

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

I.A. 969 OF 2020

Under Section 66(2) & 69(a) of Insolvency
& Bankruptcy Code, 2016

Mr. Balkrishan Sharma
The Resolution Professional

...Applicant

Vs.

Praveen Kumar Pillai & Others

...Respondent

I.A. 101 OF 2021

Under Section 19(2) & 19(3) of Insolvency
& Bankruptcy Code, 2016

Mr. Balkrishan Sharma
The Resolution Professional

...Applicant

Vs.

Cogencis Information Services Limited
& Others

...Respondent

I.A. 2627 OF 2021

Under Section 12(2) of Insolvency &
Bankruptcy Code, 2016

Mr. Balkrishan Sharma
The Resolution Professional

...Applicant

I.A. 1116 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Model 27 of
the Schedule of the IBBI (Bye Laws and
Governing Agencies Regulations) 2016

Mr. Balkrishan Sharma
The Resolution Professional

...Applicant

Vs.

**ICSI Institute of Insolvency
Professionals & Others**

...Respondent

In the matter of

C.P.(IB) No. 157/MB/2017

HCL Services Limited

Operational Creditor

Vs.

Universal Commodity Exchange Limited

Corporate Debtor

Order delivered on: 05.12.2023

Coram:

Shri Prabhat Kumar

Justice Shri V.G. Bisht

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 969 OF 2020
I.A. 101 OF 2021
I.A. 2627 OF 2021
I.A. 1116 OF 2022
In

C.P.(IB) No. 157/MB/2017

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances

For the Applicant : None Present
For the Respondent No.2
In IA 101/2021 : Mr. Kunal Kanungo, Advocate
For the Resolution Professional : Mr. Madan Vaishnawa, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Four Interlocutory Applications i.e. IA 1116/2022, IA 101/2021, IA 969/2020, and IA 2627/2021 have been filed by Sh. Balkrishan Sharma, the Interim Resolution Professional ("Applicant") of M/s Universal Commodity Exchange Limited ("Corporate Debtor" in C.P. (IB) No. 157 of 2017. On perusal of the peculiar facts of the case, this Bench considers to dispose of all these application by this common Order.
2. This Tribunal passed an Order dated 08.06.2018 initiating Corporate Insolvency Resolution Process ("CIRP") under the provisions of Insolvency & Bankruptcy Code, 2016 ("Code") in the case of Corporate Debtor on an application filed by HCL Services Limited, one of the Operational Creditor and the Applicant was appointed as an Interim Resolution Professional (IRP) by this Bench in the same Order which was received by the Applicant/ IRP on 18.6.2018.

Interlocutory Application No. 1116/2022

3. This Interlocutory Application No. 1116/2022 is filed by Sh. Balkrishan Sharma, the Interim Resolution Professional (“Applicant”) of M/s Universal Commodity Exchange Limited (“Corporate Debtor” in C.P. (IB) No. 157 of 2017 seeking directions against the Institute of Insolvency Professional of ICSI, of which he is professional member (“Respondent), seeking discharge from the duties as IRP/RP of the corporate debtor, permission to file application to surrender membership as insolvency Professional, for direction to CoC members for payment of the outstanding amount Rs. 7,64,824/- and further fee and exp. to the applicant:

4. The Applicant is stated to have visited the Registered office premises of the Corporate Debtor at Mahape on 4.9.2018 along with the officers of the IDBI Bank as per the permission granted, and found that all the four floors of the building were emptied except installed Furniture. 2-3 Rooms and some almira were locked of which key were not available with the IDBI Bank officials.
 - 4.1. First CoC meeting was held on 18.09.2018 by placing all the facts and copy of Forensic Audit Report conducted by KPMG before the members. 2nd CoC meeting was held on 10.1.2019. Miscellaneous Application no. 3918/ 2019 filed by IRP for withdrawal of CIRP petition came to be dismissed by this Tribunal on 17.02.2020. Third CoC meeting was called to be held on 7.3.2020 but no member attended the meeting.
 - 4.2. It is stated in the application that IA 101/2021 filed by the Applicant on 17.03.2020 under section 19 of I.B.C., 2016 against non-cooperation by the CoC members still pending. 1.A. no. 969/2020

filed by the Applicant on 17.03.2020 against all the Directors under section 66 and 69 of I.B.C., 2016 is still pending.

4.3. It is the case of the Applicant that an e-mail was sent on 18.4.2022 to the Respondent ICSI-IIP to Surrender membership as he has been suffering from knee problems and bone problems on other joints, particularly on palm joint of left hand just below thumb but it was informed by the IPA that either pending assignments be completed or permission be sought from this Tribunal to seek discharge from each assignment.

Interlocutory Application No. 101/2021

5. This Interlocutory Application No. 101/2021 is filed by Sh. Balkrishan Sharma, the Interim Resolution Professional (“Applicant”) of M/s Universal Commodity Exchange Limited (“Corporate Debtor” in C.P. (IB) No. 157 of 2017 seeking directions against the CoC members, comprising of M/s Cogencis Information Services Limited (“Respondent No. 1”) and M/s IDBI Capital Markets and Securities Limited (“Respondent No. 2”) for their alleged non co-operation.
6. Respondent No. 2 M/s IDBI Capital Markets and Securities Limited has filed reply stating that the Applicant had fixed the last date of receiving claim as 02.07.2018 and it is an admitted position that he had not received any claim within the prescribed time period. Thereafter, Respondent No.2 has lodged its claim on July 10,2018, the Applicant, vide his email dated 17th August 2018 @ 11:57, had replied that the claim is barred by limitation and could not be accepted, stating that "*With reference to your claim for Rs.47,42,900/- it has been found that this claim is time barred under section 238 of the Insolvency & Bankruptcy Code, 2016. Your bill is dated 16.03.2012 and you are, first time claiming the amount by you letter dated*

10.07.2018, more than 3 years as per Limitation Act, 1963. But if you have filed any case or recovery suit in the court or you want to justified otherwise like legal notice duly received by them, I will wait for your reply till 18 August 2018 up to 3 PM. In absence of your reply or satisfactory reply, your claim will not be accepted”.

- 6.1. It is submitted that pursuant to the receipt of said email dated 17 August 2018, the Respondent No. 2 did not provide any further documents substantiating/justifying the claim. Hence, it is submitted that the Applicant did not provide any justification as to why he considered the claim of the Respondent No.2 and allegedly constituted CoC with Respondent No.2.
- 6.2. The Respondent No. 2 has emphasised that, despite the Applicant being aware that the Petitioner is not pursuing the matter and is in fact, the directors are not available, the office is shut for long and the order dated 23.07.2018, upon receipt of claims from Respondents allegedly constituted Committee of Creditors ("CoC"). The Applicant informed the Respondent No.2 that he will update the status of claim and CIRP status in the alleged 1st CoC meeting and accordingly, held it on 18th September 2018. During the said meeting, it was clearly decided that the original petitioner will bear the expenses and fees/expenses after 18.09.2018 will be borne by the CoC for which the Applicant will first submit his quotation for approval of the Respondent Companies as is evident from email dated 27th September 2018 (02:59 PM). Furthermore, it is submitted that the minutes of alleged 1st CoC meeting were never finalized.
- 6.3. Thereafter, the Applicant is stated to have sent an email dated 1 October 2018 (5:31pm) with notice and agenda of alleged 2nd COC meeting and letter of offer of fees for services of Resolution Professional with effect from 18.09.2018. The said email was replied

by me vide email dated 03.10.2018 @11:55 where in it was clearly stated that Respondent No. 2 would require to take internal approvals for the fee proposal and sought adjournment of the meeting. Hence, it is clear that there was no understanding that the Respondent No.2 would be incurring CIRP cost as alleged. It appears that the Applicant is trying to make a scapegoat out of the Operational Creditor who filed its claim and the same shall not be permitted.

Interlocutory Application No. 969/2020

7. This Interlocutory Application No. 969/2020 is filed by Sh. Balkrishan Sharma, the Interim Resolution Professional (“Applicant”) of M/s Universal Commodity Exchange Limited (“Corporate Debtor” in C.P. (IB) No. 157 of 2017 seeking directions against the directors to contribute to the assets of the corporate debtor in terms of Section 66(2) of the Code; to punish to the officers/directors of the corporate debtor with imprisonment and/or with fine under Section 69 (a) of the Code; and also include Other director(s) of the corporate debtor and other companies who may also be liable in this application, but not included mistakenly or due to non-availability of record.
8. The Applicant filed status report dated 4th July, 2018 along with bank statements with its analysis showing as to how amount had been continuously withdrawn till the balances in the accounts of few banks reduced to nil/minimum.
9. The KPMG, on the direction of the Forward Market Commission (FMC), conducted and submitted Forensic Audit Report dated 05.01.2015 to FMC on 06.01.2015. The copy of the Forensic Audit

Report has been submitted before this Court on 23.07.2018. A letter of reply dated 5.7.2018 was received from Commex Technologies Limited along with seven different kind of account statement with the corporate debtor which had been signed by Shri Jayant Mitra as Managing Director.

10. According to the provisions of Section 69 of the Insolvency and Bankruptcy Code, 2016 read with section 5 (19) of the Code and section 2 (60) of the Companies Act, 2013, the directors of the corporate debtor and the first directors of both companies, namely, Commex Technologies Limited and Skyline Capital Services Pvt. Ltd., managing the affairs of these companies, are punishable with imprisonment or fine or both.

Interlocutory Application No. 2627/2021

11. This Interlocutory Application No. 2627/2021 is filed by Sh. Balkrishan Sharma, the Interim Resolution Professional (“Applicant”) of M/s Universal Commodity Exchange Limited (“Corporate Debtor” in C.P. (IB) No. 157 of 2017 seeking extension in the CIRP period. For the sake of brevity, the facts narrated elsewhere are not repeated again.
12. Besides stated above, the applicant has also stated that the Registered office at Exchange House, Building No. 8 (105), Sector-II, Millennium Business Park, Mahape, Navi Mumbai-400710 was locked and seized by IDBI Bank in terms of Order passed by Debt Recovery Tribunal.
13. No promoter director(s) and Key Managerial Personal was available to talk with. As per the Registrar of Companies record, accounts were prepared, audited and filed up the year ended 31.3.2014 and not thereafter. No funds are available with the corporate debtor.

14. As per the ROC record KPMG was contacted and they provided the copy of Forensic Audit Report which they submitted to SEBI on 05.01.2015. A criminal complaint has been filed by NABARD against the promoter directors at the EOW, Mumbai Police, Office of the Mumbai Police Commissioner, Craford Market, near CSMT railway station, Mumbai.
15. The Applicant had collected statements of accounts from various banks (except 2-3 banks) of corporate debtor and analysed the payments w.e.f. 01.04.2014. These statement have been collected referred in the Forensic Audit Report.
16. Status Report has been filed on 05.07.2018 with this Tribunal, disclosing the fact that Rs. 28,45,18,602.47 has been disbursed in the year 2014-15 and 2015-16 needs to be accounted for and verification.
17. A notice was dispatched to the CoC members to hold meeting on 7.3.2020. The notice was dispatched with a draft resolution for liquidation of corporate debtor. But no member attended the meeting

Common Findings and Decision

18. None was appearing on behalf of the Applicant since many occasions. On perusal of the web-page of Insolvency & Bankruptcy Board of India to ascertain the status of the Applicant, it was discovered that the Applicant's Authorisation for Assignment expired on 6th July, 2022 and prior to this the Applicant was not holding any valid authorisation between 27.12.2020 to 6.7.2021. Further, no counsel has been appearing in IA 1116/2022, IA 101/2021 and IA 969/2020, all filed by the Applicant. Further none is appearing on behalf of Corporate Debtor in

IA 2627/2021, which is an application filed by an Operational Creditor against rejection of its claim.

- 18.1. Considering the facts of the case and the medical condition of the applicant, this Tribunal considers it appropriate to discharge the Applicant from the duties of IRP/RP of the Corporate Debtor, subject to handing over of all records and case proceedings details in relation to CIRP of the Corporate Debtor to the incumbent Resolution Professional appointed in terms of this Order.
- 18.2. In view of discharge of the Applicant, this Tribunal appoints Mr. Charudutt Pandhrinath Marate, having Registration No. IBBI/IPA-001/IP-P-00350/2017-18/10651, email: charuduttm@yahoo.co.in as the Resolution professional with immediate effect at a remuneration of Rs. 1,50,000/- p.m. for the period decided by CoC, and expenses incurred in relation to CIRP shall be extra. He is directed to take hand over of all records and case proceedings details in relation to CIRP of the Corporate Debtor as well as details of his pending claims with necessary supporting from Sh. Balkrishan Sharma, the outgoing IRP.
- 18.3. The newly appointed Resolution professional is directed to call the meeting of Committee of Creditors immediately, and put a resolution for their vote to decide for further action in the CIRP of the Corporate Debtor. As per status of CIRP in case of Corporate Debtor available on the IBBI web-page, no action is stated to have been taken after public announcement. The members of the Committee of Creditors are directed to attend the said meeting without fail and convey their decision in the meeting to the newly

appointed Resolution professional so that he may update the Tribunal about the further course of action in the CIRP.

- 18.4. Needless to say, the CoC shall also take into consideration the details of fees and expenses of the outgoing IRP, and approve the same after verification to be done by the incoming Resolution Professional. The Original Applicant i.e. HCL Services Limited has already paid a sum of Rs. 3,00,000/- towards dues of the outgoing IRP/Applicant in terms of Order dated 23.07.2018 passed by this Bench and the said amount shall be adjusted towards the dues to the extent not ratified by the CoC in terms of Regulations 33(3) of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 which provides that “*The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies*”.
- 18.5. The CoC members shall make necessary payments of the approved CIRP cost after aforesaid adjustment of Rs. 3,00,000/- in the manner stated in preceding para, out of their resources in proportion of their admitted claim in case the funds are not available with the Corporate Debtor, and said contribution shall be considered as Interim finance to be dealt with in accordance with the provisions of the Code.
- 18.6. The CoC members shall also fix the remuneration of the newly Appointed Resolution Professional and shall also contribute a sum of Rs. 3,00,000/- to meet necessary CIRP expenses and fees of the Resolution Professional. Needless to say, said contribution shall be considered as Interim finance to be dealt with in accordance with the provisions of the Code.

- 18.7. As regards action to be taken against the Directors, we direct the Insolvency & Bankruptcy Board of India to initiate appropriate proceedings in terms of section 69 of the Code against the the directors of the corporate debtor and the first directors of both companies, namely, Commex Technologies Limited and Skyline Capital Services Pvt. Ltd., managing the affairs of these companies.
- 18.8. Since, there is a clear case of siphoning of funds and assets of the Corporate Debtor, we direct the newly appointed Resolution Professional to file a fresh application before this Bench for adjudication of transactions u/s 66 or other provision relating to avoidance transactions for recovery of money of the Corporate Debtor.
- 18.9. In view of aforesaid findings that the property of the Corporate Debtor is in attachment pursuant to Debt Recovery Tribunal Order and recovery against avoidance transactions may be discovered, this Bench consider it appropriate to extend the CIRP period for a period of 3 months from the date of this Order. The period from the date of earlier expiry till the date of this Order shall stand excluded considering the peculiar circumstances of the case.
19. In view of aforesaid decision and directions, IA 1116/2022, IA 101/2021 & IA 2627/2021 is disposed of as allowed. Further, IA 969/2020 is disposed of in terms of aforesaid directions.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)