Corporate Debtor. The Applicant has relied on the Judgement of *M. Srinivas Vs. Smt. Ramanathan Bhuvaneshwari Company Appeal (AT) (Insolvency) No. 498 of 2019*.

7. The Respondent No. 1 vide diary No. 2514/2023 dated 17.10.2023 filed his Written Submissions and relied the judgment of *M/s Regan Powertech Pvt. Ltd. Rep. by Erstwhile RP vs. M/s Veeral Controls Pvt. Ltd. & Ors. (2022) ibclaw.in 791 NCLAT*.
8. We have heard the Ld. Counsels and perused the averments made in the Application, Reply and written submissions along with the documents enclosed with the Application.
9. The Applicant in this matter has filed present application under Section 213 of the Companies Act, 2013 invoking Section 213(a)(i) as a shareholder of *M/s Bohra Industries Limited*. The Respondents have taken the preliminary objection with regard to Applicant's eligibility to meet the minimum threshold as provided under Section 213(a)(i) of the Companies Act 2013, alleging that the Applicant at the time of filing of the Application held 1,84,000 equity shares of the Respondent company which is below 10% of the total voting power of the company as provided under Section 213 of the Companies Act, 2013. The Applicant has come in capacity of his

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shareholding in *M/s Bohra Industries Limited*, who admittedly does not meet the basic requirement of holding 10% of the shareholding of the *M/s Bohra Industries Limited*.

10. The Applicant had filed this Application vide Diary No. 494/2020 dated 11.03.2020 invoking Section 60(5) of IBC 2016 and Section 213 of Companies Act, 2013 knowing the fact that the Respondent No. 1 has already undergone CIRP vide order dated 07.08.2019 passed by this Adjudicating Authority. During the pendency of the present application, this Adjudicating Authority has approved the Resolution Plan vide order dated 13.10.2021. The Applicant has prayed that CIRP of the Corporate Debtor be stayed, with immediate effect, as some fraudulent or wrongful trading has been carried by the Corporate Debtor and its suspended directors before the commencement of CIRP against which no application has been ever filed by the RP under Section 66 or any other Section of IBC, 2016.
11. An Application under Section 66 of IBC is filed by the RP, on whose application the Adjudicating Authority passes the order under Section 66, when it is found that any business of the Corporate Debtor has been carried out with intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose. With regard to this prayer, the Applicant is not competent to move any application before this Tribunal invoking Section 66 of the IBC. Since filing an application under

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Section 66 is under purview of IBC, 2016 for which the Resolution Professional is competent, hence, this relief cannot be granted to the Applicant.

12. In the present matter, the Resolution Plan has already been successfully implemented by the SRA and *M/s Bohra Industries Limited* is no more a Corporate Debtor. With regard to investigation as has been sought by the Applicant invoking Section 213 of the Companies Act, as far as filing the application under Section 66 of IBC is concerned, such an application is filed during the CIRP or a liquidation process. If it is found that business of the Corporate Debtor has been carried on with intent to defraud the creditors of the Corporate Debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the RP pass an order that any persons who were knowingly parties to carrying on the business in such manner shall be liable to make such contributions to the assets of the Corporate Debtor as it may deem fit. Hence, an application under Section 66 of IBC can be filed only by the RP, during the CIRP or the liquidation process. Any third person has no power/authority to move such an application.

13. It is submitted by the learned counsel for the RP that RP after the successful implementation of Resolution Plan became functus officio and therefore, no direction can be issued to the RP. It is further submitted by the learned counsel for the RP that prayer seeking investigation into the affairs of the Company on the ground of breach of Agreement

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can also not be granted in view of the fact that as per the plan approved by this Authority, all violations or breach of any agreement has been condoned and no such agreement is in existence. It is also submitted by the learned counsel for the RP that though the present application was filed by the Applicant in the year 2020, it was never seriously prosecuted by the Applicant and notice on the said Application was issued only on 24.01.2023 which would show that the Applicant was never interested to prosecute the present application. It was also contended that allegation regarding the mis-utilization of IPO has been explained in para 4 of the main application.

14. As far as the allegation regarding the increase in the cost of material consumed is concerned, the same has been explained in para 5 of the reply (Para 5.8 of this order) which shows that because of the reduced SSP due to high moisture content, the product of the Corporate Debtor i.e. fertilizer became unsaleable and in support of the same laboratory test was also conducted during the pendency of the CIRP and even the internal auditor of the company had also given a report which justifies the aforesaid claim.
15. In view of the facts and circumstances presented before us, we are not inclined to grant the prayers sought in the *IA No. 118/JPR/2020*. Accordingly, the Application is rejected and disposed of.

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16. The Registry is directed to provide a copy of this Order to the parties herein.

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**DEEP CHANDRA JOSHI**  
**JUDICIAL MEMBER**

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**RAJEEV MEHROTRA**  
**TECHNICAL MEMBER**