

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Web-Based Video Conferencing)**

IA No. 302 of 2020 in
C.P. (IB)No.215/BB/2019
U/s. 66(1) & (2) of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of:

Ms. Shirley Mathew

Liquidator of

M/s. Veracious Builders and Developers Private Limited...

Applicant/Liquidator

Versus

1. Mr. Kaluvoy Sreenivasulu Reddy

Former Director of M/s Veracious Builders and Developers Pvt Ltd
Son of Mr. Venkata Subba Reddy
Aged Major, G-03, Ground Floor,
Laa Royal Manor, 11th Main, 11th Cross,
HAL 2nd Stage, Indiranagar,
Bengaluru- 560 038.

Respondent No.1

2. Mrs. Kaluvoy Madhavi

Former Director of M/s Veracious Builders and Developers Pvt Ltd
Wife of Mr. Kaluvoy Srinivasulu Reddy
Aged Major, G-03, Ground Floor,
Laa Royal Manor, 11th Main, 11th Cross,
HAL 2nd Stage, Indiranagar,
Bengaluru- 560 038.

Respondent No.2

Order Delivered on: 14th December, 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 : Ms. Aishwarya Prasad
For Respondent : Shri Krishnamurthy

ORDER

Per: BENCH

1. The present petition is filed on 13.08.2020 by the Liquidator of M/s Veracious Builders and Developers Private Limited (hereinafter referred to as “Corporate Debtor”) under section 66(1) and (2) of the IBC, 2016, interalia praying that this Tribunal may direct the Respondents to jointly and severally pay a sum of Rs. 13,21,92,691/- into the Liquidation Account of the Corporate Debtor as contribution to the assets of the Corporate debtor.
2. The facts of the case are mentioned below:
 - a) It is submitted that vide order dated 17.01.2020 ordered the liquidation of the corporate debtor in terms of Section 33(2) of the Code and has appointed the applicant as the Liquidator of the Corporate Debtor.
 - b) Further, due to conduct of business of the Corporate Debtor by the Respondents, concerns regarding certain related party transactions and other financial irregularities were raised by the members of the Committee of Creditors in the meetings. In the light of these concerns, a resolution was unanimously passed by the Committee of creditors in its First meeting dated 11.09.2019 to conduct a Transaction Audit Review.
 - c) Thereafter, in the second meeting of the Committee of creditors held on 19.09.2019 the period of the Transaction Audit Review was unanimously approved from March 2016 till the date of commencement of the CIRP on 30.07.2019.

- d) Further, in the third meeting of the Committee of creditors held on 05.11.2019, resolution was unanimously passed appointing M/s Sarath and Associates, Chartered Accountants, as the Transaction Auditor for the Corporate Debtor. Subsequently M/s Sarath and Associates, Chartered Accountants, are appointed to carry out the Transaction Audit of the Corporate Debtor for the period from 01.04.2015 to 30.07.2019.
- e) It is submitted that on 29.07.2020 M/s Sarath and Associates, Chartered Accountants, submitted their Transaction Audit Report of the Corporate Debtor. And the same has been attached along with the application. The findings arrived at in the Transaction Audit Report are as follows:
- (i) Loans and Advances written off:
- (1) Loans and advances of the corporate debtor totally amounting to Rs. 19,53,97,557/- were systematically written off in the books of the Corporate Debtor, which is evidence of diversion of the funds of the Corporate debtor by the Respondents. These transactions were made through bank/cheques to various parties and the receivables in this regard were subsequently written off to the profit and loss account.
- (2) The books of account of the Corporate Debtor have recorded the above mentioned payments as advances that were paid to the ledger accounts of different individuals created under the head '*Advance paid for projects*'. However, details of these individuals such as the address, contact number, PAN and GST details have not been recorded. This establishes these were fraudulent transactions and designed by the

respondents to remove monies from the Corporate Debtor and thereby defraud its creditors.

(3) There were no clear narrations or evidences made available by the respondents when in control of the corporate debtor to prove that the transaction are of pure business nature and entered into with due care and diligence. There are no documents such as purchase orders, invoices, delivery receipts, etc available with the Corporate Debtor to establish that nay goods or services were received in respect of the advances made. This establishes that these amounts were siphoned off by the Respondents.

(ii) Loan advanced to the Respondent No. 1 by the Corporate Debtor.

(1) The Respondent made various personal expenditures from the sums of the Corporate Debtor including credit card payments, payments of life insurance premiums, payment of school fees etc. these transactions were wholly unrelated to the business of the corporate debtor and were personal in nature.

(2) The said sums were expended by the Corporate Debtor by the debiting an account titled 'loans to director' in the name of the Respondent No. 1. This account has an outstanding debit balance of Rs. 1,26,00,458/- payable by the Respondent No.1 to the Company. The Respondent No.2 is also responsible for these transactions.

(iii) Repayment of Car Loan availed of by IDT Build Private Limited

(1) The Coprorate debtor since 2015 has made periodic EMI payments, totally amounting to Rs. 49,73,285/-

towards repayment of a Car Loan availed of from HDFC Bank by one IDT Build Private Limited for the purchase of an Audi Q5 super luxury vehicle bearing number KA 03 MT 4447 which is registered in the name of IDT Build Private Limited.

(2) IDT Build Private Limited is a related party of Legno Door and Systems Private Limited which in turn is a related party company of the Corporate Debtor. The directors of IDT Build Private Limited and the directors of Legno Door and Systems Private Limited are the very same and include the Respondents.

(f) The above points of the Transaction audit report were analysed by the Liquidator and she has identified the following transactions as “fraudulent Transactions” in respect of the loans and advances written off.

(1) PAN number and other details not available.

In the ‘Sundry Balances Write Off’ ledger account of the Corporate Debtor, certain advances amounting to Rs. 10,64,48,000/- were written off which were made to persons who are unidentified and whose PAN number has not been recorded in the books of the corporate debtor. In almost all these cases, the amounts written off were greater than Rs. 2,00,000/-. The fields in the ledger account for recording the details of these individuals such as the address, contact number, PAN and GST details have all been left blank. The office of the Commissioner of Income Tax issued two notices, both dated 29.07.2016 and bearing numbers Non-PAN AIR/PCIT-1/1005712832 and Non-PAN AIR/PCIT-1/1005710499 respectively to the corporate debtor

in respect of the non-linking of the PAN of the corporate debtor to certain transactions.

(2) Loans to Legno Door Systems Private Limited

In the 'Sundry Balances Write Off' ledger account of the Corporate Debtor, certain advances amounting Rs. 81,70,408/- made to Legno Door Systems Private Limited were written off. Legno Door Systems Private Limited is a related party of the Corporate Debtor and it does not appear that the transactions have been conducted at arms-length or for any business purpose.

(g) It is submitted that by way of an e-mail dated 07.07.2020 applicant has notified Respondents of the findings of the report and asked to provide an explanation, if any, on or before 30.07.2020. Thereafter, the respondent No.1 responded by way of an e-mail dated 15.07.2020 whereby the Respondent requested for an extension till 10.08.2020 and further requested to be granted access to the books of account of the Corporate Debtor in this regard. The applicant further vide email dated 23.07.2020 informed the respondent that a copy of the audited accounts of the Corporate Debtor along with the tally back-up of the same are available with the Auditors C.K ParthaSarathy and Co., Chartered Accountants. However, the Respondents have failed to provide any explanation whatsoever with respect to the finding of the Report despite having sufficient opportunity for the same.

(h) Further, the respondents also sold mortgaged flats without obtaining the required No Objection Certificate from its secured and violated the terms of the transaction documents with its secured creditors and defrauded them. Monies collected from flats purchasers were not deposited in the escrow as was required to be done. Cash payments from flats purchasers were

not disclosed nor deposited in the escrow account as was required to be done. The Corporate Debtor collected funds from customers through bank accounts other than the escrow account to receive funds from customers to Rs. 15.82 Crores. The amounts are collected fraudulently and in a manner opposed to the mandate of contractual agreements. While these actions also attract the provisions of Section 66 of the Code, the aforesaid claims are already being agitated by the secured creditor before the Commercial Court and are for this reason also not agitated herein or considered by the Transaction Auditor.

- (i) The Transaction mentioned at Para 2 (e) (ii) and (iii) are the amounts of Rs. 1,26,00,458/- and Rs. 49,73,285/- which are for meeting the personal expenses of the directors and the related parties; and have been stated to be fraudulent in nature by the Liquidator. The amount of Rs. 1,26,00,458/- was for Loans to directors for credit card payment , LIC/School fee payment etc; while the amount of Rs. 49,73,285/- was given to a related party IDT Build Private Limited, for payment of an Audi Car purchased by it. Therefore, the respondents have breached the fiduciary duty owned by them to the Corporate Debtor as directors, by diverting the funds of the corporate debtor for their own personal use. The actions of the Respondents in diverting the funds of the Corporate Debtor to meet their personal expenses, paying off the car loan on behalf of a related party entity and removing funds from the Corporate Debtor as questionable advances to unknown parties without PAN, TDS deduction, address etc without any proof of actual receipt of goods/services tantamount to carrying on the business of the Corporate Debtor for a fraudulent purpose and meet the threshold for fraudulent trading prescribed in Section 66(1) of the Code. This is further established and made evident from the fact that these loans and advances were

subsequently written off in a questionable manner in the profit and loss account.

(j) Hence it is submitted that the Respondents are jointly and severally liable to make a total payment of Rs. 13,21,92,691/- to the assets/liquidation account of the Corporate Debtor for the following fraudulent actions:

- a. Rs. 11,46,18,408/- in respect of the fraudulent loans and advances of the Corporate Debtor that were systematically written off;
- b. Rs. 1,26,00,458/- in respect of the personal expenditure of the Respondents made from the monies of the Corporate Debtor under the head loan to director which has not been repaid; and
- c. Rs. 49,73,285/- in respect of the Periodic EMI payments made by the Corporate Debtor towards repayment of the car loan on behalf of IDT Build Private Limited for the benefit of the Respondents.

3. The Learned Counsel for the Statement of Objection/Synopses contenting the following:

- a. It is submitted that the major component is an amount of Rs. 11,46,18,408/- which is allegedly written off fraudulently without obtaining proper identity of the parties, addresses, contact numbers, PAN nos., GST Numbers, without purchase orders, invoice, delivery receipts, etc.
- b. Moreover, when the applicant is seeking for a direction to remit such a huge amount, it is imperative on her part to pin-point the specific instances with detailed break up of cases where the amounts have been written off without obtaining identity of the parties, addresses, PAN Numbers, GST details, without

obtaining documents such as purchase orders, invoices, delivery receipts, etc.

- c. However, no details are forthcoming either in the application or in the Transaction Audit Report regarding names of the parties and the amounts written off where identity of the parties have not been obtained; names of the parties and the amounts written off where address of the parties have not been obtained; names of the parties and the amounts written off where contact numbers of the parties have not been obtained; names of the parties and the amounts written off where GST details of the parties have not been obtained; names of the parties and the amounts written off where amounts have been written off without obtaining documents such as purchase orders, invoices, delivery receipts, etc. Hence a prayer for a direction to remit such huge amount without the above details does not survive.
- d. Further, the second component is an amount of Rs. 1,26,00,458/- which is alleged to be personal expenses of 1st respondent which are debited to “loans to Director”. However, the Transaction Auditor has not considered the advances made by the 1st respondent in 2017 or 2018 to the Corporate Debtor totally amounting to Rs. 1.50 crore. If this amount is taken into consideration, there would be a credit balance of Rs. 24.00 lakhs in the name of the 1st responded.
- e. The third component relates to alleged payments of EMIs to HDFC bank totally amounting to Rs. 49,73,285 in respect of a car on behalf of M/s IDT Build Private Limited which is alleged to be a related party of M/s Legno Door Systems Private Limited which is in turn a related party of the Corporate Debtor.
- f. It is submitted that the car was purchased by the Corporate Debtor in January 2014 by availing a loan from HDFC Bank. Therefore, the EMIs were paid by the Corporate Debtor. In this way, the entire loan was cleared by the corporate debtor. Subsequently, for some

administrative reasons, on 16.07.2019, the car was sold to M/s IDT Build Private Limited and the sale proceeds have been received by the Corporate Debtor through cheque/RTGS. It is also submitted that IDT Build Private Limited is not a related party to the corporate debtor.

- g. It is submitted that the entire process of Transaction Audit is one sided and the same is conducted without giving an opportunity to the respondents to explain the transactions and to explain the background of the transaction to the Transaction Auditor.
4. Heard Learned Counsel for the parties and perused the records available.
 5. The present petition was filed by the Liquidator of M/s Veracious Builders and Developers Private Limited under section 66(1) and (2) of the IBC, 2016 inter alia seeking for a direction to the respondents to jointly and severally pay a sum of Rs. 13,21,92,691/- into the liquidation account of the corporate debtor.
 6. This tribunal has perused the Transaction Audit report attached along with the application. The audit report under the head Ascertaining End use of funds it is observed that *“During the F.Y 2015-16 and FY 2017-18, amount of INR 7.21 Crores and INR 12.32 Crores of loans and advances were written off by the company . It is noted that, these advances were paid majorly to individuals ledger account created under the head “Advance paid for projects”. Further, the master records of these individuals were not having details such as PAN, GSTIN, Address, contact number etc., further, in 11 Cases Company had posted Sundry Balances written off entires. Whereas the balance of the account is either Nil or lesser than the written off amount. The excess balance written off were paid to the parties in later dates amounting to INR 1.85 Crores. Also there are 26 instances where we noted that the time gap between the payment to parties and write off in the ledger is within the same financial year amounting to INR 1.02 Crores.*

7. Further, under the head Loans to directors, it is noted that the auditor has observed that *“There were 8 events of receipt of cash amounts from the director and recorded in the ledger totalling to 43.36 lacs, during the period April 2018 to December 2018. It is noted that neither the source of these cash transactions nor the purpose of paying in cash are recorded in the narration. Further analysis of narrations of the entires in the ledger, it is noted that there were 40 transactions amounting to Rs. 40 lacs, which are personal expenses of Mr. Sreenivasulu borne by the Company. These payments were made on behalf of Mr. Sreenevasuslu for the services/payments availed such as credit card payments, daughter’s education fees, insurance premium, etc.,*
8. Moreover under the head Car loan of Potential related party paid by Veracious it is noted by the auditor that *“During the verification of bank statement of Veracious it is noted that Equal Monthly Instalment (EMI) of a car loan availed from HDFC bank for the Audi Q5 super luxury vehicle bearing number KA 03 MT 4447 had been continuously paid by Veracious. On further verification of records in website parivahan.gov.in maintained by Ministry of Road Transport & Highways, it is noted that the car is registered in the name of “IDT Build Private Limited”. It is further stated that “it appears that IDT Build Private Limited is a related party to Legno Door and Systems Private Limited, a sister concern and related party company of Veracious.”*
9. It is thus noticed that in accordance with the Transaction Audit Report conducted by the Independent Professional M/s. Sarath and Associates, Chartered Accountants certain transactions were specifically pointed out which were in the nature of fraudulent transaction or wrongful trading, as prescribed under Section 66 of the IBC 2016. In the transaction audit report, reliance was placed on the Independent Auditor report for F.Y 2015-16 and F.Y 2017-

18 and various other documents as listed in detail in the transaction audit report under heading 'Source of Information' at Page-44 of the application. It reveals that the Auditor has duly considered the audit report for various financial years, accounting data backup, Ageing Details of Debtors and Creditors, bank account statements, Joint Development Agreement, various mortgage agreements and sale agreements and other document totally 21 in number. On the basis of these documents, the specific finding for different financial years were listed by the Auditor under the following captions:

- a. *Loans and Advances written off in the Banks which were evidence of diversion of funds by the Company* - After examining the details including Independent Auditor's Report, the Auditor has given the finding regarding diversion of funds by the Company through fresh loans and advances written off amounting to Rs. 7.21 crores for F.Y 2015-16 and Rs. 12.32 crores for F.Y 2017-18. For arriving at these figures, he has pointed out specific discrepancies and inconsistencies in the amounts and non-availability of the details related to the individuals against whom the advances paid were written off. It was also pointed that there were 26 instances where the advances paid to the parties were written off in the same financial year, and it amounted to Rs. 1.02 crores. Further, advances written off amounting to Rs. 1.85 crores were actually paid to the parties on later dates. On the basis of such discrepancies, the Auditor had concluded that the provisions of Section 66 (1) & (2) of the IBC are squarely applicable to these transactions.
- b. *Loan to Directors questionable transactions recorded in the Books*: An amount of Rs. 1.26 crores was flagged as loan to Directors which included personal expenses of the Directors

like Credit Card payments, School Fees and Insurances premium etc; and further it is also stated that there were also receipt of various cash amounts from the Directors to the tune of Rs. 43,00,000/- during the year 2018, for which no details of the source etc., were recorded in the ledger.

- c. *Car Loan EMI in favour of a related party*- Another amount of Rs. 49.73 lakhs was paid towards EMI for Audi Car purchased in the name of a related party by the Company for which there was no justification.

10. On the basis of the above findings the Liquidator gave specific opportunity to the Respondents along with the detailed finding of the Auditor and it has been stated in the Para 8 of the application as under:

“8. I submit that by way of e-mail dated 07.07.2020 I notified the Respondent of the findings of the Report, and asked them to provide an explanation, if any, on or before 30.07.2020. thereafter, the Respondent No.1 responded by way of an email dated 15.07.2020 whereby the Respondent requested for an extension till 10.08.2020 and further requested to be granted access to the books of account of the Corporate Debtor in this regard. I responded by way of an email dated 23.07.2020 whereby I informed the Respondent No.1 that a copy of the audited accounts with the Auditors C.K Partha Sarathy and Co. Chartered Accountants, and that he may access the same at their office. However, the respondents have failed to provide any explanation whatsoever with respect to the finding of the Report despite having sufficient opportunity for the same.”

11. Therefore once the Respondents failed to furnish any explanation in respect of these transactions in spite of specific opportunities granted by the Liquidator, now they cannot file objections stating that the specific details regarding proper identity of the parties and

specific instances etc were not given. However, it is stated here that it were the respondents who were responsible for the maintenance of Books of accounts and they themselves had indulged in these write-offs and other discrepancies/irregularities mentioned above. There are specific findings regarding certain amounts which were written off, but, subsequently payments were also made. Further, within the same year certain advances were given and also written off. No explanation whatsoever is furnished by the Respondents regarding the Director's personal expenses being booked in the books of the Company; nor any justification/explanation have been filed for the payment of EMI of car loan of a related party being M/s. IDT Built Private Limited. There is no documentary evidence furnished, neither to the Liquidator when specific opportunity was given nor before this Tribunal regarding that there was infact an advance made by the Respondent No.1 '*sometime in the year 2017 or 2018*' totalling Rs. 1.50 crore. Therefore, the claim that the personal expenses debited to the tune of Rs. 1.26 crores as loan to Directors will infact have no effect, since there would remain a net credit balance of Rs. 24 Lakhs in the name of the Respondent No.1, is not acceptable. It is clear that when the Respondents themselves are claiming that the advances of Rs. 1.5 crores was made by Respondent No.1 were '*Sometime in the year 2017 or 2018*' establishes that there is no such documents or evidence since Respondents themselves are not sure of any such transaction actually taking place. No specific dates thereof and the related documents could be produced and therefore only such a claim has been made. The explanation given for the payment of EMI for the sister concern/related party is also not tenable and the contention that the Company was not a related party is not backed by any evidence. In any case, this party indeed a third party, therefore such payment cannot be treated to be business transaction.

12. The provisions of Section 66 (1) and 66 (2) of the IBC reads as under:

“66(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business 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 the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

66(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 contributions 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 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.”

13. In view of the above discussion, it is concluded that the former directors of the corporate debtor have engaged in Fraudulent transaction and the auditor's report has established such transactions beyond any doubt. The respondents in their reply have failed to rebut the contentions raised by the Liquidator. It is seen that the Liquidator has categorically notified the respondent and has given specific opportunity to the respondents to give explanation to the findings in the transaction audit report, however they have failed to do so.

14. Therefore, this Tribunal is of the considered opinion that the Respondent are jointly and severally liable to make a total reimbursement/payment of an amount of Rs. 13,21,92,691/- to the Liquidation account of the corporate debtor.

15. Accordingly, **IA No. 302 of 2020** is disposed of.

-Sd/-

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

-Sd/-

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