

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

C.P. (IB) 30/MB/2019

Under Section 7 of the IBC, 2016

In the matter of

**Mr. Nitin Suresh Satghare & 99
Others**

... Petitioners

v/s.

Panoramic Universal Limited

... Corporate Debtor

Order Pronounced on: 30.09.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioners: Adv. Raghavan Sarathy i/b Thodur Law Associates

For the Corporate Debtor: Adv. Prasad Sarvankar

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by **Mr. Nitin Suresh Satghare & 99 Others**(hereinafter called "Petitioners") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against **Panoramic Universal Limited**(hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default to the extent of Rs. 1,55,12,880/- as provided under Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition is filed by Mr. Nitin Suresh Satghare, the present Petitioners/ Applicant No. 1, authorized vide letter dated 21.12.2018 which is annexed to the Petition.
3. The Petition reveals that the Corporate Debtor is a listed company and is associated with Pancard Clubs Limited which is a group company of the Panoramic Group of companies. Through order dated 29.02.2016 passed by SEBI and subsequently confirmed vide order dated 12.05.2017 passed by the Securities Appellate Tribunal (SAT), Pancard Clubs Limited including its associate companies and directors were directed to repay the entire sum of monies invested by the Financial Creditors and hence, the entire amount due to the Financial

Creditors has become due and payable and the same remains unpaid from the date of the said order passed by SAT. However, there was no payment made. So, the entire assets of the Panoramic Universal Limited was later on attached by the Recovery Officer of SEBI pursuant to order dated 28.03.2018 and thereafter vide order dated 21.08.2018 for recovery of dues of Pancard Clubs Limited as payable to the financial creditors.

4. The Petitioners has filed the present Petition to initiate the Corporate Insolvency Resolution Process under the Code against the Corporate Debtor to recover the dues from the Corporate Debtor.

Submissions made by the Petitioners:

5. The Counsel for the Petitioners contended that:
 - a. The Petitioners herein being 100 in number, out of the 55,00,000 investors, are the Original Financial Creditors of the Pancard Clubs Limited, a company incorporated under the Companies Act, 1956.
 - b. By way of an order dated 29.02.2016, the proposed Intervener herein, i.e., SEBI has ordered the winding up of the Collective Investment Scheme of Pancard Clubs Ltd. and ordered/ directed for refund through 'Bank Demand Draft' or 'pay order'. The money collected by the said company under the scheme with returns, which are due to its investors as per the term of offer and thereafter, within a period of 15 days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Scheme) Regulations, 1999.
 - c. In terms of said order, it is stated *inter alia* that in the event of non-compliance of the said order of refund, SEBI shall initiate attachments and recovery proceedings under the SEBI Act and rule and regulations framed thereunder against the Company and others responsible (which includes the present Corporate Debtor).
 - d. The above order came to be challenged before the Securities Appellate Tribunal (SAT) and that SAT was by way of an order dated 12.05.2017 pleased to uphold the impugned order of SEBI dated 29.02.2016.
 - e. Pursuant to the said order of SAT, the order of SEBI attained finality and is not challenged by the Pancard Clubs Limited or any other person and that in the meanwhile, there being no interim orders by SAT, the Recovery Officer of SEBI has issued Recovery Certificate No. 1020 of 2016 dated 02.12.2016 against the

Panclub Clubs Ltd. and its directors as well as the present Corporate Debtor.

- f. Pursuant to the Recovery Certificate and Demand Notice dated 02.12.2016, two notice of attachment of bank accounts and DMAT accounts both dated 02.12.2016 in recovery proceedings No. 2758/2016 and 2759/2016 were issued to the Company Panclub Clubs Limited as well as its directors and NSDL, CDSL and all mutual funds in India.
- g. Thereafter, in furtherance of the Recovery Certificate, notice of attachment of shareholdings of the defaulters in their subsidiary companies including the present Corporate Debtor dated 09.12.2016 in Recovery Proceedings No. 2760/2016 came to be issued.
- h. In the meanwhile, the order dated 12.05.2017 came to be passed by SAT confirming the order dated 29.02.2016 passed by SEBI.
- i. By way of an order dated 09.03.2018, the Recovery Officer caused to attach the properties of the company and its subsidiaries and called for information regarding other assets of the defaulters.
- j. By way of an order dated 28.03.2018 in Recovery Proceedings No. 1020/2016, all the movable and immovable properties of including the properties of PUL were attached of the present Corporate Debtor and its subsidiaries and enterprises.
- k. Aggrieved by the order of attachment dated 28.03.2018 passed by Recovery officer, the Corporate Debtor challenged the aid order of attachment before the SAT vide Appeal No. 178/2018 wherein SAT disposed of the said Appeal by way of an order dated 13.06.2018 directing PUL, i.e., present Corporate Debtor to furnish the details as would be sought by SEBI within 1 week and that the present Corporate debtor would furnish the same within 1 week and the SEBI passed an order on the attachment within 8 weeks thereof.
- l. Thereafter by way of order dated 21/08/2018 the Recovery officer has after giving an opportunity of being heard in the matter of attachment dated 28/03/2018 held that "the attachment of assets of PUL and its subsidiaries vide order dated 28/03/2018 does not call for any modification."
- m. The order of attachment dated 21/08/2018 is impugned by way of Appeal No.422 of 2018 by the Corporate Debtor before the SAT which is since pending and there is no interim order in the said

Appeal.

- n. By way of Notification dated 11/04/2019, the State Government initiated proceedings under the MPID Act thereby appointing the Deputy collector, Mumbai City as the Competent authority MPID and that the case under the said Act is being proceeded with before the Special Court at Mumbai.
- o. The Competent authority MPID has attached all the properties of Pancard Clubs and the present Corporate Debtor and their subsidiaries and criminal proceedings under Section 406.420 and 34 of IPC r/w 3 and 4 of MPID Act 1999 under C.R.No.98/2017.

Submissions made by the Corporate Debtor:

- 6. The Counsel for the Corporate Debtor contended that:
 - a. The present Petition is not maintainable *per se* as the Petitioners neither qualifies to be an Operational Creditor nor a Financial Creditor. The various documents annexed to the Petition demonstrate that the Petitioners entered into a contract with one Pancard Clubs Limited, which is a separate and distinct legal entity from that of the Corporate Debtor and as such no contract or dealing has been done with the Corporate Debtor by the Petitioners at any point of time.
 - b. The Petitioners have already preferred a Company Petition bearing CP (IB) 4578 (MB)/2018 before Court No. 1 of this Tribunal against Pancard Clubs Limited for initiation of CIRP process against it for the alleged debt and also, the Petitioners have filed the present Petition for the same alleged debt, the default of which is committed by Pancard Clubs Limited. By doing this, the Petitioners have abused the process of law.
 - c. SEBI has already attached the properties of the Pancard Clubs Limited and they are in process of sale of the attached properties for payment to the investors. Knowing all this, the Petitioners chose to shift the entire claim to the Corporate Debtor for which a Petition before this Tribunal is already pending. The Petition is therefore clearly devoid of any merits and ought to be dismissed.
 - d. The Petitioners have annexed various orders passed by the SEBI and SAT. However, the Petitioner failed to consider that the said orders have been passed against the Pancard Clubs Limited and not against the Corporate Debtor. The order dated 21.08.2018 passed by the Recovery Officer against the Corporate Debtor is already under challenge and the same is pending before the SAT.

Submissions made by SEBI:

7. SEBI was ordered to represent by order dated 28.05.2019 and by order dated 09.07.2019, SEBI sought permission of NCLT to file its reply. The Counsel for the SEBI, contended that:
 - a. SEBI vide order dated 29.02.2016 directed Pancard Clubs Limited to refund the amounts collected from investors under an unregistered Collective Investment Scheme along with returns and not to alienate any of the properties, except to refund the money to investors.
 - b. On 02.12.2016 vide Certificate No. 1020 of 2016, the Recovery Officer of SEBI initiated recovery proceedings against the Pancard Clubs Limited for having failed to repay a sum of Rs. 7035,00,01,000/- along with returns to investors.
 - c. SEBI vide order dated 09.12.2016 attached the shareholding of Pancard Clubs Limited in 29 subsidiaries, including 73.45% shareholdings of defaulters in the Corporate Debtor, and vide order dated 21.12.2016, attached immovable properties of Pancard Clubs Limited. Vide order dated 12.05.2017, SAT upheld the SEBI order dated 09.12.2016 and directed Pancard Clubs Limited and its directors to comply with the directions issued vide the SEBI order.
 - d. SEBI vide order dated 21.03.2018, directed the Corporate Debtor to remit entire amounts due to Pancard Clubs Limited along with interest to SEBI within one week from the date of receipt of the order *inter alia* on the following grounds:
 - a) It was observed that huge amounts have been transferred from the accounts of Pancard Clubs Limited to the Corporate Debtor and its subsidiaries which have not been returned.
 - b) Pancard Clubs Limited had been making payments for purchase of properties in the name of the Corporate Debtor and its subsidiaries and the said amounts have not been refunded to Pancard Clubs Limited.
 - e. Thereafter, SEBI vide order dated 28.03.2018 attached all movable and immovable properties of the Corporate Debtor and its subsidiaries and prohibited them from disposing the said properties in any manner.
 - f. The above said 21.03.2018 and 28.03.2018 orders were challenged before SAT. Vide order dated 13.06.2018, SAT directed SEBI to consider the Corporate Debtor's representation and pass

appropriate order. Thereafter, after duly considering the submissions made and documents placed, the Recovery Officer passes an order dated 21.08.2018 vide which the Recovery officer has directed that attachment on the properties of the Corporate Debtor would continue.

- g. In light of the above, SEBI has taken cognizance of the schemes launched by Pancard Clubs Limited and has held that the schemes operated by Pancard Clubs Limited are in the nature of CIS, squarely falling within the ambit of Section 11AA of SEBI Act, being run in violation of provisions of the SEBI Act and the CIS Regulations. Furthermore, SEBI has passed appropriate orders to ensure refunds of aggrieved investors. The Corporate Debtor and its subsidiaries diverted the huge amounts of money collected by Pancard Clubs Limited from investors. Further, Pancard Clubs Limited also created assets in the name of the Corporate Debtor and its subsidiaries using the money collected from investors.
- h. In light of the same, in the instant facts and circumstances, admission of the instant Petition and appointment of an Interim Resolution Professional in the matter would restrict and hamper the recovery efforts that are made by SEBI, thereby severely curtailing its ability to carry out its statutory duties and, as such, would not be in the interest of the aggrieved investors.

Findings:

8. On going through the submissions and arguments of the Counsel for the Petitioners, Corporate Debtor and proposed Respondent, it is unequivocally established that the Petitioners have invested monies under some Collective Investment Scheme in the Company Pancard Club Limited and are aggrieved by the non-payment of monies by Pancard Club Limited and have filed CP (IB) 4578/(MB)/2018 before this Tribunal. The Petitioners are now seeking initiation of CIRP against Corporate Debtor being one of the group companies of Pancard Club Limited, without any privity of contract between the Petitioners and Corporate Debtor.
9. The Petitioners form his basis of claim on the basis of some order passed by SEBI dated 29.02.2016 which directed and sought to recover monies from its group companies. There were other directions of attachment of properties of Corporate Debtor passed by SEBI. SAT upheld the SEBI order dated 09.12.2016 and directed Pancard Clubs Limited and its directors to comply with the directions

issued vide the SEBI order.

10. SEBI vide order dated 21.03.2018, directed the Corporate Debtor to remit entire amounts due to Pancard Club Limited along with interest to SEBI within one week from the date of receipt of the order *inter alia* on the following grounds:

- a) It was observed that huge amounts have been transferred from the accounts of Pancard Club Limited to the Corporate Debtor and its subsidiaries which have not been returned.
- b) Pancard Club Limited had been making payments for purchase of properties in the name of the Corporate Debtor and its subsidiaries and the said amounts have not been refunded to Pancard Club Limited.

The above order talks about amounts being transferred by Pancard Club Limited to the Corporate Debtor and that properties were purchased in the name of Corporate Debtor. The order does not *per se* declare that Corporate Debtor shall be liable for the debts of the Parent Holding Company.

11. There is evidently no order passed by SEBI/SAT or decree of any Court declaring the liability of the Corporate Debtor to pay the monies/debts to the Petitioners.
12. The corporate structure of group companies are typically cluster of companies having independent corporate and legal existence and the corporate veil to be pierced only in cases of fraud. The matter is sub judice before SAT and also before NCLT with regard to initiation of CIRP against Pancard Club Limited.
13. In the absence of any nexus of any contract or privity of contract between the Petitioners and the Corporate Debtor or any proof of debt and default between the parties, the provisions of the Code are of no avail to the Petitioners. Hence, the Petition under Section 7 of the Code, in the absence of any debt under Section 5(8) of the Code, is dismissed.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)