

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V

IA No. 107 of 2021

CP (IB) 2995/MB/2019

Under Section 66 R/W Section 60(5) of the I&B
Code, 2016

In the matter of

Small Industrial Development Bank of India

...Operational Creditor

v/s

E & G Global Estates Limited

....Corporate Debtor

IA No. 107/2021 IN

CP (IB) 2995/MB/2019

In the matter of

Mr. Gajesh Labhchand Jain

....Resolution professional

v/s

1. Dnyaneshwar Chaudhari (Suspended Director)
2. Ganesh K. Ahire (Suspended Director)
3. Bela Gujarati (one of the home buyer)
4. Pallavi Girish Malani (one of the home buyer)
5. Govind Malani (one of the home buyer)
6. Madan Vallabhdas Devi (one of the home buyer)
7. Mina Gopal Gokhale (one of the home buyer)
8. Jitendra Kothari - Authorised Representative (as a formal party)
9. Small Industrial Development Bank of India (as a formal party)

....Respondents



Delivered on: 17.11.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Resolution Professional: Mr. Ayush Rajani, PCA a/w Khushboo Shah i/b
AKR Advisors.

For the Respondents: Mr. Yash Badkur, Advocate, Mr. Amir Arsiwala Advocate
i/b Mr. Vishal Jain, CA.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. This is an application being IA 107 of 2021 in CP(IB)2995/MB/2019 filed by Mr. Gajesh Labhchand Jain, Resolution Professional of E & G Global Estates Limited, under section 66 read with Section 60(5) of Insolvency & Bankruptcy Code, 2016 (Code) against Dnyaneshwar Chaudhari, Suspended Director of E & G Global Estates Limited, Respondent and others, and sought inter alia, the following prayers: -

- i. Direct removal of Respondent Nos. 3 to 7 from the CoC as there is neither any default nor any debt is owed since their respective infusion of funds were returned back to them/their related parties/relatives on the same day by Respondent Nos. 1 and 2.
- ii. Allow the Applicant to reconstitute, cancel entire voting rights of Respondent Nos. 3 to 7 and undertake appropriate changes to the present voting rights of the rest of the CoC members in view of the said fraud perpetrated by the Respondents with an intent to defraud the creditors and misleading the Applicant to believe that the Respondents 3 to 7 are "financial creditors" by filing fraudulent claims which otherwise never existed as on the date of commencement of insolvency process.



2. This Bench vide an order dated 24.06.2020 admitted the petition resulting into initiation of Corporate Insolvency Resolution Process.
3. The Applicant states that during the course of CIRP, forensic auditor viz. Mazars Business Advisors Pvt. Ltd. were appointed to undertake the forensic audit of the books of the Corporate Debtor for the period from 01.04.2014 to 24.06.2020.
4. Subsequently, the Forensic Auditors have filed their report dated 14.01.2021 which provides sufficient reasons to believe that the Respondents have undertaken certain transactions with an intent to defraud the creditors which are covered under the provisions of Section 66 of the Code.
5. The Applicant further submits that the present application throws light on the fraudulent transactions entered into by the Respondent No. 1 & 2 (suspended directors) in connivance with some of the home-buyers who are also Respondents i.e. Respondent Nos. 3 to 7 to this application thereby mis-leading the Applicant RP to believe these Respondents Nos. 3 to 7, home-buyers as financial creditors, while the transaction relating to amounts so invested by these Respondent Nos. 3 to 7 were reversed by the Respondent suspended Directors and repaid to the "related parties" of the Respondent Nos. 3 to 7 in to a different bank account.
6. Such doubtful acts of Respondents have led to creation of a Committee of Creditors of the present Corporate Debtor which includes Respondent home-buyers who cannot be considered as financial creditors in light of these facts and that the amount so invested by them was paid back to the account of the relatives of these Respondent Nos. 3 to 7 practically within 24 hours of the receipt into the account of the Corporate Debtor, routed through the personal account of the Respondent Nos. 1 and 2 (being suspended directors) The



aggregate value of such transactions is Rs. 70 lacs.

7. The forensic auditors while going through the details and financial data especially the bank statement of Respondent Nos. 1 and 2 which was made available to Applicant by another suspended director, Mr. Sushil Uttarwar. The Applicant upon receiving such information and after looking into the bank account statements of the Corporate Debtor and observed that Respondent Nos. 1 and 2 withdrew the exact amount of funds on the same date on which these funds were infused by Respondent Nos. 3 to 7 into the Corporate Debtor's bank account and subsequently, have claimed to be "home-buyers" by filing their respective claims with the Applicant.

8. Furthermore, Respondent Nos. 1 and 2 upon withdrawal of the said funds from the account of the Corporate Debtor and transferring it into their personal bank account, subsequently, proceeded to return these exact amounts of funds back to the "related parties" of Respondent Nos. 3 to 7 either on the same day or immediate next working day. Thereby effectively creating the following false impression that the Respondent Nos. 3 to 7 are "home-buyers" who based on such mis-representation were made part of the CoC of the Corporate Debtor, while they continued to enjoy this position without having invested any penny since the entire investment was routed back to the account of their respective related parties by Respondent Nos. 1 and 2.

9. Thereafter on 12.01.2021, the Applicant sent emails to each of the beneficiaries i.e. respective related parties of Respondent Nos. 3 to 7 to whom the funds were refunded by the Respondent Nos. 1 and 2 through their individual personal account inquiring and seeking confirmation of having received such funds. These related parties of Respondent Nos. 3 to 7 also reverted vide individual emails dated 13.01.2021 in affirmation and agreeing to have received the said funds back into their accounts.



10. The Applicant submits that it is also clear that the Respondent No. 1 to 7 had clear intent to defraud the creditors and such act is squarely covered under Section 66(1) and 66(2) of the Code. In fact, on perusal of all the emails received from respective Respondents/their relatives, it is also evident that the emails as annexed to this Application, are precise with a clear "acceptance" of receiving the said funds back and is a clear case of collusion amongst Respondent No. 1 to 7. Accordingly, the Respondent No. 3, 4, 5, 6 and 7 ought not be treated as "financial creditors" and cannot be given corresponding voting rights which is otherwise prejudicial to the interests of other stakeholders including Respondent No. 9 i.e. SIDBI who is made a formal party to the present Application.

REPLY FILLED BY THE RESPONDENT NO's 1, 2 & 7 -

11. The said transactions with Respondent Nos. 3 to 7 (home buyers) were in the ordinary course of business, untainted with any fraudulent intent and was done prior to the Insolvency Commencement date. Moreover, it is an undisputed fact that neither the Respondent Nos. 3 to 7 nor their alleged relatives are related to Respondent No. 1.

12. By way of purported application, the Respondents mentions that the Applicant is seeking reversal of the -

13.1 Amount of Rs. 40 lacs which was paid by the Corporate Debtor from its HDFC account to the Respondent no. 1 in his Personal Account-

13.1.1 In this regard it is submitted that the withdrawal of the said amount from the bank account of Corporate Debtor into the Respondent no. 1 personal account was towards the repayment of the unsecured loan provided to the Corporate Debtor by Respondent no. 1.

13.1.2 The Respondent further submitted that all the stipulations for the said takeover of the management under various documents are being adhered to and MOU dated 30.11.2018, provides-

a. The clause 5(1) of the said MOU provides for the obligations of the representatives is reproduced herein for reference-



"To ensure that all the unsecured loan repayment will be mutually done as agreed and decided between the company and the acquirer".

- b. The clause 8(5) of the said MOU provides for the obligations of the acquirer and Sushil is reproduced herein for reference_

"Revenue from receivables from the previous sales made by the company shall directly deposited in acquirer bank account and RERA account which shall be used for repayment of unsecured loan."

13. The Respondent mentions that the forensic report cannot be relied upon by the Applicant as it is an incomplete report as the same is prepared without considering the audited financial statements of the 2016-17 to 2019-20 of the Corporate Debtor. The auditor has prepared the forensic report without considering the purchase contracts, ledgers, year wise fixed asset register and secretarial records of the Corporate Debtor. Further the forensic report cannot be relied upon as the auditor in the said report states that the auditor has not conducted a detailed review of the operations of the Corporate Debtor and the observations in the forensic report are on the basis of the limited review as per the scope of work. Therefore, it is submitted that the forensic report cannot be relied upon and ought to be dismissed in limine.

14. The Respondent No. 1 and 2 mention that it is a mere allegation that the Respondents in collusion on 06.09.2019 transferred an amount of Rs. 30,00,000/- from the account of the Corporate Debtor to the proprietary firms managed by the husband of Respondent No. 7, arises from the forensic report. However, it is pertinent to note that the Forensic Report states that "While reviewing the villa sales proceeds, it has been observed that in that in case of Mina Gopal Gokhale, funds amounting to INR 30 lacs received on 6-Sep-19 were utilized for payment to two parties namely Asha Accounting Services (INR 15 lacs) and V M Associates (15 lacs). On conducting discreet enquiry about the



parties, it is understood that both the above firms are owned by Mina Gopal Gokhale's husband; thereby resulting in diversion of funds..... Note: Relationship between the above-mentioned parties and the firms has been identified through discreet enquiry and no specific evidence of the same is available."

15. The Respondent No. 1 and 2 mentions that the sampling methodology adopted by Forensic Auditors as provided at page no. 46 of the Forensic Audit Report has the following inherent limitations-

- a. Since choice of sampling method is a judgmental task, there exit chances of biasness as per the mindset of the person who choose the sample.
- b. Improper selection of sampling techniques may cause the whole process to defunct.
- c. Sampling may exclude some data that might not be homogenous to the data that are taken. This affects the level of accuracy in the results.

16. The Respondent No. 1 and 2 mention that the contents of the Forensic Audit Report hold no ground as there is no material or conclusive evidence on record to corroborate the aforementioned allegation. Similar allegations have been levied on respondent No. 3 to 6, and the Applicant has supported the same by annexing bank statement of Respondent No. 1. However, no statement of accounts has been annexed or relied upon by the Applicant while levying the said allegation against Respondent No. 7. Similarly, the forensic audit report, mentions the name of Respondent No. 3 to 6/their alleged related parties in the "Details of the Related Party Transactions" and "Sales Proceeds Diverted from Bank", but the name of the Respondent No. 7 has not mentioned in either of them.

17. The Respondent No. 7 states that there is no iota of proof on record, stating that the two proprietary firms belonged to or were managed by the



"related party" of Respondent No. 7. On the contrary, the allegation of the "related party" is based on information obtained via a discrete enquiry and the forensic auditor admits that there is no specific evidence to show that the two proprietorship firms are controlled by the husband of Respondent No. 7.

18. The Respondent 1 and 2 mentions that the content of the Applicant that there is a clear collusion between the Respondents to defraud the creditors is not correct. The Applicant states that an email dated 12.01.2021 was sent by him, enquiring and seeking confirmation from the respective "related party" of the Respondent Nos. 3 to 7, who were alleged receivers of the purported fund transfer made by Respondent No. 1 and 2. To which the Applicant received a revert from the respective "related parties" of Respondent No. 3 to 7 on 13.01.2021, affirming and agreeing to have received the said purported funds. The Respondent 1 and 2 contends that a perusal of the emails show that they are only confirmations from related parties of respondent No. 3 to 6. There is no confirmation or admission with respect to Respondent No. 7. Respondent No. 7 denies the allegation of the existence of any "related party". The same can be inferred from the email trails annexed to the Application which evidently show that although, there are email trails exchanged between the Applicant and the alleged related parties of the Respondent No. 3 to Respondent No. 6, there are no emails on record that show any communications between the alleged related party of Respondent No. 7 and the Applicant, concerning the alleged fund transfer.

FINDINGS:

19. IA 107 of 2021 in CP 2995 of 2019 has been filed by the Resolution Professional, Mr Gajesh Labhchand Jain, under section 60 (5) of the IBC against the Respondents as mentioned below:

- a. Dnyaneshwar Chaudhari (Suspended Director)- Respondent No. 1
- b. Ganesh K. Ahire (Suspended Director)- Respondent No. 2
- c. Bela Gujarati (one of the home buyer)- Respondent No. 3



- d. Pallavi Girish Malani (one of the home buyer)- Respondent No. 4
- e. Govind Malani (one of the home buyer)- Respondent No. 5
- f. Madan Vallabhdas Devi (one of the home buyer)- Respondent No. 6
- g. Mina Gopal Gokhale (one of the home buyer)- Respondent No. 7
- h. Jitendra Kothari – Authorised Representative (as a formal party)- Respondent No. 8
- i. Small Industrial Development Bank of India (as a formal party)- Respondent No. 9

20. The Applicant /RP mentions that during the course of CIRP, a forensic auditor viz. Mazars Business Advisors Private Limited was appointed to undertake the forensic audit of the books of the Corporate Debtor for the period from 1st April 2014 to 24th June 2020. Further, the forensic auditor has filed its report on 14th January 2020 which provided sufficient reasons to come to a conclusion that Respondent(s) have undertaken certain transactions with intent to defraud the creditors and these transactions are adequately covered under section 66 of the Code.

21. The Bench notes that Respondent No. 1 and 2 are suspended directors who in connivance with the Respondent No. 3 to 7 entered into fraudulent transactions through home-buyers in the Corporate Debtor Company.

22. The Bench notes that Respondent No. 3 to 7 (home buyers) in connivance with Respondent No. 1 and 2 (Suspended Directors) entered into surreptitious transaction which enabled them to be treated as home buyers and therefore, as a part of the CoC of the Corporate Debtor. However, the Bench further notes that the entire money invested by these Home Buyers have been rooted back to the relatives of Respondent No. 3 to 7 through the personal account of Respondent No. 1 and 2 by taking out the money from the Corporate Debtor company into the personal accounts of Respondent No. 1 and 2 and thereafter



rooting the same money back to the relatives of Respondent No. 3 to 7. The total value of such circuitous related party transaction amounts to Rs. 70 lacs. In all these cases, Respondent No. 1 and 2 upon withdrawal of said funds from the accounts of the Corporate Debtor company transferred into their own personal account and thereafter returned the exact amount of the fund back to the related party either on the same day or next working day. Thereby effectively creating false impression that Respondent No. 3 to 7 are homebuyers. It is as a result of this misrepresentation that they became home buyers and part of the CoC. All these fraudulent homebuyers became part of the CoC of the Corporate Debtor when having invested no money since the entire investment was rooted back to the account of respective related Party by Respondent No. 1 and 2.

23. The Bench notes that Resolution Professional (RP) after discovering such act has sent an Email on 12th January, 2021 to each of the beneficiaries of Respondent No. 3 to 7 to whom the funds were refunded from Respondent No. 1 and 2 and each of these related parties have agreed to have received the said fund back into their account.

24. The Bench notes that vide this IA, the RP has brought to fore Five such fraudulent transactions involving Respondent No. 1 and 2 (suspended directors) on one side and Respondent No. 3 to 7 on another.

Transaction between Respondent No. 1 and 3

25. The Bench in this case finds that on 26th August 2019, the Respondent No. 3 had infused Rs. 10 lacs into the account of Corporate Debtor company on the same day that is on 26th August 2019. Respondent No. 1 withdrew this Rs. 10 lacs from the said account of Corporate Debtor Company into his own personal account maintained with the Bank of Baroda.

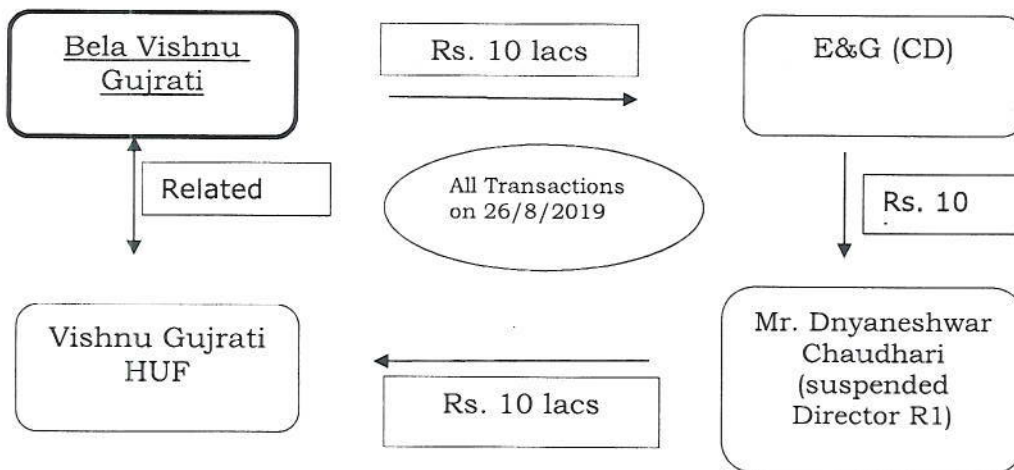
26. Thereafter Respondent No. 1 transferred the said Rs. 10 lacs from his own personal account to one "Mr Vishnu Gujrati HUF", an HUF created by husband of



Respondent No. 3 i.e. Mrs. Bela Gujarati (one of the home buyer) where Respondent No. 3 is a coparcener of the said HUF. This whole process clearly shows that Respondent No. 3 who invested Rs. 10 lacs to become homebuyer and Financial Creditor of the Corporate Debtor received from Respondent No. 1 the total amount of Rs. 10 lacs on the same day.

27. The Bench notes that Respondent No. 1 to 3 had concealed the said fact of the circuitous transaction and Respondent No. 3 had filed claims with the RP as a home buyers and enjoyed the position as financial creditor based on this alleged financial debt.

28. The pictographical depiction of the circuitous transaction is represented as below-



In the above graphical depiction, the arrow denotes money trail and the flow of funds amongst the parties. It clearly shows that the fraudulent transactions by Respondent No. 3 i.e. Bela Gujarati (one of the home buyer) Rs. 10 lacs has returned back to her HUF.

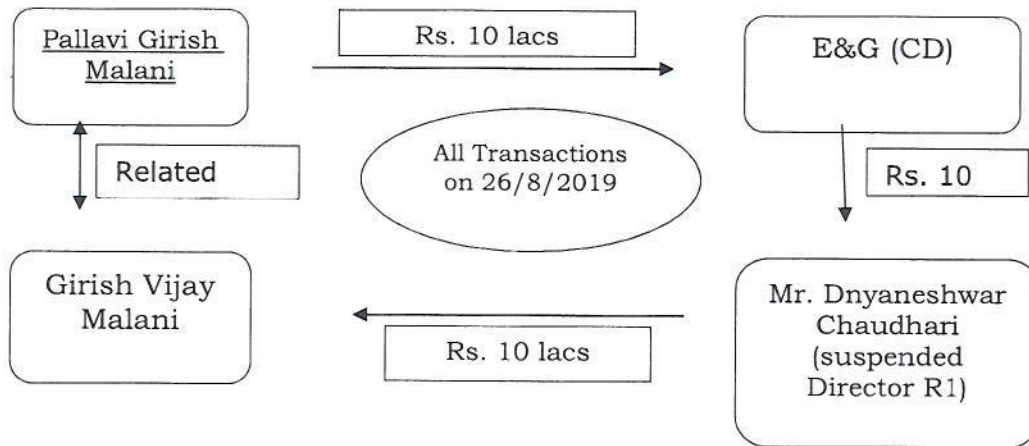
Transaction between Respondent No. 1 and Respondent No. 4:

29. The Bench notes that there has been a similar transaction of Rs. 10 lacs on 26th August 2019 between the Respondent No. 1 and Respondent No. 4



wherein the Respondent No. 4 has received Rs. 10 lacs from the Respondent No. 1 on the same day from the personal account of Respondent No. 1 into the account of Mr. Girish Mallani who is husband of Respondent No. 4. In other words, effectively Respondent No. 4 received back alleged financial Debt of Rs. 10 lacs on the same day.

30. A depiction of this transaction is as under:



Transaction between Respondent No. 1 with Respondent No. 5 and Respondent No. 6:

31. Similarly, transaction has also happened between R 1 and R 5 and also between R 1 and R 6 on 26th August 2019 for an amount of Rs. 10 lacs each wherein effectively R5 and R6 have received back the alleged Financial debt of Rs. 10 lacs on the same day i.e. on 26 August 2019.

Transaction between Respondent No. 2 and Respondent No. 7:

32. The Bench notes that there has been circuitous transaction between R2 and R7 on 6th September 2019 where R 7 has infused Rs. 30 lacs into the accounts of Corporate Debtor and on the same day R2 and R7 in collusion transferred the said Rs. 30 lacs to two proprietary firms of the husband of R7



i.e. Asha Accounting Services and VM Associates, there by R 7 effectively received back the financial debt of Rs. 30 lacs on the same day.

33. It is very clear to the Bench that R1 and R7 in the above-mentioned transactions have defrauded the Corporate Debtor Company and such an act is squarely covered under Section 66 (1) and 66 (2) of the Code.

34. R1 and R2 who are the suspended directors in their defense have mentioned that the forensic report is incomplete and that the auditors have not conducted detailed review of the operations of the Corporate Debtor company. The Bench notes that the Respondent Number 1 and 2 who are the suspended directors have raised baseless technical objection regarding choice of sampling method and sampling technique. It is clear to the Bench that they have no defense regarding their conduct in the whole matter wherein they had fraudulently taken out money from the Corporate Debtor's Bank account and had paid back same amount to the related parties of the alleged homebuyer.

35. The Bench also notes that from amongst these alleged home buyers/Respondents only R7 (Meena Gokhale) has submitted a reply to this fraudulent application. The Bench note that the contention of R7 are feeble and baseless. R7 mentions that the allegations against them is devoid of any corroborative evidence and that no material of conclusive evidence has been put up against the aforesaid mentioned allegation.

36. The Bench therefore notes that R7 has not provided any proper explanation regarding its collusion and being a party to the fraudulent transactions.

37. In view of the above the Bench directs the following:

- a. Removal of R3 to R7 from CoC and also as financial Creditor/ Home-Buyer, as there is no debt own to them by the Corporate Debtor



company and purported infusion of funds by each of these Respondent were returned back to them through their related parties (relatives) on the same day or the next day by Respondent Number 1 and 2 who are suspended directors of the Corporate Debtor company.

- b. These transactions of purported creditors are vitiated by fraud, therefore all these transactions are declared as null and void.
 - c. The Resolution Professional (RP) to reconstitute CoC after cancelling the entire voting rights of R3 to R7 in view of the fraud committed by these Respondents with an intention to defraud the Corporate Debtor company.
38. IA 107 of 2021 in CP 2995 of 2019 is **disposed off** in terms of Para 37 above.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)



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On _____

Sachin Kumar
Deputy Registrar

National Company Law Tribunal, Mumbai Bench
8/12/2021
Government of India