



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**  
*(Exercising powers of Adjudicating Authority under  
The Insolvency & Bankruptcy Code, 2016)*

**I.A No. 293/2021**

Under Section 66 and 60 (5) of the I& B Code, 2016 r/w  
Rule 11 of the NCLT Rules, 2016

in

**C.P (IB) No. 214/BB/2019**  
u/s 9 of the IBC Code r/w Rule 6 of  
Insolvency and Bankruptcy 2016

In the matter of

**Mr. Ratnakar Shetty,**

*Liquidator of*

*M/s. Unitex Apparels Private Limited,*

*C/o RPAR & CO LLP,*

*No.16, Level 3,*

*Skyline Towers, 7<sup>th</sup> Cross, Sampige Road,*

*Malleswaram,*

*Bengaluru -560003*

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Applicant/ Liquidator

Versus

1. M/s. AR2G Software Services Private Limited,

2. Mr. Rajeev Raghavan,

3. Mr. Raghu Shivani Ganeshrao,

Respondents No.1 to 3 are residing at

No. 514, V.V. Puram,

Bengaluru - 560004

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Respondents

**Order delivered on: 25<sup>th</sup> May 2023**

**Coram:**

1. Hon'ble Justice (Retd.) T Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Shri Harikrishna Pramod

For the Respondent : Shri. Hemanth Rao



**Per: Manoj Kumar Dubey, Member (Technical)**

**ORDER**

1. This application is filed on 13.09.2021 by Shri Rathnakar Shetty, the Liquidator of M/s. Unitex Apparels Private Limited/Corporate Debtor, under Section 66 and 60 (5) of the I & B Code 2016 read with Rule 11 of the NCLT Rules, 2016 *inter alia* seeking to direct the Respondents to make contribution to the assets of the Corporate Debtor to the extent of Rs.79,65,543/- along with interest at the rate of 18% per annum till the date of repayment.
2. It is stated that this Adjudicating Authority initiated Liquidation process of the Corporate Debtor on 21.09.2020 in I.A No 395 of 2020 by appointing Applicant herein as a Liquidator. The Applicant/Liquidator was also Interim Resolution Professional (IRP) of the Corporate Debtor by an order dated 29.10.2019 and later confirmed as the Resolution Professional (RP). Upon becoming IRP, he examined the books of accounts of Corporate Debtor and found that the Corporate Debtor had lent an amount of Rs.79,65,543/- to a related party known as M/s.AR2G Software Services Private Limited i.e, Respondent No.1 and the amount was purportedly utilized by Respondent No.1 to receive allotment of the Schedule property being a parcel of land situated in Mysore from the Karnataka Industrial Area Development Board (KIADB). This amount is recorded in the audited financial statement of the Corporate Debtor for the FY 31.03.2019 as a long-term loan lent by the Corporate Debtor to Respondent No.1. Further, stated that the Respondent No.1 is a related party because of R2 & 3 who are the erstwhile directors of the Corporate Debtor are also directors and shareholders of the Respondent No.1.
3. The Applicant took up this issue to the Respondent No.2 & 3, and sent an email dated 07.05.2020 to explain how and when this amount would be returned to the Corporate Debtor. Further the Applicant also sought information regarding the land allotted to the Respondent No.1. The Respondent No.3 vide email dated 14.05.2020 gave an untenable response by making reference to a different transaction involving M/s.



SVC Bank Limited. Respondent No.3 evasively replied that the due amount could be returned to the Corporate Debtor by sale of the land, with the consent of M/s. SVC Bank Limited. The Applicant found this response of the Respondents to be unsatisfactory and persistently continued to follow up with respondents to recover the due amount into the pool of assets of the Corporate Debtor. Subsequent to his appointment as Liquidator of the Corporate Debtor, the Applicant issued an email dated 24.03.2021 to the Respondents, requesting them to immediately repay the amount of Rs. 79,65,543/- along with interest at the rate of 12% computed till the date of payment to the liquidation account of the Corporate Debtor.

4. The Respondent No.2 issued an untenable response to this email by way of an email dated 26.03.2021 wherein he stated that the Respondent No.1 is not liable to pay any money to the corporate Debtor. In order to deny liability, Respondent No.2 cited the bar of limitation and also brought up a different transaction with M/s. SVC Bank Limited.
5. It is stated that the Respondent No.1 being a related party with respect to the Corporate Debtor, the Respondents could have, at best undertaken a lending transaction at arm's length and at market price, after obtaining the necessary approvals. Not only the respondents violate the law governing related party transactions, but also caused severe detriment to the Corporate Debtor. Further, the Respondents have unjustly enriched themselves at the cost of the Corporate Debtor. For all the reasons set out above, the Respondents are liable to make contribution to the assets of the corporate to the extent of Rs. 79,65,543/- being the due amount, along with interest at the rate of 18% per annum till the date of repayment.
6. The Respondents have filed the statement of objections vide Diary No.3529 dated 13.12.2021 interalia contending as follows:
  - i. It is stated that the Applicant has relied on Financial statement of the Respondent No.1 as on March 2016 (at para 9 of the application), thus even from the documents relied by the Liquidator



it is evident that the transaction was before the enactment of the code on 28.05.2016, Hence Section 66 of the Code cannot be applied retrospectively to the said transaction.

- ii. It is stated that in the instant case, the RP failed to perform his duty and adhere to the timelines specified under the Code. The instant application has been filed after liquidation of the Corporate Debtor in stark violation of strict timelines stipulated under Regulation 35.
- iii. Further, the application is also liable to be dismissed in limine as it is deliberately bereft of material particulars as to the dates on which the amounts were transferred by the Corporate Debtor to the Respondent No.1. Merely, because the corporate Debtor has shown Rs.79.65 Lacs in its balance sheet as liable to be paid by the Respondent No.1, the said transaction does not fall within the ambit of Section 66 of the code. Further stated that the application is also barred by limitation in view of the fact that the transaction pertains to the financial year 2013.
- iv. It is further stated that the Respondent No.1 was a corporate guarantor to the loans availed by the Corporate Debtor. On default of the said loans, SVC Co-operative Bank Limited (SVC Bank) had filed I.A No. 2724/2018 for attachment before judgement of the Schedule Property. Accordingly, the DRT attached the Schedule Property vide its Order dated 04.01.2019 and the same was in operation till 16.04.2021. The Respondent No.1 entered into a Onetime Settlement with the SVC Bank for a sum of Rs. 90 lacs and the Bank vide its letter dated 20.03.2021 acknowledged the settlement of dues and discharged the Respondent No.1 from its corporate guarantee. Thus, when the Respondent No.1 guaranteed the loans availed by the Corporate Debtor and paid a sum of Rs. 90 lacs towards the debts of the Corporate, the question of any fraudulent transaction between the parties does not arise.
- v. It is further stated, it is true that a sum of Rs. 71,60,056/- has been advanced by Unitex to the Respondent No.1, the Applicant has



failed to mention the exact date of transfer of amount or any other material particulars. Further, the audited financial statement of the CD for the year ending 31.03.2028 and 31.03.2019 are both prepared by the Liquidator. Nevertheless, only because a sum is shown as due in the balance sheet, the transaction does not fall within the ambit of Section 66 of the code. Further, stated that in the entire application there is not a single word about any fraudulent intent of the Respondents, the transaction is of FY 2013 when the Corporate Debtor had 2,000 employees and was successfully running the business. Infact, the Corporate Debtor had made a profit of Rs.3,44,19,342/- and had generated revenue of Rs.1,03,41,31,648/- in the said financial years. Hence there is no necessity of defrauding any creditors and the Respondents could not have predicted the insolvency/liquidation of the Corporate Debtor at that juncture.

7. Heard the Learned Counsel for the Applicant and Learned Counsel for the Respondents and carefully perused the records.
8. On 29.11.2022, the Learned Counsel for the Applicant reports that no rejoinder for the reply filed by the Respondents.
9. The Respondent No.1 has also filed the written arguments vide Diary No.1882 dated 05.04.2023 interalia stating as under:
  - i. The Applicant in the application except mentioning the amount mentioned in the Balance sheet, had not even stated when and under what circumstances the transaction in question has occurred. On the otherhand, it is the Respondent who has produced the Bank account statements and other documents giving exact details of the transaction.
  - ii. Further, the Liquidator had failed to obtain any expert opinion in respect of the alleged transaction in spite of them being almost 6 years prior to initiation of CIRP. Due to the absence of any forensic audit/expert opinion, the Application is bereft of particulars of the fraudulent transaction. In the absence of the



forensic audit/specific averments in respect of fraud, the Liquidator has miserably failed to prove that the said transactions were fraudulent.

iii. Further, at para 6 of the application, the Liquidator has stated that he has questioned the Respondents about the alleged transaction on 07.05.2020, but the application has been filed with an enormous delay only on 04.09.2021, thus, the Liquidator has failed to comply with the statutory requirement of filing section 66 Application within the 75<sup>th</sup> day of CIRP commencement.

iv. The Respondent No.1 have also relied upon the following judgements:

*i. Mrs. Renuka Devi Rangaswamy, RP v. Regen Powertech Private Limited the order passed by Hon'ble NCLAT;*

*ii. Star India Private Limited v. Advance Multisystem Broadband Communications Limited, Hon'ble NCLT, Kolkata*

*iii. Venkatesan Sankarnarayana, the RP for RTIL Ltd., v. Mr. Nitin Shambhukumar Kasliwal and others, Hon'ble NCLT, Mumbai*

*iv. Regen Power Tech Private Limited v. Madhusudhan Khemka, Suspended Board of Director of Regen Power Tech Pvt. Ltd. passed by Hon'ble NCLT Chennai.*

10. The contention of the Applicant is that the Corporate Debtor had lent an amount of Rs.79,65,543/- to the Respondent No.1 and amount is also recorded in the audited financial statement of the Corporate Debtor as a long-term loan lent by the Corporate Debtor to Respondent No.1. Further, the Respondents No.2 & 3 who are also directors and shareholders in the Respondent No.1 Company deliberately routed funds from the Corporate Debtor to the Respondent No.1 and such transfer of funds was not even undertaken in accordance with any agreement.

11. On the otherhand, the Respondents contended that the Respondent No.1 had guaranteed the loans availed by the Corporate Debtor and also paid



a sum of Rs. 90 lakhs towards the debts of the Corporate Debtor. Further the Applicant has failed to mention the exact date of transfer of the amount or any other material particulars. Nevertheless, only because a sum is shown as due in the balance sheet, the transaction does not fall within the ambit of Section 66 of the code. The Liquidator has also failed to obtain any expert opinion in respect of the alleged transaction inspite of them being almost 6 years prior to initiation of CIRP.

12. It is observed that even the amount has been transferred from the Corporate Debtor to the Respondent No.1; there is no clarity and no audited documents placed to show that any fraudulent transactions happened. The Applicant is lacking in evidence to support the value contended in the present application. In this regard it is stated that in a similar situation, the co-ordinate Bench of NCLT, Mumbai in its order dated 06.03.2023 in M.A No. 384 of 2020 in C.P (IB) No. 1237 of 2019 *Mrs. Vaishali Arun Patrikar v/s. Mr. Hemanth Khinvasara*, wherein it is held that in the absence of any concrete proof with regard to the alleged fraudulent transaction under Section 66 and lack of evidence on account of conducting any audit etc., the application for declaring fraudulent transaction under section 66 was dismissed.
13. Therefore, in view of the above facts and circumstances, we are of considered opinion that the Applicant has failed to furnish the requisite details or provide any material proof with regard to the contention raised in the application. Hence the present application is liable to be dismissed. Accordingly **I.A No. 293 of 2021** in CP (IB) No. 214/BB/2019 is dismissed.

**Sd/-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**Sd/-**

**(T.KRISHNAVALLI)  
MEMBER (JUDICIAL)**