

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

I.A. No. 4971/2020 In (IB)-849 (PB)/2020

Under Section: 60(5) of IBC.

In the matter of:

M/s. SUNDRAM CONSULTANTS PVT. LTD. **Applicant**

Vs.

M/s. THREE C PROPERTIES PVT. LTD. **Respondent**

In the matter of:

ASHMEET SINGH BHATIA ... **APPLICANT**

Order delivered on: 31.05.2021

CORAM

**SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT
SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Virender Ganda, Sr. Adv., Rajnish Sinha, Vishal Ganda, Ayendeb Mitra, Shreya Kohli, Akshaya Ganpath, Rakesh Kumar, Preeti Kashyap and Ankit Sharma, Advocates

For the Respondent: Mr. Tapan Sangal, Advocate

For Intervenors : Kumar Mihir, Kartavya Batra & Siddhant Sharma, Advocates

MEMO OF PARTIES

ASHMEET SINGH BHATIA

S/o Sh. Gurdeep singh Bhatia
R/o 12-A, Savitri Sahini Enclave,
New Hyderabad, Lucknow- 226007

... Applicant

VERSUS

1. M/s. SUNDARAM CONSULTANTS PVT. LTD.

REGISTERED OFFICE AT:
78, Bentinck Street, Unit-5D, 4th Floor,
Block-B, Kolkata, WB-700001

2. M/s. THREE C PROPERTIES PVT. LTD.

REGISTERED OFFICE AT:
Flat No. 14, Ground Floor,
Pul Pehlad Pur, DDA MIG Suraj Apartment,
New Delhi-110044

... Respondents

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The present application is being filed by Mr. Ashmeet Singh Bhatia, homebuyer in one of the companies of the Corporate Debtor, namely, M/s. Granite Gate Properties Pvt. Ltd., undergoing CIRP before this tribunal, C.P. (IB)-1248(PB) of

2018, under Section 60 (1) read with Rule 11 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) and National Company Law Tribunal Rules, 2016 seeking issuance of directions to the Respondent.

2. Under the said application the following reliefs have been prayed for :-

- a. *“Allow the impleadment of the Applicant in the present Company Petition;*
- b. *Dismiss the present Company Petition, under Section 65 of the I&B Code, 2016, as it has been filed with malicious intent to defraud this Hon’ble Tribunal and the thousands of innocent flat buyers, including the Applicant;*
- c. *Impose a very heavy penalty on the Financial Creditor for intentionally and mischievously filing this malicious and fraudulent collusive Company Petition, in criminal conspiracy with the Corporate Debtor; and*
- d. *Pass any other/ further orders, in favour of the Applicant, which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the matter.”*

3. The Applicant states that, the following group companies of Corporate Debtor (“CD”) are facing CIRP;

- a. M/s. Granite Gate Properties Pvt. Ltd..
- b. M/s. Three C Projects Pvt. Ltd.
- c. M/s. Three C Universal Developers Pvt. Ltd.

- d. M/s. Three C Shelters Pvt. Ltd.
- e. M/s. Boulevard Projects Pvt. Ltd.
- f. M/s. Three C Infra Pvt. Ltd.

4. The Applicant further states that, the Three C Group and its group companies have three equal partners, namely Mr. Nirmal Singh, Mr. Vidur Bharadwaj and Mr. Surpreet Singh Suri. That Mr. Surpreet Suri has been writing to his other two partners from time to time, pointing out the various frauds being played in the group companies. The Applicant has gained knowledge of some of the frauds being played in the group companies, including in the CD, through the information circulated by Mr. Surpreet Singh Suri via his various emails. True copies of some of the emails, dated 30.12.2018, 08.02.2019, 22.02.2019, 25.02.2019, 05.03.2019, 20.04.2019, 15.10.2019 and 01.12.2019, Mr. Surpreet Singh Suri had written to both Mr. Nirmal and Mr. Vidur, enquiring them about the various transactions in their group companies have been attached.

5. It is further stated that, inter alia, the email dated 15.10.2019, mentioned about a financial fraud of more than Rs. 202 crores, in the Bank Account No. 38164449254, of the Greenpolis Project belonging to a group company of the Three C Group, namely, Three C Shelter Pvt. Ltd., in which, along with others, even the Corporate Debtor, M/s. Three C Properties Pvt. Ltd.

and the Financial Creditor/ Applicant of this present petition, M/s. Sundram Consultants Pvt. Ltd. are also deeply involved. It is pertinent to mention here that the above said group company, M/s. Three C Shelters Pvt. Ltd. is also facing various CIRP proceedings.

6. The Applicant states that till 31.01.2014, these three promoters of the Three C Group were themselves the directors of the CD, but since then they have been appointing their junior trusted employees as directors and have been committing the various frauds through them. The Applicant submits that due to the following reasons, the present petition filed by the Petitioner is an out rightly collusive petition and is liable to be dismissed under Section 65 of the I & B code, 2016;
 - a. That the so-called Agreement, dated 08.05.2019, on the basis of which the loan transaction has been allegedly claimed by the Financial Creditor is not a registered document. That the so-called Agreement, dated 08.05.2019, does not have any witness to it, also it is not notarized.
 - b. That there is no charge registered with respect to the said loan with the Registrar of Companies. That the registered office of the Financial Creditor is in Kolkata. The registered office of CD is in New Delhi. The stamp paper No. DX325058, of Rs. 100/-, used for preparing the

above said so called Agreement, dated 08.05.2019, was purchased in Uttar Pradesh.

- c. That all the four reminder letters have been written by the same person/ official namely, Mr. Vivek Kumar, on behalf of the Financial Creditor and further all these four reminder letters have been received by the same person/ official, namely, Mr. Nitin Kumar Sinha, on behalf of the CD.
- d. That a casual look at the Statement of the Bank Account No. 36759100958, State Bank of India, Nehru Place Branch, New Delhi, from 01.05.2019 to 30.06.2020, of the Financial Creditor/ Applicant, attached as Annexure P-8, (Pages 41 to 113), would show that his Bank Account has been used for money laundering and the Financial Creditor had entered into voluminous financial transactions with the various companies owned by Mr. Harkaran Singh Uppal son of Mr. Nirmal Singh, who is promoter director of the CD.
- e. That it is also pertinent to mention here that M/s. Three C Universal Developers Pvt. Ltd. was the first company of this Three C Group, which was incorporated by thee promoters in 2007 and since then it has been the main flagship and main holding company, having dozens of group companies as its subsidiary and associate companies, has been consistently misused and abused

for illegally siphoning off and diverting thousands of crores from the various group companies, which had collected this money from thousands of flat buyers, between 2008 to 2012. The Granite Gate Properties Pvt. Ltd., with which the Applicant had booked a flat and had paid a huge amount of money as part payment, was one such victim of the limitless greed of these dishonest promoters. Money was diverted from various bank accounts of M/s. Granite Gate Properties Pvt. Ltd. as well, through M/s. Three C Universal Developers Pvt. Ltd.

- f. That as per the Financial Creditor, the CD had defaulted in payments on 31.07.2019, 31.10.2019 and 31.12.2019 and 29.02.2020. However as it is demonstrated using the bank statement of the CD, attached along with this application as Annexure P-8, that despite the alleged defaults in by the Corporate Debtor, the Financial Creditor has totally unexplainably further advanced an amount of Rs. 7.50 crores to the CD on 13.05.2020 (through three transactions of Rs. 3 crores, Rs. 3 crores and Rs. 1.5 crores on the same day). In the present Company Petition, the Financial Creditor has deliberately not mentioned this loan of Rs. 7.50 Crores to the CD.

7. This bench, after going through all the facts and documents as produced by the Applicant in support of its application, is of the

view that the Applicant has not been able to clearly establish his relationship with the main Company Petition.

8. The Applicant in its prayer (b), prays to “*Dismiss the present Company Petition, under Section 65 of the I&B Code, 2016..*”. However, on the bare reading of Section 65 of the I & B Code, 2016, its states as follows;

“65. Fraudulent or malicious initiation of proceedings. -

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon a such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

1[(3) If, any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.]”

It is to be noted that a bare reading of Section 65 (1), states that “*If, any person initiates the insolvency resolution process..*”. However, in the present case the CIRP has not yet been initiated. C.P. (IB)-1248(PB) of 2018 is currently being heard by this bench, CIRP has not yet been initiated. The Applicant can approach this tribunal under Section 65 of I&B code, only once the Petition is admitted and CIRP has been initiated.

9. The Applicant in its prayer (c), prays; “*Impose a very heavy penalty on the Financial Creditor for intentionally and mischievously filing this malicious and fraudulent collusive Company Petition, in criminal conspiracy with the Corporate Debtor*”. The said prayer cannot be granted, the information provided by the applicant is taken on record and would be considered at the time of passing of the order in C.P. (IB)-1248(PB) of 2018 as per the provisions of the I&B Code, 2016 and applicable rules thereon.

10. I.A. 4971/2020 stands disposed of in terms of the above order.

Let a copy of order be served to parties.

Sd/-

(B.S.V. PRAKASH KUMAR)

ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (Technical)

31.05.2021