THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)

IA Nos.105/2022 & 444/2022
in
CP (IB) No.218/Chd/Hry/2020

Under Section 60(5) & 65 of IBC, 2016, read with Rule 11 of NCLT Rules, 2016

<u>In the matter of:</u>

M/s Pan Portfolios Private Limited
….Petitioner

Vs.

M/s. KSBL Securities Limited …Respondent

And in the matter of:-
<u>IA No.105/2022</u>
Atlanta Limited
through its Chairman Rahjoo Bbarot
having its registered office at
301, Shree Amba Shanti Chamber,
Opposite Hotel Leela, Mumbai
Maharashtra 400059
….Applicant

Vs.

Mr. Pawan Kumar Agarwal,
Resolution Professional for KSBL Securities Limited
having its registered office at
40/55, First Floor,
CR Park, New Delhi-110019 …Respondent

And in the matter of:-
<u>IA No.444/2022</u>
Atlanta Limited
through its Chairman Rahjoo Bbarot
having its registered office at
504, Samarpan, New Link Road,
Chakala, Near Hotel Mirador, Andheri
Mumbai 400099, …Applicant

Vs.

1. Mr. Pawan Kumar Agarwal,
Resolution Professional for KSBL Securities Limited

having its registered office at
40/55, First Floor,
CR Park, New Delhi-110019

2. KSBL Securities Limited
having its registered office at
40/55, First Floor, CR Park,
New Delhi-110019

3. M/s. PAN Portfolios Private Limited
through its Authorized Signatory …Respondents

Order delivered on: 02.02.2023

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present:

For the Applicant in
IA No. 105/2022 : Mr. Himanshu Mehta, Advocate

For the Applicant in
IA No. 444/2022 : Mr. Amandeep Singh Talwar, Advocate

For the respondent in : Mr. Pawan Kumar, Resolution Professional
IA No. 444/2022

For the respondent in
IA No. 105/2022 : Mr. Vishav Bharti Gupta, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present applications i.e., IA No. 444/2022 & IA No. 105/2022 are interlinked and interconnected. Therefore, are taken together for proper adjudication.

IA No. 444/2022

In the instant application, the applicant is seeking the following directions against the respondent.

i. Direct an inquiry into the fraudulent and collusive manner of initiation of the CIRP in the facts and circumstances of the present Case.

ii. Direct that the affairs of the corporate debtor be investigated to unravel the true purpose of initiation of the CIRPi.e. to hide the illegal misappropriation of monies and summarily reject or ignore valid claims, thus defeating them.

iii. In the alternate: Issuance of order termination/ closure/ recall of Corporate declaring Insolvency Resolution Proceedings against M/s KSBL Securities Private Limited being initiated fraudulently.

iv. Direct the replacement of the IRP/RP and, consequentially, Issuance of directions to the new Resolution Professional to initiate an enquiry into the fraudulently initiated proceedings and submit a report to this Hon'ble court in a time-bound manner.

v. Passing such orders or issuing directions as this Hon’ble Tribunal may deem fit.

vi. Interim Relief: During the pendency of the present application, further proceedings in the CIRP process may be stayed.

2. It is submitted that the present Corporate Insolvency Resolution Process has been initiated fraudulently at the behest of suspended management in collusion with an operational creditor, i.e., PAN Portfolio Private Limited. In the present case, the petition under Section 9 was admitted vide order dated 18.06.2021. The applicant was advanced a loan of Rs. 5 Crores by Kumar Share Brokers Limited, as a security for the said loan, 2870200 equity shares of the applicant held by Mr Rajhoo Ambalal Bbarot were pledged. The

applicant, vide letter dated 04.03.2016, offered to make payment of the entire outstanding loan, but the said offer was rejected by the corporate debtor on 17.03.2016. The applicant, in this regard, filed a Civil Suit i.e., CS (OS) 2632 of 2015, before the Hon'ble Delhi High Court, vide order dated 14.01.2016, the Hon'ble Delhi High Court transferred the original Suit ADJ Karkardoma, Delhi.

3. It is submitted by the applicant that despite the orders of the Hon'ble High Court and ADJ Karkardoma, the respondent-corporate debtor alienated the shares of the applicant. After the said alienation, respondent No. 3 filed a petition under Section 9 for a default of Rs. 2,43,000/-. It is stated that despite sufficient assets worth Rs. 45.39 Crores, respondents No. 2 & 3 mislead this Adjudicating Authority by concealing material information and thereby admitted the petition against the corporate debtor.

4. The applicant has submitted that due to the violation of interim orders of the Hon'ble High Court and ADJ Karkardoma, the applicant filed an SLP before the Hon'ble Supreme Court of India, i.e., Special Leave Petition (Crl.) No. (s) 7169/2018, wherein the corporate debtor/respondent No. 2 admitted that the corporate debtor has already recovered an amount of Rs. 8,6145,478/- by selling shares 1767672 in the open market and 1102525 shares are still lying with it. The registered address of the corporate debtor is fake without any construction and ownership record.

5. It is further submitted that in view of the admission order dated 18.06.2021 passed by this Adjudicating Authority, the learned ADJ Karkardoma, Delhi vide order dated 17.07.2021, adjourned the Civil Suit No. 2563 of 2016 sine die. The applicant has filed its claim of Rs. 9,33,12,613/- under Form C along with required proof of claim to respondent No. 1 i.e.,

Interim Resolution Professional, on 26.08.2021. The same has been acknowledged vide email dated 31.08.2021. Further, the above-said claim has been put on hold by respondent No. 1 due to the pendency of a case under Section 138 of the Negotiable Instruments Act filed by the corporate debtor against the applicant. The said Act was done to keep the applicant out of CoC.

6. It is submitted that the Corporate Debtor had malafidely sold the shares 1767672 of the applicant-Atlanta Limited in the open market and had wrongfully gained a sum of Rs. 8,61,45,478 against the original sum of Rs 5 Crores. This way, the corporate debtor has already committed fraud with the applicant by recovering an excess amount of Rs 3,30,56,516/-. Notwithstanding the same, the IRP has refused to adjudicate the claim of the applicant.

7. Notice of this application was issued to respondents. In response to the notice, a reply has been filed by respondent Nos. 1 & 2 vide diary No. 00299/2 dated 15.09.2022, wherein the averments made by the applicant have been denied. It is further submitted that the applicant has violated the terms of the Short-Term Loan Agreement (STLA) dated 21.02.2015. Further, the applicant has not paid the interest due for the month of July 2015, and the corporate debtor was unable to make up the shortfall, therefore, in view of the low liquidity of the applicant company's share, the corporate debtor is left with no option but to offload the collateral (shares) to cover the difference. It is stated that vide order dated 01.09.2015 of Hon'ble Delhi High Court, the respondent-corporate debtor was restrained not to dispose of the shares pledged by the applicant under the STLA subject to top-up of the amount of Rs. 1,45,54,954/- within one week. The conditional order was not complied

with by the applicant. Further, as per the directions of the Hon'ble Delhi High Court vide order dated 28.09.2015, the applicant failed to furnish the bank guarantee till date. Subsequently, vide order dated 14.01.2016 of Hon'ble Delhi High Court, the matter was transferred before ld. District Judge Karkardoma Delhi for further proceedings. The applicant further filed an SLP before the Hon'ble Supreme Court, wherein it was observed that "*proceedings before the Courts below shall be disposed of on merits without being influenced by the order passed by the Hon'ble High Court or by this Court."*

8. It is submitted by the respondent that the issue i.e., what amount is owed by who is a matter of trial under Section 138 of the Negotiable Instruments Act filed by respondent No. 2, which is pending before Patiala House Court for adjudication. Further, respondent No. 1/Resolution Professional did not find any securities (i.e., 11,02,525 shares) of Atlanta Limited with the corporate debtor. An application under Section 19 (2) and for preferential transactions has been filed before this Adjudicating Authority.

9. The respondent has further denied that CIRP has been initiated fraudulently in collusion with suspended management. Also, the account of the corporate debtor was declared NPA on 28.09.2019, and various creditors have pledged the securities to recover their dues. The BSE & NSE declared the corporate debtor as a defaulter and expelled them from the stock exchanges, and a criminal complaint has been registered against the corporate debtor.

10. The applicant has filed a replication to the reply filed by the respondent by diary No. 00299/04 dated 02.01.2023, wherein the averments made by the

respondent have been denied and reiterated the statements made in the application. For the sake of brevity, the same is not repeated herein.

11. We have heard the learned counsel for the applicant & respondent and perused the record available.

12. The aforementioned facts clearly indicate that there are litigations going on between the parties at different levels. Apart from this fact, the applicant has failed to bring on record any concrete evidence in support of his claim that the CIRP has been initiated in a fraudulent manner. In any case, the present Adjudicating Authority has ordered the initiation of the Corporate Insolvency Resolution Process against the corporate debtor after taking into consideration all the facts. In view of this, the instant application is without merits and dismissed accordingly.

<u>IA No. 105/2022</u>

13. In the present application, the applicant is seeking directions to a respondent-Resolution Professional to verify the claim submitted by the applicant in accordance with Regulation 14 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further direction to respondent-Resolution Professional to release 1102525 shares.

14. At the cost of repetition, certain facts pleaded in IA No. 444/2022 are mentioned below as the same would be required for the adjudication of the present IA.

15. It is submitted that the learned ADJ Karkardoma, Delhi vide order dated 17.07.2021, adjourned the Civil Suit No. 2563 of 2016 sine die. The applicant has filed its claim of Rs. 9,33,12,613/- under Form C on 26.08.2021. The

same has been acknowledged vide email dated 31.08.2021. Further, the above-said claim has been put on hold by Resolution Professional due to the pendency of a case under Section 138 of the Negotiable Instruments Act filed by the corporate debtor against the applicant.

16. Further, it is stated that even if the claim qua the applicant-financial creditor is adjusted with the claim of the corporate debtor after making necessary deductions qua the excess amount recovered, still the corporate debtor stands to be in debt to the applicant/financial creditor.

17. Reply has been filed by respondent-Resolution Professional vide diary No. 00026/01 dated 23.05.2022, wherein it is stated that after going through various conditional orders passed by the Hon'ble Supreme Court, Hon'ble Delhi High Court and before Ld. District Judge, Karkardoma and the books of account of the corporate debtor and various transactions and agreements which were executed between the petitioner and the corporate debtor, the Resolution Professional came to the conclusion that the applicant's claim be kept on hold on account of pending recovery proceedings under Section 138 of the Negotiable Instruments Act, 1882 against the applicant filed by the corporate debtor which is pending against the applicant. The respondent has computed the amount with additional interests till the insolvency commencement date, and after adjustment of the remaining 11,02,528 shares at market rate on the insolvency commencement date, an amount of Rs. 6,56,14,349/- is still recoverable from the applicant as of 18.06.2021.

18. The applicant has filed a replication to the reply vide Diary No. 00026/2 dated 02.01.2023, wherein the averments made in the reply have been denied.

19. In the present case, the records indicate that there is pending litigation related to the transactions made under the short-term loan agreement (STLA) dated 21.02.2015. The applicant claims that they have paid interest from time to time. Per contra, the corporate debtor invoked the pledged shares in violation of the aforementioned STLA and sold the shares in the open market. In the application, the applicant claims that the corporate debtor has recovered Rs. 3.30 Crores in excess through the illegal selling of the shares. The case is pending before the Ld. ADJ Karkardoma, Delhi. It is also seen that there are cases pending under Section 138 of the Negotiable Instruments Act against the applicant in the Patiala House Court, Delhi for bounced cheques allegedly issued by the applicant for the interest amount. As the matter is under litigation, such a claim can only be a contingent claim.

20. In this connection, we refer to the discussion paper dated 26.08.2020 on the estimation of contingent claims released by the Insolvency and Bankruptcy Board of India. The relevant part is extracted below for the sake of clarity:

> *"The discussion paper identified (a) that there is an inherent value to all contingent claims, (b) that occurrence of future uncertain events have an impact on the value of contingent claims, and © a methodology to account for such uncertainties and ascertain the value of such claims. Thereafter, the IBBI amended the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") to allow the assignment of actionable claims, disputed claims, cause of action and contingent claims ("2018 amendment").*

21. We further make a reference to Regulations 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) & Regulation 25 of IBBI (Liquidation Process) Regulations, 2016 respectively, which are extracted below:

" ***Regulation* 14. *Determination of amount of claim.***

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable when he comes across additional information warranting such revision.

Regulation 25. Determination of quantum of claim.

Where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim based on the information available with him."

22. Similarly, the Indian Accounting Standards 37 ("Ind AS 37") states that in the case of disputed liabilities pending judicial adjudication an entity determines whether a present obligation exists at the end of the reporting period by taking account of all available evidence, including, for example, the opinion of experts. The evidence considered includes any additional evidence provided by events after the reporting period. On the basis of such evidence:

(a) where it is more likely than not that a present obligation exists at the end of the reporting period, the entity recognises a provision(if the recognition criteria are met); and

(b) where it is more likely that no present obligation exists at the end of the reporting period, the entity discloses a contingent liability,unless the possibility of an outflow of resources embodying economic benefits is remote.

23. In view of the above, we are of the view that the contingent claims are capable of being estimated. It needs to be emphasised that Regulation 25 of the IBBI (Liquidation Process) Regulations, 2016 has made it mandatory for liquidators to estimate the value of contingent claims. In the circumstances, the Resolution Professional under the assistance of valuers can follow the same methodology to estimate the value of such contingent claims as in the present case.

24. As a sequel to the above discussion, we hold that the Resolution Professional's action in rejecting the claim of the applicant is not in accordance with the provisions of the Code and he is directed to consider the claim of the applicant in accordance with Regulation 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons).

25. In the result, the present application i.e., IA No. 105/2022 is allowed with aforesaid observations and disposed of accordingly.

Sd/-	Sd/-
(Subrata Kumar Dash)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**

February 02, 2023

PB/ASH