

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

IA(IBC)/366/KOB/2023

IN

IA(IBC)/97/KOB/2023

IN

CP(IB)/45/KOB/2021

*(Under Order VI Rule 16 of Civil Procedure Code, 1908
read with Rule 11 of the NCLT Rules, 2016)*

In the matter of:

M/s. Savute Textiles Private Limited.

Memo of Parties:

1. Mr. Venesan Gopinathan, Managing Director (Power suspended) - M/s Savute Textiles (P) Ltd, Vaninilayam, PRA 68, Friends Nagar, Palachuvadu, Kakkanad, Ernakulam, Kerala- 682 038. Email: vinesan@gmail.com.
2. Mr. Stephan Logan, Director (Power suspended) of M/s Savute Textiles (P) Ltd 5, Wynfort Lodge, Moira, Crajgavon BT 67 OQT, London. Email: Stephen-logan@icloud.com.
3. M/s. HST Exports (P) Limited, previously known as Savute Textiles and Clothing Exports Pvt Ltd) SEZ, 1G3 Infra Ltd., Vadamugham, Kangeyam, Palayam, Uthukuly Taluk, Tirupur Dt., Tamil Nadu- 638 751. Email: vinesan@gmail.com.
4. M/s. Global Latitude Limited, First Floor, 2 Woodberry Grove ODR England to Office 9, Dalton House 60 Windsor Avenue London SW19 London N 12 OD. Email: Stephen-logan@icloud.com.

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In re: M/s. Savute Textiles Private Limited.

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5. M/s. Silent Valley Trading- Mr. Vinayan (Proprietor), SEZ, 1G3 Infra Ltd., Vadamugham, Kangeyam, Palayam, Uthukuly Taluk, Tirupur District., Tamil Nadu 638 751.
 6. American Blue Textiles - Vani Vinesan (Proprietrix), PRA 68 Vaninilayam, Friends Nagar, Palachuvadu, Kakkanad, Ernakulam, Kerala- 682 038. Email: vinesan@gmail.com.

... Applicants.

-Versus-

1. Mr. K. Easwara Pillai, 6th Floor, Amrita Trade Towers, S A Road, Pallimukku, Kochi 682 016.
keaswaran@aaainsolvency.com.
2. Mr. Satheesh Gopalakrishna Pillai- Share Holder 73-74, Swaroop Park, Near Gandhi Bhavan, Kothrud Pune, Maharashtra- 411 029. Email: satishgpillai@hotmail.com.
3. Mr. Syam Satish- Share Holder, 73-74, Swaroop Park, Near Gandhi Bhavan, Kothrud Pune, Maharashtra- 411 029. Email: satishgpillai@hotmail.com.

4. Mr. Venky Nayar- Share Holder, Lake View-
3, Fine Arts Avenue, Kochi, Kerala 682 016.
Email: satishgpillai@hotmail.com.

... Respondents.

Order delivered on: 25.04.2024

Coram:

Hon'ble Member (Technical)
Shyam Babu Gautam

Hon'ble Member (Judicial)
TMT. Justice (Retd.) T. Krishna Valli

Appearances:

For the Applicants : Mr. Shameem Ahmed, Adv.
For the Respondent No. 1 : Mr. Akhil Suresh, Adv.,
For the Respondent Nos. 2 to 4 : None appeared.

ORDER

Per: Coram

1. The present application is filed by the Applicants who are arrayed as Respondent Nos. 1,2,4,11 & 12 in IA(IBC)/97/KOB/2023 under Order VI Rule 16 of Civil Procedure Code, 1908 read with Rule 11 of the NCLT Rules, 2016 for the following relief: -

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- To strike out the counter filed by the Respondent Nos. 5,7 & 8 in IA(IBC)/97/KOB/2023.

2. The Brief facts of the case are as follows: -
3. The Applicants stated that the Respondent Nos. 5,7 & 8 had filed a common reply titled as 'Counter'. in which it is clearly admitted that there are no allegations against them nor there are any relief sought against them by the RP in IA(IBC)/97/KOB/2023 under Section 66. It is stated that even when there are no reliefs sought against Respondent Nos. 5, 7 & 8 they had chosen to file a counter however, a perusal of the said counter filed by Respondent No. 5, 7 & 8, would show that the said pleadings are a reply to the Common counter filed by Respondents 1 2 4 and 10 to 12. It is further stated that a perusal of the averments in the Original Application and the Common counter filed by Respondent No. 5, 7 & 8 would show that both the RP and Respondent No. 5,7 & 8, are acting hand in glove with each other for supporting the case set up by the RP in IA(IBC)/97/KOB/2023. It is a well-settled principle of law that the Plaintiff has to stand on his own legs” and has to plead and prove the case set up by him and cannot be permitted to prove his case by relying upon the submissions or weakness of the defendants.

4. It is stated that in IA(IBC)/97/KOB/2023 the Resolution Professional had made a deliberate attempt not making any allegations against Respondent No. 5, 7 & 8. even when Respondent No. 5, 7 & 8 were instrumental in pushing the Corporate Debtor to the CIRP. The Applicant further stated that the loan amount with Canara Bank was classified as NPA on 18th June 2019 during which time Respondent No.5 was a director on board of the Corporate Debtor. It is stated that. when the loan amount with Canara Bank had become NPA, 1st and 2nd Applicants herein, were making all efforts to maximize the revenue and clear the outstanding liabilities to the creditors. It is stated that. after the loan amount had become NPA on 18th June 2019. the 1st and 2nd Applicant were trying their best to minimize any potential loss to the creditors, however, Respondent No. 5 put pressure on the Board to give priority to repay the unsecured loan standing to his credit over the other secured financial creditors and the operational creditors. It is submitted that between 30th March 2020 and 31st March 2020. an amount of INR 1,35,00,000 was repaid by the Corporate Debtor to Respondent No.5 Mr. Satheesh Gopalakrishna Pillai. It is submitted that. Such repayment of INR 1,35,00,000 to Respondent No.5. even when the loan account of the corporate debtor had become NPA and when the Corporate Debtor was on

the verge of CIRP would definitely come under the Provisions of Section 66 (2) and the Resolution Professional, in spite of having the details of such repayments {which are reflected in the bank account) did not make any attempt to seek relief against Respondent No. 5 in IA(IBC)/97/KOB/2023. This single instance is more than enough to demonstrate the collusion between the Resolution Professional and Respondent No. 5 in filing the Original Application and the purported counter filed by Respondent No. 5, 7 & 8.

5. It is stated that the Resolution Professional remains silent on the related party transactions done with Industrail Trading Private Limited and Industrail Ventures Private Limited which are the family concerns of Respondent No. 5, 7 & 8 and from which entities amount of INR 11,83,877 and INR 125,388 are due and which are recoverable from them. Despite such dues from the related entities of Respondent No. 5, 7 & 8, the Resolution Professional had chosen not to claim any reliefs against them and had not raised any concerns.

FINDINGS: -

6. We have heard the learned counsel for both parties and perused the entire case records/documents. We have also gone through the shreds of evidence on record. To arrive at a definitive conclusion, concerning this matter, we have gone through a

decision rendered by the Hon'ble NCLAT in ***H S Oberoi Buildtech Pvt. Ltd. Vs. Inderjit Singh & Anr.*** (Company Appeal (AT) (Ins.) No. 958 of 2022) may be referred to. The relevant part of that order is quoted hereunder: -

8. Counsel for the Respondents could not deny the fact that notice was not issued to the Appellant by the Tribunal while reserving the orders in the aforesaid three applications, therefore, it is well established that the Respondent has been condemned without giving any opportunity of hearing by the Tribunal. In such scenario, it would be relevant to refer to a decision of the Hon'ble Supreme Court in the case of 'State of Orissa vs Binapani Dei, 1967 AIR 1269', in which it has been held that not only the judicial order but also the administrative order should be passed by following the principle of natural justice.

9. In the present case, opportunity of hearing is conspicuous by its absence, therefore, it is a fit case in which the impugned order deserves to be set aside and the matter deserves to be remanded back to the Tribunal to once again hear the parties and take a decision in accordance with law by passing a speaking order.

10. Consequently, all the three appeals are allowed and the order dated 24.05.2022 is set aside. The aforesaid three applications are remanded back to the Tribunal to decide it again by passing a

speaking order after giving an opportunity of hearing to the Respondent, in all the aforesaid three applications, much less the present Appellant who is the SRA.

7. Thereafter we have gone through the judgment of the Hon'ble Supreme Court in ***Mrs. Maneka Gandhi vs Union Of India (UoI) And Anr*** (AIR 1978 Supreme court 597) wherein the Court held that: -

*"It is a wholesome rule designed to- secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. **The core of it must, however, remain, namely, that the person affected must have a reasonable***

opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk (1949) 1 All Eng. Reports 109 that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case".

8. In the instant case, we are of the considered opinion that the parties who are arrayed as Respondents have the right to present their case. It is seen from the records that the Respondent Nos. 2,3 and 4 (*Respondent Nos. 5,7 and 8 in IA(IBC)/97/KOB/2023*) submitted their reply statement before this Tribunal on 11.07.2023. Therefore, this Tribunal accepts the reply statement filed by the Respondent Nos. 5,7 & 8 in IA(IBC)/97/KOB/2023 and allowed the aforesaid Respondents to present their arguments before this Tribunal at the time of the final hearing of IA(IBC)/97/KOB/20223 and the same was heard and reserved for orders on 26.02.2024. Hence, the prayer sought in the present IA is itself becomes infructuous.
9. Accordingly, the applications are **dismissed as infructuous.**

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10.The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

11.An urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

12.File be consigned to records.

SHYAM BABU
GAUTAM

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SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T.KRISHNAVA
LLI

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T.KRISHNAVALLI
Date: 2024.04.25 15:57:59
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T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 25th day of April, 2024.

Rajasree R. Nair/LRA