



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 430 OF 2023

Under Section 66 of Insolvency &
Bankruptcy Code, 2016

Mr. Kailash Shah,
Resolution Professional

...Applicants

Vs.

Mr. Kiran Charandas Mehta & others

...Respondents

In the matter of

C.P.(IB) No. 1981/MB/2019

Yogesh Wrapper Agency

...Operational Creditor

Vs.

New Empire Textile Processor Private
Limited

...Corporate Debtor

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Ms. Mitali Bhatt, Advocate
For the Respondent 3 & 4 : Mr. Shyam Kapadia, Advocate
For the Respondent 7 : Mr. Nausher Kohli, Advocate



ORDER

1. This Application IA 430/2023 is filed by Sh. Kailash Shah, the Resolution Professional (“Applicant”) of M/s New Empire Textile Processor Private Limited (“Corporate Debtor”) in the Corporate Insolvency Resolution Process (“CIRP”) initiated in terms of C.P. No. 1981 (IB)/MB/2019 to seek reliefs against the Respondents in terms of Section 66 of the Insolvency & Bankruptcy Code, 2016 (“Code”).
2. Mr. Kiran Charandas Mehta and Mr. Atul Vikram Mehta, Suspended Director of the Corporate Debtor, are Respondent No. 1 & 2 respectively. Mrs. Sangeeta Jatinder Mehta, Sister in law of suspended Director i.e. Mr. Kiran Mehta (Respondent No. 1) of the Corporate Debtor, is Respondent No. 3. Mr. Divyank Jatinder Mehta, (Nephew of suspended Director i.e. Mr. Kiran Mehta (Respondent No. 1) of the Corporate Debtor is Respondent No. 4. M/s. Ayush Dye Chem and M/s Vinod Chemicals (both Proprietary of Mr. Dinesh Vani) is Respondent No. 5 and ^ respectively. Sangeeta Tex Dyes P. Ltd. is Respondent No. 7.
3. This Tribunal vide its Order dated 26 August 2019 admitted the Corporate Debtor pursuant to Petition u/s Section 9 of the Code and appointed Applicant as Interim Resolution Professional (“IRP”). IRP constituted Committee of Creditors (“CoC”) and convened the first meeting of the CoC on 10 October 2019 wherein it was resolved to appoint Applicant as Resolution Professional (“RP”).
4. It is submitted that Corporate Debtor is involved in Spinning, weaving and finishing of textiles. During the course of CIRP on perusal of Books of Account and ledger copies shed light on some



potential fraudulent transactions entered into between the Respondents

5. The Applicant has filed this Application in terms of Section 66 of the Code, which reads as under -

“66. Fraudulent trading or wrongful trading. –

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.



Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor”

6. *Transfer / Sale of residential flat having address 903, Tirupati Apartment, Opp. Oswal Park, Pokhran Road No 2. Thane (west) - 400601 amounting to Rs.69,00,000/- to Mrs. Sangeeta Jatinder Mehta i.e. Respondent No. 3, Sister in law of one of the suspended director Mr. Kiran Mehta i.e. Respondent No. 1 without any genuine business transaction with an intent to defraud the creditors of the Corporate Debtor.*

6.1. The Applicant submits that Mr. Kiran Mehta (Ex-Director of the Corporate Debtor) i.e. Respondent No. 1 fraudulently transferred the asset of Corporate Debtor i.e. 903, Tirupati Apartment, Opp. Oswal Park, Pokhran Road No 2. Thane (west) -400601 to Mrs. Sangeeta Jatinder Mehta i.e. Respondent No. 3 (Sister in law of one of the suspended director Mr. Kiran Mehta i.e. Respondent No. 1 of the Corporate Debtor) for an amount of Rs.69,00,000/- on 21 August 2017. Consideration for sale of flat to be received from Mrs. Sangeeta Jatinder Mehta i.e. Respondent No. 3 has been discharged by (a) Payment of Rs. 62,65,000/- through Banking channel; (b) TDS on sale deducted amounting to Rs. 69,000/- by the Purchaser and (b) as sum of Rs. 5,66,000 has been adjusted towards Consulting charges.

6.2. It is further stated the corporate debtor has paid consultancy charges of Rs. 13,74,000/- to Mrs. Sangeeta Mehta i.e. Respondent No. 3. Consultancy Charges are paid by the corporate debtor to Mrs. Sangeeta Mehta only after the



transaction of sale of flat takes place i.e. 21.08.2017. To accommodate the payment to be made by Mrs. Sangeeta Mehta to corporate debtor for purchase of flat, corporate debtor paid Rs. 13,11,000/- to Mrs. Sangeeta Mehta and Mrs. Sangeeta Mehta returned the money to corporate debtor towards payment for purchase of flat. (Rs. 7,45,000/- paid by cheque and Rs. 5,66,000/- through journal entry). On 05.07.2019, almost 2 years after the sale of flat, an amount of Rs.5,66,000/- was still pending to be received from Mrs. Sangeeta Jatinder Mehta i.e. Respondent No. 3. Respondent No. 1 suspended directors of CD passed "journal" entry in books of Corporate Debtor on 05 July 2019 adjusting said receivable of Rs.5,66,000/- so as to extend another illegal benefit to Mrs. Sangeeta Jatinder Mehta i.e. Respondent No. 3.

7. Transfer / Sale of residential flat having address 904, Tirupati Apartment, Opp. Oswal Park, Pokhran Road No 2. Thane west - 400601 amounting to Rs.69,00,000/- to Mr. Divyank Jatinder Mehta i.e. Respondent No. 4, Nephew of one of the ex-director Mr. Kiran Mehta i.e. Respondent No. 1 without any genuine business transaction with an intent to defraud the creditors of the Corporate Debtor.

7.1. The Applicant submits that Mr. Kiran Mehta (Ex-Director of the Corporate Debtor) i.e. Respondent No. 1 fraudulently transferred the asset of Corporate Debtor i.e. 904, Tirupati Apartment, Opp. Oswal Park, Pokhran Road No 2. Thane west -400601 to Mr. Divyank Jatinder Mehta i.e. Respondent No. 4 (Nephew of Ex-Director i.e. Mr. Kiran Mehta (Respondent No. 1) of the Corporate Debtor) for an amount of Rs.69,00,000/- on 21 September 2017, which was discharged by (a) Payment of Rs. 62,15,000/- through Banking channel; (b) TDS on sale deducted amounting to Rs. 69,000/- by the



Purchaser and (b) as sum of Rs. 6,16,000 has been adjusted towards Consulting charges.

7.2. The corporate debtor has paid consultancy charges of Rs. 13,80,000/- to Mr. Divyank Jatinder Mehta i.e. Respondent No. 4. Consultancy Charges are paid by the corporate debtor to Mr. Divyank Jatinder Mehta only after the transaction of sale of flat takes place i.e. 21.09.2017. To accommodate the payment to be made by Mr. Divyank Jatinder Mehta to corporate debtor for purchase of flat, corporate debtor paid Rs. 13,11,000/- to Mr. Divyank Jatinder Mehta and Mr. Divyank Jatinder Mehta return the money to corporate debtor towards payment for purchase of flat. (Rs. 6,95,000/- paid by cheque and Rs.6,16,000/- through journal entry). On 05.07.2019, almost 2 years after the sale of flat an amount of Rs.6,16,000/- was still pending to be received from Mr. Divyank Jatinder Mehta i.e. Respondent No. 4. Respondent No. 1 suspended directors of CD passed “journal” entry in books of Corporate Debtor on 04 July 2019 adjusting said receivable of Rs.6,16,000/- so as to extend another illegal benefit to Mr. Divyank Jatinder Mehta i.e. Respondent No. 4.

8. ***Transaction 2: Transfer of Rs.1,10,40,000/- of payment received from sale of flat was immediately transferred to M/s Sangeeta Tex Dyes P. Ltd.***

8.1. The applicant submits that major portion of payment received from the purchaser Mrs. Sangeeta Jatinder Mehta and Mr. Divyank Jatinder Mehta was immediately transferred to a company named M/s Sangeeta Tex Dyes P. Ltd. in which Purchaser’s husband is a director. Thereafter in the year 2019-20, the amount that was given to M/s Sangeeta Tex Dyes P. Ltd. as a loan in the year 2017-18 was transferred to profit and



loss account of the corporate debtor by debiting consultancy charges. The Journal entry of debiting consultancy charges and crediting the loan account of Sangeeta Tex Dyes P. Ltd. is only an attempt to write off the account of Sangeeta Tex Dyes P. Ltd. without receiving money from them.

9. Transfer / Sold of flat bearing Flat No. 208, "PEARL GALAXY" at Survey No.73, Hissa No.37 C at Ballyani Site, Titwala-Ambiwali Road, Titwala, Thane to M/s. Ayush Dye Chem (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 5, without any genuine business transaction with an intent to defraud the creditors of the Corporate Debtor

9.1.The Applicant submits that Respondent No. 1 & 2 i.e. Suspended Directors of the Corporate Debtor have fraudulently transferred the asset of Corporate Debtor i.e. Flat No. 208, "PEARL GALAXY" at Survey No.73, Hissa No.37 C at Ballyani Site, Titwala-Ambiwali Road, Titwala, Thane to M/s. Ayush Dye Chem (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 5 for Rs. 17,54,984/- on 17 March 2019 merely by way of a journal entry.

9.2.In addition to above, it is submitted that while M/s. Ayush Dye Chem (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 5 was a vendor / supplier to Corporate Debtor, Respondent No. 1 & 2 i.e. Suspended Directors of the Corporate Debtor deliberately transferred asset of the Corporate Debtor for meager amount of Rs.17,54,984/- Flat No. 208, "PEARL GALAXY" at Survey No.73, Hissa No.37 C at Ballyani Site, Titwala-Ambiwali Road, Titwala, Thane to M/s. Ayush Dye Chem (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 5.

10. Transfer / Sold of flat bearing Flat No. 309, "PEARL GALAXY" at Survey No.73, Hissa No.37 C at Ballyani Site, Titwala-Ambiwali



Road, Titwala, Thane to M/s. M/s Vinod Chemicals (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 6, without any genuine business transaction with an intent to defraud the creditors of the Corporate Debtor

10.1. The Applicant submits that Respondent No. 1 & 2 i.e. Suspended Directors of the Corporate Debtor have fraudulently transferred the asset of Corporate Debtor i.e. Flat No. 309, "PEARL GALAXY" at Survey No.73, Hissa No.37 C at Ballyani Site, Titwala-Ambiwali Road, Titwala, Thane to M/s. Vinod Chemicals (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 6 on 22 March 2019 merely by way of a journal entry for an amount of Rs.17,67,992/-.

10.2. In addition to above, it is submitted that while M/s. Vinod Chemicals (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 6 was a vendor / supplier to Corporate Debtor, Respondent No. 1 & 2 i.e. Suspended Directors of the Corporate Debtor deliberately transferred asset of the Corporate Debtor for meager amount of Rs.17,67,992/- Flat No. 309, "PEARL GALAXY" at Survey No.73, Hissa No.37 C at Ballyani Site, Titwala-Ambiwali Road, Titwala, Thane to M/s. Vinod Chemicals (Proprietary of Mr. Dinesh Vani) i.e. Respondent No. 6.

11. The Applicant has further pleaded that the Respondents are also possibility involved in substantial money laundering and appropriate stringent legal action is necessary against the Respondents. Accordingly, the Applicant has sought the return of the immovable property from Respondent No. 3, 4, 5 and 6, which has been transferred fraudulently and return of the amount of Rs.1,10,40,000/- back to the Corporate Debtor forthwith and



permit Resolution Professional to reverse the fraudulent journal entries in the books of account of Corporate Debtor.

12. The Respondent No. 3 and 4 have filed the written submissions stating that the transactions with the Corporate Debtor are bona-fide; the application having been filed after more than 3 years is hit by delay and latches; they were not in control of affairs of the Corporate Debtor; and applicant has failed to demonstrate that the business of Corporate Debtor has been carried on with an 'intent to defraud' its creditor or for 'any fraudulent purposes'.
13. Respondent No. 7 has filed the reply and written submission stating that application against Respondent No. 7 is not maintainable on account of takeover by new management/successful resolution applicant (Harit Industries) and has pleaded that the Successful Resolution Applicant of the Respondent No. 7 can not be fastened with any liability arising from transactions prior to commencement of CIRP in case of Respondent No. 7. It is further stated that the claim of financial debt made by the Applicant was rejected by the Resolution Professional in CIRP of Respondent No. 7; and application is not maintainable being hit by delay & latches.
14. We have heard the Learned Counsel and perused the material available on record.
 - 14.1. At the outset, we find that the Adjudicating Authority may direct to make contribution to the assets of the corporate debtor if it finds that any persons who were knowingly parties to the carrying on of the business in the fraudulent purpose or for fraudulent purposes. Further, the sub-section 2 of section 66 provides for the order to be made against the a director or partner of the corporate debtor, as the case may be in certain specified circumstances.
 - 14.2. We find that the Corporate Debtor has sold four immoveable properties of the Corporate Debtor one each to



Respondent No. 3-6, of whom Respondent No. 3 & 4 are stated to be related person of the Respondent No. 1, the suspended director of the Corporate Debtor and Respondent No. 5 & 6, owned by one Mr. Deepak Vani, are vendors to the Corporate Debtor. While alleging the fraudulent transfer, the Applicant has neither brought on record any evidence pertaining to contemporaneous fair value of each of such immoveable property nor pleaded how a transaction of sale, simpliciter, can said to be transfer for fraudulent purpose, when the consideration has been duly discharged.

14.3. We find that the Applicant has made out a case based on a proposition that (a) part of consideration was paid through adjustment towards liability of corporate debtor owed to Respondent No. 2 & 3; (b) the major portion of money received from the Respondent No. 2 & 3 was transferred to Respondent No. 7 which came to be adjusted against the alleged consulting charges stated to be payable to Respondent No. 7; and (c) whole of consideration receivable from the Respondent No. 5 and 6 was discharged against payments to be made for purchases made from them by the Corporate Debtor. In the absence of any evidence of understatement of consideration, we can not hold that these transaction of sale of immoveable properties are not bona-fide simply because the consideration came to be paid in part, in two cases, and in full, in remaining two cases, by set off against the liability owed to them. We are of the considered view that discharge of liability by the Corporate Debtor in this manner can certainly be said to be falling under section 43 of the Code, provided condition pertaining to look-back period contained therein is satisfied. Since, the Applicant is before us for an order in terms of section 66, we have no hesitation to hold that no order can be passed



qua Respondent No. 5 to 6 in relation to transfer of immovable property. As regards transfer of immovable property in favor of Respondent no. 3 & 4 is concerned, we are of considered view that any declaration in relation to such transfer shall be subject to protection of lending bank's security interest, if any created by Respondent No. 3 & 4.

14.4. As regards payment of consultancy charges to Respondent No. 3 & 4 and purchases made from Respondent No. 5 & 6, the Applicant has not pleaded that no benefit accrued to the Corporate Debtor from these services or purchase of goods. The Applicant has simply pleaded that the consulting charges to Respondent No. 3 & 4 came to be paid after the transaction of sale of flats. To this extent, we can find substance of the Applicant that booking of such consultancy charges may have taken place merely to set off the balance consideration receivable from Respondent No. 3 & 4 as the payments made by the Corporate Debtor has come back to Corporate Debtor as payment towards part consideration of flat. The Respondent No. 3 & 4 have also not pleaded in the reply what services were rendered by them to the Corporate Debtor to earn such consultancy charges. Accordingly, to the extent of consultancy charges of Rs. 13,74,000/- to Mrs. Sangeeta Mehta i.e. Respondent No. 3 and Rs. 13,80,000/- to Mr. Divyank Jatinder Mehta i.e. Respondent No. 4 can not be said to be a bona-fide transaction.

14.5. As regards purchases from Respondent No. 5 & 6, we do not find any averment that such purchases were not genuine. Accordingly, we have no hesitation to hold that no order can be passed against Respondent No. 5 & 6 in relation to purchases made from them.



- 14.6. As regards payment of Rs. 1,10,40,000/- transferred to Respondent No. 7, out of proceeds of money received from the Respondent No. 3 and 4 towards transfer of flats, it has been alleged that the husband of Respondent No. 3 is director of Respondent No. 7, who is also father of Respondent No. 4 and this transaction of transfer of money back to Respondent No. 7 is routing of money back to them. We find that Respondent No. 3 and 4 are mother and son and both are related to Respondent No. 1. Both Respondent No. 3 & 4 paid Rs. 55,20,000/- each on 30.10.2017 to Corporate Debtor out of proceeds bank loan raised by them for purchase of said flat against its security and the said money was transferred to the Respondent No. 7 on same date. This chain of events clearly demonstrates that the transaction of sale of Flat to Respondent No. 3 & 4 resulted into facilitation of borrowings by them and said borrowing ultimately found way in the coffers of Respondent No. 7, which is related to Respondent No. 3 & 4.
- 14.7. We find merit in the submission of Respondent No. 7 that consequent upon transfer of Corporate Debtor to Successful Resolution Applicant in terms of approved resolution plan under the Code, no liability pertaining the period prior to commencement of CIRP of Respondent No. 7 can be fastened upon them. Accordingly, no order can be passed against Respondent No. 7 in relation to the said amount.
- 14.8. Nonetheless, since this transaction of routing money to Respondent No. 7 was facilitated in connivance with Respondent No. 1, 2 3 and 4, we are of considered view that a direct can be issued against them to contribute a sum of Rs. 1,10,40,000/- to the Corporate Debtor.
15. This Bench has reached a conclusion that consultancy charges of Rs. 13,74,000/- to Mrs. Sangeeta Mehta i.e. Respondent No. 3 and



Rs. 13,80,000/- to Mr. Divyank Jatinder Mehta i.e. Respondent No. 4 can not be said to be a bona-fide transaction and Respondent No. 1, 2 3 and 4, we are of considered view that a direct can be issued against them to contribute a sum of Rs. 1,10,40,000/- to the Corporate Debtor. These amounts, put together, constitutes the consideration stated to be paid by the Respondent No. 3 & 4 to the Corporate Debtor. This leads us to the conclusion that the transfer of flats by the Corporate Debtor was facilitated by Respondent No. 1 and 2 in connivance with the Respondent no. 3,4 and 7 to facilitate transfer of money to Respondent No. 7 and keep these two flats away from the creditors of the Corporate debtor in a fraudulent manner. Accordingly, we have no hesitation to hold the transfer of flats to Respondent No. 3 & 4 can be set aside, subject to security interest, if any, held by the Bank/Financial Institution who lent money to Respondent no. 3 & 4. It is clarified that the recovery of these two flats shall be subject to satisfaction of charge, if any created in favor of lenders to Respondent no. 3 & 4.

16. Accordingly, the Respondent No. 1, 2, 3, 4 shall be severally and jointly liable to contribute to the assets of Corporate Debtor to the extent of amount involved in satisfaction of charge, if any, in favor the lenders of Respondent No. 3 & 4. The transfer of flats by Corporate Debtor to Respondent No. 3 & 4 is declared void subject to charge, as discussed.

17. In view of the foregoing, IA 430 of 2023 is disposed of as partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)