

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

M.A. 1014 OF 2018

Under Section 43 r/w 44 and Sec.60(5)(C)
of the IBC, 2016.

Mr. Vishal Bidawatjika

...Applicant

In the matter of

C.P. (IB)No.1407/MB/2017

ICICI Bank Limited

...Financial Creditor

V/s.

Blupast Industries Private Limited

... Corporate Debtor

Order delivered on: 05/12/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : Mr. Akash Acharya Advocate

For the Respondent : Mr. Ashish Pyasi, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This MA 1014/2018 is filed by Mr. Vishal Bidawatjika (“Liquidator”) of M/s Blueplast Industries Limited {in liquidation} “(Corporate Debtor)” seeking refund of Rs. 3.60 Crores from M/s Bluplast Corporation, the Licensor of trade-mark “Blueplast”) being paid byss the Corporate Debtor as Interest Free Security Deposit; and
2. This Tribunal admitted the Company Petition CP(IB)/1407(MB)/2017 filed by the Financial Creditor under Section 7 of the I.B.C. for initiating CIRP of Corporate Debtor in terms of the Code vide order dated 05.10.2017, and appointing Mr. Vishal Bidawatjika was obtained to act as the I.R.P. in the interim Resolution Professional, who was subsequently confirmed as Resolution Professional, and later on appointed as Liquidator of the Corporate Debtor. The Corporate Insolvency Resolution Process having to be concluded on 03.07.2018 and the COC having resolved to liquidate the company in the 5th COC conducted on 12.06.2018 and having passed the resolution to file the necessary Applications for liquidation and the Resolution professional sought for the necessary orders to act as the liquidator and to initiate further steps thereafter as a Liquidator after giving the necessary consent to the COC. The present Application is filed by the Liquidator after issuance of the necessary orders of Liquidation passed by the Adjudicating Authority.
3. The applicant has stated that the Corporate Debtor (referred to as "The Licensee" also) has initially entered into an agreement on 1st day of April 2000 (The License Agreement) with M/s. Bluplast Corporation, a Partnership Firm incorporated under Indian Partnership Act, 1932, the owner of the Trade Mark "Bluplast" which is registered under the Trade and Merchandise Marks Act, 1958. Incidentally, Bluplast Corporation (the Licensor) is co-owned by Shri Kamlesh Jain and Shri Indermal Jain, the

Directors of the Corporate Debtor (the Licensee). In consideration of the exclusive right to use of licensed rights specified in the said agreement, the Corporate Debtor/Licensee paid to the Licensor an interest free deposit of Rs.3,60,00,000 (Rs. Three Crore Sixty Lakhs only).

- 3.1. The Agreement for Mark Licence User entered into by the Licensor and the Licensee expired on 31.03.2016 and the same has been renewed on 23.03.2018 from 01.04.2016 to 31.03.2018., Upon expiry of the said agreement effective from 31.03.2018, the Resolution Professional has advised that the Agreement ceased to exist from 01.04.2018 and accordingly sent a demand notice on 20.04.2018 to the Licensor to return the said deposit of Rs.3.60 crores to the Resolution Professional as the management of the affairs of the CD has been vested with the him pursuant to the commencement of Corporate Insolvency Resolution Process against the Corporate Debtor.
- 3.2. While acknowledging the notice sent by the applicant on 20th April, 2018, the promoter Directors of the Corporate Debtor have expressed their inability to return the said deposit amount of Rs.3.60 Cr. The noncompliance by the Licensor in payment of the said deposit of Rs.3.60 crores in spite of raising a demand on the Licensor, was discussed in detail in the CoC Meeting held on 12th June, 2018 and it was resolved to file a suitable application before the Hon'ble NCLT, against the Corporate Debtor, the promoters, their related parties and relatives to restrain them from registering or using the Brand " Bluplast".
- 3.3. Following non payment of the said deposit of Rs.3.60 lacs by the Licensor, a reminder has also been sent on 13th June, 2018. In these circumstances, the Liquidator has sought necessary directions and relief's which in terms of the provisions of Section 60 (5) (c) of the IBC from this Tribunal
4. It is stated that, during the course of examination and assessment of the financial records by the forensic auditor of the Corporate Debtor for the period from 2015 till 2017 i.e. the preceding 2 years, certain transactions

were found which appeared to be preferential and fraudulent as per the provisions of the Code done by related parties i.e. Mr. Indermal Jain (director) and Mr. Kamlesh Jain (director) made to the tune of Rs. 57,91,187/-. These transactions of Mr. Indermal Jain (director) and Kamlesh Jain (director) are stated to be mentioned in the Annexure "I" and Annexure "II" respectively. The Forensic Audit report revealed that there were certain unsecured Loans given to the Directors and which came to be adjusted in the unsecured Loan account of the corporate debtor.

- 4.1. It is submitted that the transactions referred to hereinabove have put the Directors in a beneficial position by prepaying the loan from directors in preference to other creditor of the Corporate Debtor. The Resolution Professional has made a Tabular details of the transactions of the Directors, and enclosed the Balance sheets of the Corporate Debtor during the relevant period and the Tabular details of transactions of the Directors named hereinabove.
- 4.2. The Resolution Professional had accordingly reported the same to the Adjudicating Authority vide letter dated 17.12.2017. However, the amount have been recalculated and accordingly a demand notice has been issued to the promoters on 06.08.2018. However the promoters have failed to repay the amount of Rs. 13,60,352 (Rs. Thirteen lakhs Sixty Thousand Three Hundred Fifty Two Only) within the statutory period of 7 days.
- 4.3. The Promoters / Directors were called upon to get back the above amounts as recalculated to the Company and pursuant to which the promoters/ directors had made certain payments i.e. an amount of Rs. 13,64,361/- paid by Mr. Indermal Jain and an amount of Rs. 12,45,000/- paid by Mr. Kamlesh Jain which the Resolution Professional had received on several dates leaving a balance amount of Rs. 13,60,352/- and Rs. 18,21,474/- respectively payable to the Corporate Debtor by the Directors.

- 4.4. As the entire payments were not received it was decided In the 3rd COC meeting conducted on 29.01.2018 which was also attended by the suspended directors of the Blupast Industries Limited, the committee had resolved to recover the dues and called upon the Directors granting them a weeks time to get back the amounts back to the Company. The suspended directors having failed to comply with the directions and having paid only a part of the amount the necessary steps were initiated for filing the necessary Applications before this Tribunal for preferential transactions and granting some more time to complete the resolution process in the 4th COC which was also attended by the promoter / Directors. The Resolution professional had accordingly filed the Application u/s 43 on or about 02.04.2018 for seeking directions to recover the above amounts from the promoter / Directors but as there were certain defects in the aforesaid application filed the Tribunal had granted the liberty to withdraw the same and file a Fresh Application hence the Applicants had withdrawn the said Application on 22.06.2018 with the liberty to file a fresh application.
5. In the circumstances aforesaid the Liquidator has sought following reliefs –
- 5.1. Allow the instant Application;
 - 5.2. To give appropriate directions to the Licensor (M/s. Bluplast Corporation), co owned by the promoter directors of Bluplast Industries Ltd (the Licensee), to return the deposit amount of Rs.3.60 crores to the Liquidator;
 - 5.3. To give appropriate directions as this Tribunal may deem fit with regard to the transactions which may likely to cover under Preferential and Fraudulent Transactions as per the provisions of the Code and Declare such preferential Transactions as null as void and necessary directions be issued to Mr. Kamlesh Jain to call back and pay a sum of Rs.18,21,474/- being the benefit received from the corporate Debtor (being related party and shareholders) and reverse the effect of such transactions as more particularly listed in Annexure "VI";

- 5.4. To give appropriate directions as this Tribunal may deem fit with regard to the transactions which may likely to cover under Preferential and Fraudulent Transactions as per the provisions of the Code and Declare such preferential Transactions and Declare such preferential Transactions as null and void and necessary directions be issued to Mr. Indermal Jain to call back and pay a sum of Rs.13,60,352/-being the benefit received from the corporate Debtor (being related party and shareholders) and reverse the effect with particularly listed in Annexure "VI".
6. That the Respondent No.2 has filed a common reply dated March 2019.
- 6.1. It has been stated that the Applicant / Liquidator has told to deposit rupees 49,99,716.00 which he thought to be coming under the preferential transactions and accordingly due and payable by the Respondents. Trusting the words of the Applicant / Liquidator, the Respondents have duly made the payments of rupees 34,59,975.00. It is submitted that such fact has also been recorded in the minutes of the CoC meetings. Despite this payment having been made after December 2017 the applicant has made a demand of Rs.18,21,474/- and Rs.13,60,352/- without justifying / explaining as to how these members have been arrived at.
- 6.1.1. The Respondent directors gave loan to the Corporate Debtor for the purpose of running their business and this loan was extended out of the borrowed made by the Respondents.
- 6.2. It has further been stated that the Applicant has not even impleaded the aforesaid Bluplast Corporation, the partnership firm which owns the trademark "Bluplast" therefore the present application is not maintainable on this ground.
- 6.2.1. The Applicant has completely failed to appreciate that the money is due and payable by the Corporate Debtor to the Respondents and in accordance with IBBI (Liquidation Process) Regulations 2016,

the claim of the parties can be mutually set off. The relevant regulations are set out herein below:

29. Mutual credits and set off. Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.

6.2.2. It is clear from the above regulations that in the event of any money is due and payable by any person to the Corporate Debtor and dues are also payable by the Corporate Debtor to the such person, either at the stage of the CIRP or liquidation, then such claims can be set off against each other and the balance amount after the set off can be paid accordingly. It is submitted that the Corporate Debtor at present owes more than Rs. 4.5 cores to the Respondents and their family members together therefore without prejudice to any of the submissions herein, the alleged claims / amount to be paid to the Corporate Debtor could have been set off by the Applicant / Liquidator in accordance with the applicable law. It is further submitted that even if the Respondents and their family members may not have filed the correct norms or sufficient information could not be provided, that does not mean that the claim of the Respondent and their family members is incorrect. It is submitted that the Applicant / Liquidator is duty to bound to consider the amount which are reflecting in the books of the Corporate Debtor and, in the present application, it is not the case of the Applicant / Liquidator that the money has not come into the Corporate Debtor through the Respondents and their family members.

7. We have heard the Counsel and perused the material available on record
 - 7.1. We find that the partners of such firms are impleaded as party respondent in the present application, and a partnership firm in itself

does not have juridical identity other than its partners accordingly we do not find any substance in the plea of the Respondent that the partnership firm M/s. Bluplast Corporation has not been made a party. As regards contention for set off we find that the set off is available to the partnership firm and the dues of each of the partners reflecting in the capital account of each partner in the books of partnership firm can only be allow to be set off in terms of Regulation 29 of liquidation process regulation. As regards the contention of the Respondent that the liquidator ought to have admitted the claim as per books of accounts of the Corporate Debtor even if there was certain technical errors in filing of their claim, we find that the liquidator ought not to have rejected the claim on such technical grounds. Accordingly, we direct the liquidator to verify the claim of the Respondents and allow one more opportunity to them to cure the defect in their claims, if any. The liquidator shall allow the set off to the extent of amounts appearing in the capital account of each partner in the books of the partnership firm and the balance of security deposit of Rs.3.60 crore, if any, shall be recoverable from the partners of M/s Bluplast Corporation.

7.2. As regards claim in relation to preferential transactions with the Respondent No.1 and 2, we find that the as per audited financial statement of the Corporate Debtor there was a balance of Rs.67,57,508/- and Rs.2,85,87,907/- owed by the Corporate Debtor as on 31.03.2015 to Respondent No.1 and 2 and the corresponding balance as on 31.03.2017 was Rs.109,993,769/- and Rs. 2,76,39,962/-. In other words there has been increase in the borrowing form Respondent No.1 and it cannot be said that there has been any preferential repayment of loan form him. As regards Respondent No.2, the balance in loan amount has decreased by sum of Rs.9,47,945/-. It is admitted fact that Respondent No. 1 and No.2 has deposited sum of Rs.13,00,000 and Rs.10,00,000/- towards these amounts, accordingly the Respondent No.1 and No. 2 has paid Rs.13,00,000 and Rs.52,055/-. In view of these facts we find that the

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preferential transaction qua Respondent No.2 has already been discharged and there does not exist any preferential transaction qua Respondent No.1.

- 7.3. It is clarified that the amount received in excess from Respondent No.1 and 2 shall be adjustable from the amounts receivable from M/s Bluplast Corporation, if any sum remains recoverable after application of set off.
8. In view of the foregoing MA 1014/2018 is disposed of as partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)