

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-3084/2023 IN C.P.(IB)-760/(MB)/2021

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Mr. Hiren Anand Agarwal & Others

... Applicant/RP

Vs.

Mr. Jitender kumar Jain & Others

... Respondents

In the matter of

State Bank of India

... Financial Creditor

Vs.

Aaj Ka Anand Papers Ltd.

... Corporate Debtor

Order Pronounced on : **13.03.2024**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant(s) : Mr. Mayank Bagla a/w Mr. Chintan
Chheda, Adv.

For the Respondent/Liquidator : Mr. Mustafa Doctor, Ld. Sr. Counsel a/w
Mr. Amir Arsiwala, Adv.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present Application IA-3084/2023 is filed on 18.07.2023 by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking following reliefs:

- a) That this Hon'ble Tribunal be pleased to allow this Application;*
- b) That this Hon'ble Tribunal be pleased to direct that Mr. Jitender Kumar Jain i.e. the Liquidator has caused breach/contempt of the order dated 12th April, 2023 and direct appropriate contempt action against the Liquidator;*
- c) That this Hon'ble Tribunal be pleased to adjudicate and declare that Mr. Jitender Kumar Jain i.e. the Liquidator of the Corporate Debtor has made various false declarations under the relevant IBBI Circulars dealing with disclosures to be made by the liquidator of the Corporate Debtor;*
- d) That this Hon'ble Tribunal be pleased to adjudicate and declare that there exist an ex-facie evident collusion between Mr. Jitender Kumar Jain i.e. the Liquidator of the Corporate Debtor and the Financial Creditors;*
- e) That this Hon'ble Tribunal be pleased to direct appropriate action against the Liquidator i.e. Mr. Jitender Kumar Jain including removal of the liquidator i.e. Mr. Jitender Kumar Jain, on grounds of there existing admitted misconduct on behalf of the liquidator in performing the duties cast upon him under the IBC;*
- f) That this Hon'ble Tribunal be pleased to pass appropriate directions and orders against Mr. Jitender Kumar Jain i.e. the Liquidator, inasmuch as i.e. Mr. Jitender Kumar Jain has failed and/or neglected to comply with the order dated 12th April, 2023 passed by this Hon'ble Tribunal in I.A. No. 654 of 2023;*

- g) That this Hon'ble Tribunal be pleased to pass appropriate orders and direction against Mr. Jitender Kumar Jain i.e. the Liquidator in respect of the admitted malafide conduct of the liquidator in performing his duties as a liquidator of the Corporate Debtor with ulterior motives, unethical gains and ill- intention;*
- h) That this Hon'ble Tribunal be pleased to pass appropriate orders and directions confirming the failure on part of Mr. Jitender Kumar Jain i.e. the Liquidator in terms of concealing and/or not disclosing material facts/information and also violating the code of conduct by not maintaining complete independence in his professional relationships;*
- i) That this Hon'ble Tribunal be pleased to pass appropriate order and directions against Mr. Jitender Kumar Jain i.e. the Liquidator for deliberately causing fraud and manipulation of the CIRP records as well as Liquidation records.*
- j) That this Hon'ble Tribunal be pleased to direct the Liquidator to adhere to and comply of the orders passed by the Tribunal including order dated 12th April, 2023;*
- k) That this Hon'ble Tribunal be pleased to direct Disclosure of the Asset Memorandum filed with the Adjudicating Authority;*
- l) That this Hon'ble Tribunal be pleased to direct Disclosure of the Valuation Reports pursuant to the Valuation conducted by the Resolution Professional/Liquidator;*
- m) That this Hon'ble Tribunal be pleased to direct the Respondent No.4 in the present Application to set up a high level committee for a detailed inquiry into the functioning of the Respondent No.1 i.e. Mr. Jitender Kumar Jain in respect of the unethical and corrupt practices adopted by him;*

- n) *Pending the hearing and final disposal of this Interim Application, the Hon'ble Tribunal be pleased to restrain the Liquidator to conduct itself in an unethical and unprofessional manner and in complete contravention to duties casted upon the Liquidator under the Insolvency and Bankruptcy Code, 2016 and Rules framed thereunder;*
- o) *Pending the hearing and final disposal of this Interim Application, this Hon'ble Tribunal be pleased to stay the effect, implementation and execution of minutes of meeting dated 19th April, 2023.*
- p) *Pending the hearing and final disposal of this Interim Application, this Hon'ble Tribunal be pleased to direct the Liquidator to restrain from conducting auction and/or e-auction for sale of assets of the Corporate Debtor.*
- q) *Pending the hearing and final disposal of this Interim Application, that this Hon'ble Tribunal be pleased to direct the Respondent No.4 to conduct a preliminary inquiry into the functioning of the Respondent No.1 i.e. Mr. Jitender Kumar Jain in respect of the unethical and corrupt practices adopted by him and submit a report before this Tribunal;*
- r) *Ad-interim and interim reliefs in terms of prayer clauses (N) to (Q) above;*
- s) *Cost of this Application;*
- t) *Such further and other reliefs that this Hon'ble Tribunal deems fit and proper in light of the present facts and circumstances.*
2. The present application is preferred on the following grounds:
- (i) The liquidator i.e. Respondent No.1 of the Corporate Debtor has made various false declarations under the relevant IBBI Circulars dealing with disclosures to be made by the liquidator of the Corporate Debtor;

- (ii) There existing an ex-facie evident collusion between the Liquidator of the Corporate Debtor and the Financial Creditor;
- (iii) Seeking appropriate reliefs for removal of the liquidator i.e. Mr. Jitender Kumar Jain, on grounds of there existing admitted misconduct on behalf of the liquidator in performing the duties cast upon him under the IBC;
- (iv) Seeking appropriate directions and orders against the liquidator, inasmuch as the liquidator has failed and/or neglected to comply with the order dated 12th April 2023 passed by this Hon'ble Tribunal in I.A. No. 654 of 2023;
- (v) Seeking appropriate action against the liquidator in respect of the admitted malafide conduct of the liquidator in performing his duties as a liquidator of the Corporate Debtor with ulterior motives and ill-intention;
- (vi) Failure on part of the liquidator in terms of concealing and/or not disclosing material information and also violating the code of conduct by not maintaining complete independence in his professional relationships;
- (vii) Violation of Section 22(2) of the IBC;
- (viii) Fraud and manipulation of the CIRP records as well as liquidation records;
- (ix) Various lapses committed by Mr. Jitender Kumar Jain in performing his duties and obligations as a liquidator of the Corporate Debtor.

3. It is therefore, that the present Applicants are seeking appropriate action against the liquidator for not performing his duties and obligations in accordance with the provisions of the IBC.

(II) JURISDICTION:

4. The registered office of the Corporate Debtor is situated within the State of Maharashtra. The office of the liquidator is also situated within the State of Maharashtra and therefore this Hon'ble Tribunal has jurisdiction for hearing, adjudicating and disposing the present interim application.

(III) BRIEF FACTS OF THE CASE

5. The Applicants submit that Aaj Ka Anand Papers Limited (hereinafter referred to as "the Corporate Debtor") was incorporated as a company under the provisions of The Companies Act, 1956 on 14th December 1993.

5.1. The Applicant submits that the Corporate Debtor availed certain financial assistance from State Bank of India (SBI) and other lenders. The Corporate Debtor defaulted in making repayments and the account of Corporate Debtor came to be declared as NPA on 29th September 2014 by the SBI.

5.2. The Applicant submits that SBI filed a petition under Section 7 of the IBC before the Hon'ble Adjudicating Authority, National Law Tribunal for initiation of CIRP against the Corporate Debtor on 12th April 2021. The Hon'ble Adjudicating Authority vide its order dated 31 March 2022 admitted the Petition and CIRP commenced appointing Mrs. Vineeta Maheshwari as the Interim Resolution Professional of the Corporate Debtor. Hereto annexed and marked Exhibit A is a copy of the

order dated 31 March 2022 passed by the Hon'ble Adjudicating Authority in CP (IB) No. 760 of 2021.

5.3. The Applicant submits that the current suspended directors of the Corporate Debtor are as follows:

5.3.1. Mrs. Ritu Anand Agrawal

5.3.2. Mrs. Sarika Navin Agrawal

5.3.3. Mr. Hiren Anand Agrawal

5.4. The Applicant states that upon the order dated 31 March 2022, one Ms. Vinita Maheshwari took charge of the Corporate Debtor as the Interim Resolution Professional of the Corporate Debtor. The Interim Resolution Professional vide its Notice dated 02-04-2022 called for the claims qua the Corporate Debtor in moratorium. Based upon the adjudication done by the then Interim Resolution Professional, a Committee of Creditors was purportedly formed by the said Interim Resolution Professional. It was pending the said moratorium period, that the Interim Resolution Professional was allegedly attempting to revive the Corporate Debtor by not adopting any appropriate action as provided for under the provisions of IBC. It was pending the said moratorium period, the IRP preferred an Interim Application No. 1623 of 2022, wherein the IRP sought directions under Section 19 (2) and 60 (5) of the IBC for seeking necessary co-operation and access to documents. The said interim application was subsequently attempted to be amended by the Interim Resolution Professional by preferring an Additional Affidavit in a manner alien to law. The suspended directors at such time responded to the said interim application by filing appropriate reply. It

was at such stage that upon hearing the respective parties, this Tribunal passed an order directing the parties to extend co-operation. The Applicant states that from such time, the order of admission dated 31 March, 2022 came to be passed, the suspended board has extended all possible co-operation as would have been required from the Suspended Directors. Hereto annexed and marked Exhibit B is a copy of the order dated 15th December, 2022.

5.5. The IRP in the interregnum was confirmed as a Resolution Professional for and on behalf of the Corporate Debtor by virtue of the confirmation recorded by the members in the Committee of Creditors. The Resolution Professional thereafter sought multiple extension of time to complete the CIRP process. It was at such stage that resolution applications were duly invited and scrutinised. Though it appears that certain resolution applicants showed interest to revive the company during the moratorium period, however the same could not be fructified owing to the non-co- operation of the committee of creditors in collusion with the Resolution Professional.

5.6. It was therefore that the Resolution Professional vide its Interim Application bearing No. 654 of 2023 approached this Tribunal seeking appropriate orders for liquidating the Corporate Debtor. The Resolution Professional after duly scrutinising the records of the Corporate Debtor and adopting appropriate procedure, informed the Suspended Board and the CoC that the Liquidation Value of the Corporate Debtor would be approximately Rs. 18 Crore. The Resolution Professional placed reliance upon the Valuation Reports submitted by the valuers duly appointed by

the Resolution Professional herself. It was therefore that this Tribunal vide its order dated 12th April 2023 appointed the Respondent No.1 as the liquidator to liquidate the assets of the Corporate Debtor. Hereto annexed and marked Exhibit C is a copy of the order dated 12th April 2023.

5.7. I say that this Hon'ble Tribunal vide its order dated 12th April 2023 had categorically stated:

“ **Order**
6. The I.A. No.654/2023 is allowed and the Corporate Debtor Aaj Ka Anand Papers Limited is ordered to be liquidated as a going concern in the first attempt and if it fails, then sale by all other methods, as prescribed under the Code, shall be taken.
(a).....”

It is therefore that this Hon'ble Tribunal categorically conveyed its specific direction that the Corporate Debtor has to be sold as a going concern in the first attempt.

5.8. It is apparent from the above order which demands, the Liquidator to attempt in the first instance, to sell the Corporate Debtor as a going concern and if it fails to do so then sale by other methods as prescribed under the Code shall be undertaken. The Liquidator being an officer of the Court/Tribunal is duty bound to comply with the orders and directions passed by this Hon'ble Tribunal and cannot on its own accord seek to cause contempt of the said orders and directions passed by the Hon'ble Tribunal. However, in the present case the Ld. Liquidator has in complete defiance to his duties as casted upon him to act as officer of

the Court/Tribunal has acted in violation and breach of the orders and directions of the Court. The Liquidator has caused contempt of the said order in as much as the Liquidator who as an officer of the court has higher pedestal of duty casted to comply with the orders passed by the Tribunal suo-moto for its illegal and illegitimate and unethical gains has caused to breach the orders of the Tribunal.

5.9. The Liquidator has tried to over-reach the orders passed by this Hon'ble Tribunal and has attempted to sell in the first instance, the assets of the Corporate on a stand-alone basis without resorting to selling the Corporate Debtor as a going concern, which would have rather maximised value for all the stakeholders. The Liquidator while causing such breach did not for once deem it appropriate to even seek clarification or any further direction from the Hon'ble Tribunal before causing contempt. This coupled with the fact that the Liquidator has been in a habit of otherwise preferring multiple Interim Applications before this Hon'ble Tribunal, which mostly are without any merits or cause. The Applicant craves leave to refer to and rely upon various Interim Applications preferred/pursued by the Liquidator while conveniently breaching the order dated 12th April, 2023.

5.10. The Applicant submits that the liquidator appointed by this Hon'ble Tribunal vide order dated 12th April 2023, did not deem it appropriate to either seek clarification from this Hon'ble Tribunal or attempt to act in accordance with the directions passed by this Tribunal. In fact, the liquidator on its own accord breached the order dated 12th April 2023, only with an intention to attempt to sell the Corporate Debtor

in complete contradiction to the directions of this Hon'ble Tribunal and is in blatant disregard and gross violation of the orders passed by this Hon'ble Tribunal.

5.11. The Insolvency and Bankruptcy Board of India (liquidation process) Regulations 2016, provides a manner in which the assets of the corporate debtor in liquidation are to be sold. It further provides for the liquidator to conduct valuation of the assets and disclose the intended mode of sale and provide reasons for the same. Regulation 34 of the Insolvency and Bankruptcy Board of India (liquidation process) Regulations 2016 directs the Liquidator to file an Asset Memorandum along with the Preliminary Report with the Adjudicating Authority. The said memorandum provides details in respect of the assets which are intended to be realised by way of sale and the same is stipulated in Regulation 34(2) & 34(3) and the same is reproduced hereinbelow for ready reference:-

"Regulation 34 of the Insolvency and Bankruptcy Board of India (liquidation Process) Regulation, 2016:

Asset Memorandum:

(1) On forming the liquidation estate Under Section 36, the liquidator shall prepare an asset memorandum in accordance with this Regulation within seventy-five days from the liquidation commencement date.

(2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale-

(a) value of the asset, valued in accordance with Regulation 35;

(b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;

(c) intended manner of sale in accordance with Regulation 32, and reasons for the same;

(d) the intended mode of sale and reasons for the same in accordance with Regulation 33;

(e) expected amount of realization from sale; and

(f) any other information that may be relevant for the sale of the asset.

(3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation (2)-

(a) value of the asset;

(b) intended manner and mode of realization, and reasons for the same;

(c) expected amount of realization; and

(d) any other information that may be relevant for the realization of the asset.

(4) The liquidator shall file the asset memorandum along with the preliminary report to the Adjudicating Authority.

(5) The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority."

5.12. The Applicant submits that the said non-compliance can be ascertained from the Minutes of Meeting dated 19th April, 2023 held by the liquidator, wherein the liquidator unilaterally decided to not adhere to the terms of the order dated 12th April 2023. Hereto annexed and

marked Exhibit D is a copy of the Minutes of the Meeting dated 19th April, 2023.

5.13. It is owing to the aforementioned circumstances, the suspended directors have been made to realise that the liquidator is not intending to act in the best interest of the Corporate Debtor and therefore feeling aggrieved by the actions of the liquidator, the suspended director have pressed the present Interim Application to seek appropriate directions to ensure:

(a) Compliance of the orders passed by the Tribunal;

(b) Appropriate actions against the liquidator for not performing his duties in terms of the IBC and IBBI Code;

(c) Direct disclosure of the Asset Memorandum filed with the Adjudicating Authority;

(d) Direct disclosure of the Valuation Report pursuant to the Valuations conducted by the liquidator as well as the Resolution Professional; and

(e) Pending the final hearing and disposal, no e-auctions for sale of assets to be conducted.

6. Heard the Counsel and perused the material on record.

6.1. We note that the Respondent, in capacity of chairman of Stakeholders consultation committee, convened a meeting of SCC on 19.4.2023 to discuss the "Going Concern Sale" of the Corporate Debtor and the minutes of the meeting records as follows –

"The Chairperson stated if the situation is same, i.e., the promoter has not returned the possession of the asset of AKAPL, then, it is not

possible to explore the 'Sale of the Corporate Debtor as Going Concern' because there is no running business/going concern.

The Chairperson therefore asked Mr. Anand Agarwal if the assets of the Corporate Debtor has been transferred back or not and if the business is still operated through Aaj Ka Anand Publication LLP. Mr. Anand Agarwal replied that business is conducted through Aaj Ka Anand Publication LLP but assets are not transferred to Aaj Ka Anand Publication LLP.

The Chairperson asked Mr. Anand Agarwal if the promoters are willing to return the business back to the Corporate Debtor to which Mr. Anand Agarwal replied that he will wait for the order of Hon'ble NCLT in section 66 application and only then he will decide.

The Chairperson enquired from Mr. Anand if asset / business of the Corporate Debtor is not transferred to Aaj Ka Anand Publication LLP, then, how it is being used by Aaj Ka Anand Publication LLP and the Chairperson said he wants that the business should come back to the Corporate Debtor so that the going concern sale of the Corporate Debtor can be considered. The Chairperson further stated that as per IBC, now the Liquidator is required to take possession of all the assets of the Corporate Debtor and the Chairperson / Liquidator is not allowing Aaj Ka Anand Publication LLP to use any asset of the Corporate Debtor and, thus, enquired whether the promoters are willing to handover the possession of the assets of the Corporate Debtor peacefully. The Chairperson further clarified that now AKAPL is in liquidation and without having business back from Aaj Ka Anand

Publication LLP, it would not be possible to explore the sale the Corporate Debtor as a going concern. Mr. Anand Agarwal replied that he will take legal opinion on this matter and will revert to the Chairperson.

In view of above, the Chairperson invited the views of the lender banks. The representative of SBI replied that as the business is not transferred back by the promoters to the Corporate Debtor, SBI is not in favour of the sale of the Corporate Debtor as a going concern as the Corporate Debtor is not a going concern. The representatives of BOB and EARC concurred with the views of the SBI on this issue in view of above discussion.

The representative of SBI however clarified that if the promoter, after taking legal opinion, decided to return the business, then, SCC can re-consider the sale of the Corporate Debtor as a going concern which was noted by the Chairperson.”

- 6.2. The above proceedings of the meeting clearly indicates that the Respondent had proposed the sale of Corporate Debtor in meeting of SCC and asked the representative of suspended Board if they are ready to return the asset/business of the Corporate Debtor, which has been transferred by them and is subject matter of an avoidance application pending before this Tribunal. We further note that SBI was not in favour of sale of Corporate Debtor as a going concern and other financial creditors i.e. BOB and EARC also concurred with the view. However, the SBI clarified that if the promoter, after taking legal opinion, decided to

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return the business, then, SCC can re-consider the sale of the Corporate Debtor as a going concern and the same was noted by the Respondent.

6.3. The above facts clearly demonstrate that the present application is filed by a person, whose actions have disabled the Respondent to sell Corporate Debtor as going concern and the present application is nothing but abuse of process of law by intimating the Respondent in this manner and restrain him from discharging his duties as Liquidator. Accordingly, we consider it appropriate to dismiss the present application and also impose cost of Rs. 1,00,000/- on the Applicant for such frivolous application. The cost shall be deposited in the Bharat Kosh.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

13.03.2024