



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

COURT-IV

I.A./1120/PB/2022

IN

Company Petition No. (IB)-267/ND/2021

*(Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Section 65 and 75 of the Insolvency and Bankruptcy Code, 2016)*

IN THE MATTER OF:

Devashree Developers Private Limited & Ors.

... Financial Creditors

VERSUS

Aravali Cylinders Private Limited

...Corporate Debtor

AND IN THE MATTER OF :

Leelawati Mahipal & Anr.

... Applicants

VERSUS

Aravali Cylinders Private Limited

... Respondents

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order delivered on: 29.08.2023

ORDER

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The present application is jointly filed by Ms. Leelawati Mahipal and Mr. Sanjay Mahipal, ('applicants') shareholders of M/s. Aravali Cylinders Private Limited ('Corporate Debtor')/ 'Respondent No.1') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 65 and 75 of the Code, 2016 inter-alia seeking following relief(s) :-



- (i) Allow the Applicants to intervene in the main Company Petition bearing No. (IB) 267 (PB) of 2021.
- (ii) Dismiss the Company Petition bearing No. (IB) 267 (PB) of 2021 initiated by the alleged Financial Creditors against the Corporate Debtor Company as initiated fraudulently and with a malicious intent for the purpose other than seeking resolution of Insolvency under the Code, 2016 and further with an intent to defraud the other persons, stakeholders of the Corporate Debtor Company.
- (iii) Initiate and impose Penal Actions under Section 65 of the Insolvency & Bankruptcy Code, 2016 against the Respondents since the Code has been invoked fraudulently, with malicious intent.
- (iv) Initiate and impose Penal Actions under Section 75 of the Insolvency & Bankruptcy Code, 2016 against the Respondents for suppression of various material facts knowing them to be material.
from the Hon'ble Adjudicating Authority,
And/or
- (v) Any other relief as this Hon'ble Adjudicating Authority may deem fit in the interest of equity, law and justice.

2. Briefly stated, the facts of the present case as averred by the applicants are that the main Company Petition i.e., (IB)/267(PB)/2021 is an application filed jointly by (i) M/s. Devashree Developers Private Limited ('Respondent No.2'); (ii) Radha Krishna Associates Private Limited ('Respondent No.3') (iii) Murari Lal Aggarwal (HUF) ('Respondent No.4); (iv) Murari Lal Aggarwal ('Respondent No.5'); (v) Vijay Aggarwal ('Respondent No.6'); (vi) Mahender Kumar Aggarwal (HUF) ('Respondent No.7') (Respondent No.2 to 7, collectively referred as Financial Creditors) under Section 7 of the Code, 2016 seeking initiation of CIRP against the Corporate Debtor/Respondent No.1.



3. The Applicants stated that the Corporate Debtor is a family owned Company wherein the Respondents Nos. 2 to 7 who are claiming to be the financial creditors of the Corporate Debtor are also related parties to the Corporate Debtor on the basis of the fraudulent loan transactions which are self-created and are only a camouflage to mislead this Adjudicating Authority.
4. Furthermore, the Applicant stated that the members of the Corporate Debtor have illegally removed the Applicant No.2 from the directorship of the Corporate Debtor against which the Applicants have initiated criminal proceedings against the accused persons vide FIR bearing No. 71 dated 05.06.2015 registered with Economic Offence Wing under Sections 409, 420, 465, 468, 471 and 120B of the Indian Penal Code and the same is pending investigation before the Hon'ble CMM (South East), Saket Courts, New Delhi bearing case no. 6526/2018.
5. The Applicants stated that the Respondents Nos. 2 to 7 had filed the impugned Company Application bearing C.P.(IB) No. 267/2021 in collusion to push the Corporate Debtor into the CIRP and thereafter liquidate the high value assets of the Corporate Debtor. It was further stated that Respondents No.2 to 7 are none other than one of the real sister's husband and his family members and the claimed alleged financial debt of Rs.2,31,00,000/- alleged to be defaulted on 31.08.2019 is a complete false statement and hence, liable to be dismissed.
6. Per contra, the Respondents in their reply had stated that the Applicants had filed the present interlocutory application with an ulterior motive of being concerned with reduction in their shareholding. The Respondents had stated that no intervention or right of hearing other than the Corporate Debtor can be allowed at the pre-admission stage of Section 7 Application. To support the contention, the reliance is placed on Hon'ble NCLAT's judgment in **DEB Kumar Majumder and Others v. State Bank of India, 2019 SCC OnLine NCLAT 26 vide its judgment dated 14.01.2019; Surinder Pal Singh & Ors. v. Spaze**



Towers Pvt. Ltd. [I.A. No. 1157, 1195 of 2023; judgement dated 27.03.2033]

7. The Respondents further submitted that there is no bar on the disbursement of money by a Director, Promoter or a shareholder to advance money to the Corporate Debtor or file a Section 7 Application under the Code. Moreover, the Respondents stated that the Applicants had levelled allegations only against the Directors of the Respondent No.1 Company and failed to show any element of fraud or collusion among the parties and therefore, the same has no bearing whatsoever on the present Company Application filed under Section 7 of the Code, 2016.
8. We have heard the Learned Counsel for the applicants and the Respondents and perused the averments made in the Application, Reply and the Written Submissions filed by the parties.
9. From the averments made in the application by the applicant, it seems that there exist inter-se disputes between directors and shareholders of the Corporate Debtor, which can at best be a matter of application under Section 241-242 of the Companies Act, 2013 but have no relevance or impact on the Captioned Application filed under Section 7 of the Code, 2016. If any shareholder has any dispute with the other shareholder or director of the Corporate Debtor, it will be open to him to move before the appropriate forum but he cannot intervene in the application filed under Section 7 of the Code, 2016.
10. **Hon'ble NCLAT's judgement dated 16.08.2019 in Prayag Polytech Pvt. Ltd. V. Hindi Tradex Ltd.] Company Appeal (AT)(Insolvency) No. 535 of 2019]** on the issue of intervention in an application filed under Section 7 is noted, wherein it was held that :-

“4. From the plain reading of Section 7 of IBC it is clear that the Adjudicating Authority, on being satisfied and if the application is complete, after notice and hearing the ‘Corporate Debtor’, may either

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admit the application or reject it. The Hon'ble Supreme Court also noticed the aforesaid mandate of law. In that view of the matter, we are of the view that there is no requirement for intervention of any Directors or shareholders of the 'Financial Creditor' or any other party before admission of Application under Section 7 of IBC. If the application is admitted, it would be open to any aggrieved party to move before this Appellate Tribunal."

11. It is trite law that the statutory right of a Financial Creditor satisfying the requirements of Section 7 of the I&B Code to trigger Insolvency Resolution Process cannot be made subservient to adjudication of other cases pending before the Hon'ble CMMM (South East) in Case No. 6526/2018 under the Indian Penal Code, 2016.

12. Further, the Hon'ble NCLAT in **Shobhnath & ors. Vs. Prism Industrial Complex Ltd., in Appeal (AT) (Insolvency) No. 557 of 2018** held that in an application filed under Section 7 of the Code, no other party than the Applicant & Corporate Debtor can be entertained and intervention by any party cannot be considered for. The relevant extract of the judgement is reproduced herein below: -

5. This Appellate Tribunal in numerous cases has stated that notice is to be given only to the 'Corporate Debtor' in an application under Sections 7 or 9 of the 'I & B Code'. The question of intervention by a third party before the admission of the application under Sections 7 or 9 does not arise.

13. Adverting to the facts of the case in hand, we are of the view that in an application filed under Section 7 of the Code, 2016, the Financial Creditor and the Corporate Debtor alone are the necessary parties and the Adjudicating Authority, at the pre-admission stage is only required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides, the application being complete as mandated under Section 7(5) of the Code. Consequently, there is no requirement for intervention of any Shareholder or any other party before admission of an application under Section 7 of the Code, 2016.



14. Further, on a perusal of the present interlocutory application filed by the applicants, it seems that the present Interlocutory Application (I.A./1120/PB/2022) is more in the nature of a reply to the Captioned Company Application ((IB)-267/ND/2021), filed under Section 7 of the Code, 2016 and such a practice is not appreciated by this Adjudicating Authority especially considering that the proceedings under Insolvency and Bankruptcy Code, 2016 are time bound.

15. Having conspectus of all relevant facts and circumstances and the judgements cited supra, we are of the view that at no intervention can be allowed by the applicants in the Captioned Application i.e., (IB)-267/PB/2021. Accordingly, the present Interlocutory Application i.e., **I.A./1120/PB/2022 being devoid of merits stands dismissed with no orders as to cost.**

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (J)