

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

I.A. No. 5610 of 2020
IN
Company Petition (IB)No.421/ND/2019

In the matter of:
The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:
Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

AND

In the matter of :

SATYA PRAKASH

Resolution Professional

Y M Foodways Private Limited

... APPLICANT

VERSUS

Y M FOODWAYS PRIVATE LIMITED

Through its Directors

G-9, Plot No. C 1/3, Ground Floor Azadpur,

Near Pusa Tower, Naniwala Baghm, New Delhi-110033

Old. Address:

B-14, Office No. 302A, 3rd floor Vikas Marg,

Laxmi Nagar, New Delhi-110092

...CORPORATE DEBTOR

UTTAM TOY, DIRECTOR

932, WZ Block, Basai Darapur,

New Delhi-110015

... RESPONDENT No. 1

MUKESH ROY, DIRECTOR

932, WZ Block, Basai Darapur,

Ramesh Nagar, New Delhi-110015

... RESPONDENT No. 2

ORDER DELIVERED ON: 21.02.2022

I.A. No. 5610 of 2020

IN

Company Petition (IB) No. 421/ND/2019



CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Avinash K. Srivastava, Hon'ble Member (Technical)

PRESENT: -

For the Applicant: Satya Prakash, the Liquidator and Adv. Jaswant Singh for Liquidator

For the Respondent: Adv. Varsha Banerjee

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present application is filed by Mr. Satya Prakash, Resolution Professional (herein after referred to as "RP") under section 25 (2)(j) read with section 66 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as Code) for declaring the transaction entered into by the Corporate Debtor and Respondents No 1 & 2 as wrongful trading and fraudulent transactions under section 66 of the Code and direct the respondents No- 1 & 2 and others liable for the same and make good the loss caused to the Corporate Debtor and also, the matter may be clubbed with application filed by Mr. Shailendra Ajmra, Resolution Professional of M/S Kwaliti Limited under Section 25 (2)(j) read with Section 43, 44 & 66 of the Insolvency and Bankruptcy Code, 2016, in Company petition No-(1B) 1440 (ND)/ 2018, as the Corporate Debtor has already been made party as respondent (Respondent No. 60).

2. Brief Facts of the case are as follows:

- i. That on an Application filed by Sumukhi Sales Private Limited (Operational Creditor), under section 9 Code, the CIRP was initiated vide the order dated 21.11.2019 and Mr. Amit Kaushal, IBBI /IPA-002-IP-N00041 / 2016-17 / 10080 was appointed as Interim Resolution Professional for carrying out resolution process in accordance with the provisions of the

IBC, 2016 and subsequently IRP was appointed as Resolution Professional (RP) in 1st CoC meeting held on 20.12.2019 and confirmed by this Bench vide its order dated 15.01.2020.

- ii. Further, COC in its meeting dated 17.02.2020 has resolved to replace Mr. Amit Kaushal and appoint Mr. Satya Prakash IP Registration No-IBBI/IPA-002/IP-N00906/2019- 2020/12920 as Resolution professional for the Corporate Debtor and accordingly, confirmed by this Bench vide its Order dated 27.02.2020.
- iii. That M/S KASHYAP SIKDAR & CO, Chartered Accountants (FRN:-016253N) was appointed as Transaction Auditor for Transaction Audit of Y M Foodways Private Limited (Corporate Debtors) vide appointment letter dated 06.02.2020 , who submitted its report on 07.08.2020 to the RP and the same was placed before the COC meeting held on 25.08.2020, and same was discussed. The details of the report are as follows:

The majority of the receipts and payments in respect of sales and purchases respectively has not been realized and paid through the bank account of Corporate debtor.

Particular	Sale Amount (Rs. in Lac)	Realisation in Bank Account (Rs. in Lac)
Sale from 22.11.2017 to 21.11.2019	63501.18	7984.67

Particulars	Purchase Amount (Rs. in Lac)	Payment from Bank Account (Rs. in Lac)
Purchase from 22.11.2017 to 21.11.2019	63268.90	6398.13

The receipts against sale have been debited and payments against purchase have been credited to the accounts named as Unclear Cheque/ Payment Clearing Account. The nature of those account clearly indicates that the ledger entry of receipts against sale recorded and the payment against the purchase recorded is being netting off with each other. The following instances are being reported in support of above comments.

- a. Purchase from Hare Krishna and Company Rs. 26,80,87,349/- in F.Y. 2017-18 but no payment has been given against the same. There is opening debit balance as on 01.04.2017 Rs. 6,29,05,045/- in Ledger of Hare Krishna and Company and the balance has been adjusted against unclear Cheque Accounts.
- b. Purchase from Jai Durga Brothers Rs. 22,05,82,433/- in F.Y. 2017-18 but no payment has been given against the same. There is opening debit balance as on 01.04.2017 Rs. 10,75,56,392/- in ledger of Jai Durga Brothers and the balance has been adjusted against unclear Cheque Accounts.
- c. Purchase from Om Trade Inexim of Rs. 53,28,01,368/- in F.Y. 2017-18 but no payment has been given against the same. Rs. 48,47,10,000/- has been debited against Un-clear Cheque Accounts. During the financial year 2018-19 there is Purchase Rs. 4,04,13,406/-, and payment given in is Rs. 20,23,00,000/- & Rs. 11,37,95,226/- was credit with Payment Clearing A/c in F.Y. 2018-19.
- d. Rs. 25000000/- received from Prakashroy Dairy Products Private Limited was adjusted with Un-clear Cheque Accounts.



- e. Purchase from Super Veg Oils Private Limited Rs. 279,67,76,654/- in F.Y. 2017-18 & Rs. 40,61,09,159/- in F.Y. 2018-19. As against purchase payment given in F.Y. 2017-18 Rs. 28,71,00,000/- & in F.Y. 2018-19 Rs. 3,82,71,039/- balance payable amount adjusted with following Ledger:-
Rs. 245,12,55,000/- with Unclear Cheque. Rs. 43,30,30,813/- with Payment Clearing A/b. The excess debited amount Rs. 67,71,039/- has been written off as Bad Debts in F.Y. 2018-19.
- f. Purchase from Value Plus Educare Private Limited Rs. 33,72,12,904/- in F.Y.2017-18 & Rs. 8,77,24,000/- in F.Y. 2018-19. As against purchase payment given in F.Y. 2017-18 Rs. 1,37,25,000/- & balance payment adjusted with Unclear Cheque & Payment Clearing A/c.
- g. Rs. 49,83,200/- received from Anandh Food Agencies Pvt. Ltd has been adjusted with payment clearing A/c.
- h. Purchase from Bhole Baba Agency Rs. 1,57,26,482/- in F.Y. 2018-19 but payment given Rs. 4,51,10,395/-. Out of the excess amount given to Bhole Baba Agency Rs. 1,96,00,800/-received back in May 2019 and the balance Rs. 97,83,113/- has been adjusted with Payment Clearing A/c.
- i. Purchase from Dashavtar Oversees Private Limited Rs. 85,70,57,600/- in F.Y. 2018-19. No payment has been made against the said purchase. There is sale to Dashavtar Oversees Private Limited Rs. 8,89,87,500/- & Rs. 77,30,70,000/- has been adjusted with payment clearing A/c.



- j. Sale to Delta Agrotech Pvt Ltd Rs. 15,46,37,943/- during F.Y. 2017-18 & Rs. 54,30,765/- during F.Y. 2018-19. As against the debit balance on account of this sale payment received Rs. 1,48,00,000/- during F.Y. 2017-18 & Rs. 10,82,50,000/- during F.Y. 2018-19. There is purchase from Delta Agrotech Pvt. Ltd for Rs.10,23,12,956/- & Rs. 6,49,94,248/-payable has been with payment clearing A/c.
- k. Purchase from Durga Traders Rs. 58,33,354/- in F.Y. 2017-18 & Rs. 10,04,416/- in F.Y. 2018-19. As against purchase payment has been made Rs. 54,49,354/- & balance was adjusted with payment clearing A/c.
- l. Payment given to Hare Krishna and company Rs 20,00,000/- in F.Y. 2018-19 was adjusted with payment clearing A/c.
- m. Payment given to Jai Ambey Sons Rs. 1,49,00,000/- in F.Y. 2018-19 was adjusted with payment clearing A/c.
- n. Purchase from JSM Proteins Pvt. Ltd. Rs. 6,55,55,000/- in F.Y. 2017-18. As against purchase Rs. 1,78,50,000/- has been paid & balance payable has been adjusted with payment clearing A/c.
- o. Purchase from JSM Vegoil Pvt. Ltd. Rs. 3,66,89,450/- in F.Y. 2017-18. As against purchase Payment of Rs. 2,13,25,000/- has been made Sale has been made to JSM Vegoil Pvt. Ltd. For Rs. 1,82,70,067/- and balance Rs. 29,05,617/- has been adjusted with payment clearing A/c.

- p. Purchase from Laxmi Brother Rs. 5,60,76,129/- in F.Y.2018-19. As against purchase payment of Rs. 3,55,51,100/- has been made and Rs. 1,25,25,000/- has been received back. Out of the balance payable Rs. 26249274/- has been adjusted with payment clearing A/c. & Rs. 68,00,755/- has been write off.
 - q. Payment given to Laxmi Trading Company Rs. 2,18,00,465/- has been adjusted with payment clearing A/c.
 - r. There is no corresponding stock as on 21.11.2019 as against Rs 27,16,627.00 GST Credit Receivable. In this regard, it has been in-formed to us by the directors of Company that Input tax credit of Rs. 27,14,186 has been blocked by the GST Authorities. GST Department has suspected that company have claimed input tax credit on the basis of fake invoice although factual position is that company have paid all liabilities of tax under GST Act and duly filed all returns as per GST Provision. The entire purchase and sale is through regular bills which are supported by transporter bilty and e- way bills. These bills are duly accounted for the books of account. The trading activities of sale and purchase on wholesale business has finally resulted into profits on which due taxes have been paid. The entire expenses are supported by bills/vouchers and fully recorded in the books of account. Book of accounts are duly audited by Chartered Accountant.
- iv. The RP has formed his opinion on the basis of report of Transaction Auditors, that a case under section 66 of IBC, 2016 is required to file before NCLT, and placed before COC at



the meeting held on 25.08.2020. The CoC discussed the matter and expressed its concern that there is insufficient/very less fund available with the CD and COC itself is not in the position to finance for litigation, as it will cost huge, with no hope of return.

- v. The CD has been made party as respondent (Respondent No. 60) in application under Section 25 (2)(b) read with Section 43, 44 & 66 of the Insolvency and Bankruptcy Code, 2016 filed by Mr. Shailendra Ajmera, Resolution Professional of Kwaliti Limited in Company petition No. IB 1440 (ND)/2018 (a Company under CIRP).

In para 8 of his application, it was mentioned that the Y M Foodways Pvt. Ltd. has made net off payment transactions for amounting to Rs. 488.15 Crores during the relevant period.

3. The Respondent nos. 1 and 2 in their reply dated 08.09.2021 submitted that:

- i. That this Tribunal vide its order dated 04.02.2021 has passed an order of liquidation in the case of the Corporate Debtor herein.
- ii. With the initiation of the insolvency proceedings, the Applicant has took over the entire records and books of account of the Company.
- iii. The application under reply has been filed beyond the period of 75 days from the date of insolvency commencement and thus not in accordance with Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (CIRP Regulations) and accordingly, liable to be rejected on this ground alone.
- iv. That a bare perusal of the Application under reply shall demonstrate the fact that the instant Application is a mere reiteration of the report of the Transaction Auditor i.e. the report of Kashyap Sikdar and Co. under the head '*Report under Section 66 of Insolvency and Bankruptcy Code, 2016*'. It

is submitted that the mere reproduction and/ or reiteration of the contents of the report of the transaction auditor, can in no manner be considered to be an application compliant to the provisions of Section 66 of IBC against the Answering Respondents. Further, the provisions of Section 66 (1) and Section 66(2) of the IBC categorically lay down the stages at which an Application under the said section can be preferred by either a Resolution Professional or the Liquidator.

- v. That the applicant has failed to make out any pleading in terms of Section 66(1) or Section 66(2) of the IBC.
- vi. The Answering Respondents have not "carried out any business" to defraud the creditor. The Applicant has failed to show any "intent" on part of the Answering Respondents to defraud the creditors. Neither it is the case of the Applicant nor it has been proved that the alleged transaction took place "within the knowledge" of the Answering Respondents.
- vii. That in order to bring any transaction within the fold of Section 66 of the IBC, it is imperative to first establish that the business of the Corporate Debtor has been carried with intent to defraud creditors. It is submitted that any allegation as to fraud needs to specifically pleaded, established and proved beyond doubt from the material on records. It is stated that in the instant case, the Applicant has failed to discharge the said burden of pleading fraud, establishing fraud.
- viii. That the Applicant has while placing reliance on the report of the Transaction Auditor, has nowhere pleaded the role of any of the Answering Respondents in any of the alleged transactions which may fall within the ambit of Section 66 of the IBC.
- ix. That the Respondent No. 1 was appointed as Director of the Corporate Debtor w.e.f. 07.09.2018, and Respondent No.2 was appointed as the Director w.e.f. 20.02.2018. Accordingly, the Respondent No.2 at best can have knowledge as regards the



transactions w.e.f. 20.02.2018 and the Respondent No.1 only came into the picture w.e.f. 07.09.2018. However, the Applicant without bifurcating the roles and responsibility if any of either of the Respondents and duration of each of the Respondents in the operation of the Corporate Debtor preferred the instant Application, which in absence of necessary details is liable to be rejected on this ground alone.

- x. That without prejudice to the above, it is submitted that it is relevant to take note of the nature of business activities of the Corporate Debtor herein. In the instant case, the Corporate Debtor was dealing in whole sale trading of milk. The business model of the Corporate Debtor pertained to collection of milk directly from different milk suppliers/ dairies/ producers of milk in different areas in Uttar Pradesh, Rajasthan and Haryana as per business requirements by transporting the collected milk by containers/ tankers to the Milk Plants. The role of the Corporate Debtor thus was to assist milk plants in collection of milk from various milk suppliers and making / assisting in making payments to them. Accordingly, it is evident that the role of the Corporate Debtor being of a Milk collection agent, the Corporate Debtor was not an earning a very high rate of profit. It is submitted that despite actually being a milk collection agent, to meet the requirements of the milk plant and the milk suppliers, the Corporate Debtor billed all the milk collected from the suppliers as its purchases and the supply of milk to the milk plants as sale in its books.
- xi. That it is further submitted that in response to the Report, it is relevant to take note of Clause 4 of the Report, which clearly limits the scope of the Audit. Without prejudice to the above, in response to the observation made by the Auditor in its report, the Answering Respondents categorically deny the observations forming part of the Report. It is further submitted that the report erroneously proceeds on the basis that the

realization and payment by the Corporate Debtor through its Bank Account being minimal compared to the sale and purchase results in applicability of Section 66 of the IBC. The said observation in the report is contrary to the nature of business being carried on by the Corporate Debtor as a Milk Collection Agent. In the instant case, the Answering Respondents have never carried on the business of the Corporate Debtor with an intent to defraud any creditors of the Corporate Debtor or for any fraudulent purpose. All the sale purchases, payment transaction with customer or vendors were genuine trade transactions and carried on in the ordinary course of business at arm's length price. There is no transaction of any sale and purchase with any related party or any case of any preferential transaction. All the transactions were accepted by the statutory auditor of the Corporate Debtor as well as the Income Tax Authority.

- xii. The realization of sales in the books of account of the Corporate Debtor from 22.11.2017 to 21.11.2019 is merely an amount of Rs.7984.67 lakhs as against the total sale amount of Rs.63501.18 lakhs.
- xiii. That it is further submitted that Kwality Ltd. is one of the major company to which the Corporate Debtor has been supplying milk. Kwality Ltd. intimated the Corporate Debtor that since its bank accounts were frozen by the Income Tax Authority, the Corporate Debtor should accept payment from customers of Kwality Ltd. and utilize the same for payment to the Milk suppliers. The Corporate Debtor in order to ensure its continued business operations acceded to the request of Kwality Ltd. and thereafter proceeded to carry on its business under the said arrangement.
- xiv. That the above nature of transaction is the only reason for the transaction auditor to take note of receipts against sale and purchase being credited to accounts named as uncleared

cheque / payment clearing account. It is submitted that the Corporate Debtor in the instant case faced a peculiar and avoidable circumstances wherein this arrangement was agreed to ensure continued operations of the business of the Corporate Debtor as a going concern. All the transactions were carried on with proper documentation, confirmation and have been shown to the auditor. The respondent places reliance to the contents of Page 41 of the transaction audit report.

- xv. That the transaction auditor in the instant case has simply doubted the payment and receipt of purchase and sale having not being paid and received through the bank accounts of the Corporate Debtor. The receipt against sale has been debited and payment against purchased has been credited to an account named as payment clearing account and uncleared cheques. Under the payment clearing account, those payments and receipts have been credited and debited which have been made or received on the direction of vendor or a customer respectively. The same can be demonstrated by the case of Anandh Food Agencies Pvt. Ltd. wherein a payment of Rs.49,83,200/- as received has been adjusted with payment clearing account as evident in clause 7 at Page 39 of the instant Application. The Corporate Debtor has not made any sale to Ananth Food Agencies Pvt. Ltd. and this payment has been received in the bank account of the Corporate Debtor on direction of Kwalitiy Ltd. Under the uncleared cheques account the payment and receipts have been entered wherein cheques have been received or paid but not presented in the bank account on the same date or later entries have been reversed at the time of clearing through bank or cheques have been returned to the parties.
- xvi. That the corporate debtor on various dates has given the details of the amount received by the corporate debtor on



account of Kwalitiy Ltd. and requested for due reconciliation of the same.

- xvii. That it is further submitted that the entire purchase is through regular bills and the said bills are duly supported by dispatch challans/ e-way bills etc. which have been accounted for in the books of accounts of the Corporate Debtor. The payments for entire purchase have been made and accounts reconciled with the suppliers and confirmation of the same provided to the Auditors. There is negligible cash purchase in the case of the Corporate Debtor herein and in the examination of the books of accounts of the Corporate Debtor it is evident that there has been no accumulation of credits in the books of accounts and there is no stagnant creditors/ payables in the books of accounts of the Corporate Debtor. The trading activities of sale and purchase of milk on whole sale resulted in profits being earned by the Corporate Debtor on which the Corporate Debtor has duly paid the applicable taxes. In absence of any common interest and any trail of any amount being either diverted or siphoned away, there cannot be any case of any fraud being committed by the Answering Respondents.

4. The Applicant in his rejoinder dated 18.10.2021 and raised almost same statement as stated in the application except the following:-

- i. The Applicant herein has formed its opinion on the basis of report of Transactional Auditor. On perusal of the transaction report as submitted by the Transactional Auditor i.e. M/s Kashyap Sikhdar & Co., Chartered Accountants, it is evident that the majority of the receipts and payments (amounting to Rs. 1123.86 Crs. Approx.) in respect sales and purchases respectively has not been released and paid through the bank account of the Corporate Debtor. The realization and payment through bank account was very minimal as compared to sale

✓

and purchase. It is also evident that the receipts against sales have been debited and payments against purchase have been credited to accounts named as unclear Cheque/payment clearing account. The nature of those account clearly indicates that the ledger entry of receipts against sale recorded and the payment against the purchase recorded is being netted off with each other.

- ii. In Company Petition No. 1440(ND)/2018, a similar application has been filed by the Resolution Professional of Kwaliti Ltd. under Section 25(2)(j) read with Section 43, 44 & 66 of the IBC wherein the Corporate Debtor in the instant case i.e., YM Foodways Pvt. Ltd. is also a respondent therein. The said Application specifically mentioned that corporate debtor herein has made net off payment transactions for amounting to Rs. 488.15 Crs. during the relevant period.
- iii. As per the provisions of IBC, the liquidator has adequate power to prosecute on behalf of the Corporate Debtor.
- iv. The Transaction Audit report itself establishes the fact that the business of the Corporate debtor has been carried out with the intent to defraud the creditors.

5. We have heard the Learned Counsel appearing for the applicant as well as the respondent and perused the averments made in the application, reply, rejoinder filed on behalf of the respective parties.

6. On the basis of averments made in the application, reply and rejoinder, it is observe that the contention of the respondent is that the time line framed under Regulation 35(A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, hereinafter called as "CIRP Regulation" and the present application is filed after that timeline that is beyond the period of 75 days from the date of insolvency commencement date, hence, the present application is not liable to be accepted. The other ground is that the averment made in the application by the RP, now the liquidator is based on



the Transaction Audit Report and the applicant has not formed his opinion, he simply reproduced the Transaction Audit Report and on the basis of that claim, there is a fraudulent transaction.

7. Learned Counsel appearing for the respondents, in course of his argument submitted that the RP, now the liquidator has not bifurcated the liability of the directors. The transaction shown in the Audit Report relates to the self from 22nd November, 2017 to 21 November, 2019, whereas the Respondent No.1 was appointed as director of the Corporate Debtor with effect from 07th September, 2018 and the Respondent No. – 2 was appointed as a director with effect from 20th February, 2018. He further contended that, therefore, these two respondents can have knowledge in respect of the transaction only from the date when they were appointed as a director but the applicant without bifurcating the roles and responsibilities of any of the respondents filed the present application. He further contended that the respondent could not be held liable for any act and omission which was done prior to the date of their appointment and this has not been explained by the applicant in the application. He further contended that the applicant has also failed to established that business was being carried out with intent to defraud the creditors therefore, the present application is not maintainable. The Learned Counsel appearing for the respondents has also raised all the averments made in the reply.

8. On the other hand, the Learned Counsel appearing for the applicant submitted that the timeline prescribed under Regulation 35(A) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation 2016, is not mandatory. He further contended that the Transaction Audit Report clearly shows that the ledger account shows that the purchase was made but no payment has been given against the same. The Learned Counsel appearing for the applicant has also raised all the facts mentioned in the application and the rejoinder.

9. Now in light of the submissions made on behalf of the parties, we consider the prayers of the applicant. At this juncture, we would like to refer

the prayer of the applicant. The scanned copy of the relevant portion at page 15 of the application is reproduced below: -

15

amounting to Rs. 488.15 Crores during the relevant period.
Copy of relevant extract of the application is attached
herewith and marked as Annexure -

PRAYER:

In view of above-mentioned facts and circumstances, it is most humbly and respectfully prayed that this Hon'ble Bench may graciously be pleased to:

- a. Allow this application.
- b. Pass an order declaring the transaction entered into by the Corporate Debtor and Respondent No 1 & 2 as wrongful trading and fraudulent transactions with the meaning of section 66 of the Code and direct the respondents No- 1 & 2 and others liable for the same and make good the loss caused to the Corporate Debtor in the manner as deem fit and proper to this Hon'ble Bench.
- c. That the matter may be clubbed with application filed by Mr. Shailendra Ajmera, Resolution Professional of M/S Kwalley Limited under Section 25 (2)(g) read with Section 43, 44 & 66 of the Insolvency and Bankruptcy Code, 2016, in Company petition No-(IB) 1440 (ND)/ 2018, as the CD has already been made party as respondent (Respondent No. 69).

10. On perusal of the prayer (C) of the applicant, we are of the considered view, in terms of the decision of the Hon'ble Supreme Court in Mr. Anuj Jain case, the application under Section 43 and 44 cannot be clubbed with an application filed under Section 66 of the IBC, 2016, therefore, we are not



inclined to club the application filed by **Mr. Shelain Ajmira** with this application, accordingly, prayer (C) of the application is hereby rejected.

11. Now, coming to the prayer (B) which relates to the transactions under Section 66 of the IBC, 2016.

12. The timeline framed under Regulation 35(A) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation 2016, is examined by the coordinate Bench No.-2, NCLT, New Delhi in the matter of **M/s AC Goel Distributing Company Private Limited... ..Operational Creditor Versus M/s Web Tech Packagings (INDIA) Private Limited... ..Corporate Debtor** and in the matter of **Mrs. Ashu Gupta, Resolution Professional V/s. Mr. Sunil Tangri in IA 102/2020**.

The Member, Judicial of this Bench was the Author of that order, therefore, the relevant portion of that order is reproduced below: -

"16. Whereas, the claim of the RP is that the timeline given in the Regulation 35 A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 is not mandatory rather directory in nature and in support of his contention, Ld. Counsel for the RP has placed reliance upon the two decisions of the Hon'ble Supreme Court, *Surender Trading Company* reported in (2003) 8 SCC 498 and another in the matter of *Brilliant Alloys Private Limited* and submitted that Hon'ble Supreme Court, in the two decisions, have held that the Regulations are not mandatory rather they are directory in nature.

17. Therefore, before considering the prayer of the applicant, we would like to consider this objection of the respondent that whether the application is maintainable in terms of Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 or not?

18. The relevant Regulations 35 A and 40 A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 are quoted below:-

***"[35A. Preferential and other transactions.
(1) On or before the seventy-fifth day of the
insolvency commencement date, the***



resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.]

[40A. Model time-line for corporate insolvency resolution process.

The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:



Section / Regulation	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	----	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c) / Regulations 6(2)(c) and 12(1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90 th day of commencement	T+90
[Regulation 13(1)]	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
	Verification of claims received under regulation 12(2)		T+97]
Section 21(6A)(b) / Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23
[Section 22(1) / Regulation 19(2)]	1 st meeting of the CoC	Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.	T+30]
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA	-----
Regulation 13(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40 th day of commencement	T+40
[Regulation 27]	Appointment of valuer	Within 7 days of appointment of RP, but not later than 47 th day of commencement.	T+47]
Section 12(A) / Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by IRP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36 (1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54 th day of commencement	T+54
Regulation 36A	Publish Form G		T+75

	Invitation of EoI	Within 75 days of commencement	
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+90
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final List of RAs by RP	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T+180

AA: Adjudicating Authority; AR: Authorised Representative; CIRP: Corporate Insolvency Resolution Process; CoC: Committee of Creditors; EoI: Expression of Interest; IM: Information Memorandum; IRP: Interim Resolution Professional; RA: Resolution Applicant; RP: Resolution Professional; RFRP: Request for Resolution Plan.]

29

19. On conjoint reading of these two Regulations, we observe that the word 'on or before the seventy fifth day of the insolvency commencement date' in Regulation 35A (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, 'on or

before the one hundred and fifteenth day of the insolvency commencement date' in Regulation 35A (2) and 'on or before the one hundred and thirty-fifth day of the insolvency commencement date' in Regulation 35A (3) are based upon the **Model timelines** given in the Regulation 40A. It is seen in Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the model timelines prescribed in respect of Regulation 35A is, 75th day of the insolvency commencement date, 115th day of the insolvency commencement date and 135th of the insolvency commencement date as referred to in sub Regulation 1, 2 & 3 of Regulation 35A respectively.

20. It is further seen that the **model timeline** for the Corporate Insolvency Resolution Process shown in Regulation 40A are based on the assumption that the CIRP should be completed within 180 days (one hundred and eighty days), as it is mentioned in Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 same is reproduced below:- ***"The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days"***

21. It is further seen that the IBBI has made this Regulations by exercising its power under Section 5, 7, 9, 14, 15, 17, 18, 21, 24, 25, 29, 30, 196 and 208 read with Section 240 of the IBC, 2016.

22. Whereas, Section 12 of the IBC, 2016 has prescribed the time limit for completion of the Corporate Insolvency Resolution Process. For better appreciation of the provision of law, the said section is quoted below:-

IBC Section 12- Time-limit for completion of insolvency resolution process.

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred

and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares.

(3) On receipt of an application under subsection (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is

pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

23. A bare perusal of the provision shows that in view of Section 12 (1), the time prescribed to complete the CIRP is 180 days from the date of admission of the application to initiate such process but in view of Section 12 (3) read with Section 12(2) of the IBC, on the approval of the Committee of Creditors (CoC) by vote of 66% of the voting shares, the Adjudicating Authority is empowered to extend the period of CIRP beyond the period of 180 days but not exceeding 90 days. And by amendment w.e.f. 16.08.2019, a proviso is added, which extends the total period of CIRP for 330 days.

24. We observe that while framing the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the IBBI has not exercised its power under Section 12 of the IBC, 2016, which means while making the Regulations for Insolvency Resolution Process for Corporate Persons, though, the IBBI has added the Regulation 40A w.e.f. 04.07.2018 and made an amendment in Regulation 35A w.e.f. 04.07.2018 but has failed to consider, the amended provision, by which the total period for completion of CIRP may extend to 330 days. Whereas, the model timelines are prepared on the assumption of completion of CIRP within 180 days.

25. Now, the question is if the legislature after making the amendment in Section 12, has extended the period of CIRP up to 330 days subject to approval of the CoC and the Adjudicating Authority, then under what authority, the IBBI could reduce the time period for completion of the CIRP from 330 days to 180 days?

26. Here we notice that the proviso in Section 12 of IBC is added by the Amendment no. 26/2019 w.e.f. 16.08.2019, **whereas the model timelines and Regulation 40A and Regulation 35A were inserted/amended w.e.f. 03.07.2018.** This shows that after the amendment in Section 12 of IBC, the model timelines in Regulations

35A and Regulation 40A have not been amended by IBBI in terms of the extension of total period for completion of CIRP.

27. At this juncture, we would like to refer to Section 240 of the IBC, which says that **"the Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code."**

28. On conjoint reading of the Regulation 35A and 40A of the IBBI Regulations and Section 12(3) of the IBC, we observe the Regulations made by the IBBI are not updated and consistent with the provision of Section 12 (3) of the Code.

29. At this juncture, we have gone through the decision of Hon'ble Delhi High Court (supra), and we notice that aforesaid facts were not placed before the Hon'ble Delhi High Court.

30. We would also like to refer to the two decisions of the Hon'ble Supreme Court (supra) on which the Ld. Counsel for the RP/applicant has placed reliance and it is seen in both the decisions, the Hon'ble Supreme Court, by considering the regulations, held that the Regulations are directory in nature and not mandatory in nature and we find, these two decisions have not been considered by the Hon'ble Delhi High Court in the decision referred to Supra.

31. At this stage, we would like to refer to Section 66 of the IBC, 2016, which is quoted below:-

IBC Section 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 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 subsection (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.

32. A bare perusal of the said provision shows that 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.

33. When we read Section 66 of the IBC along with the Regulation 35A and Regulation 40A of the IBBI Regulations, we are of the considered view that the time limit prescribed for consideration of preferential transaction and other transaction is inconsistent with the provision of Section 66, because Section 66 IBC clearly says that the Adjudicating Authority may pass an order, on the application of the Resolution Professional, during the CIRP or a liquidation process. And it is seen that the period of CIRP comes to end after the approval of the Resolution Plan and not before that or the period of liquidation comes to end after the dissolution of the corporate debtor under Section 54 of the IBC. And these facts and law were not placed before the Hon'ble Delhi High Court.

34. Therefore, in our considered view, in view of the decisions of Hon'ble Supreme Court (Supra), the Regulation is not mandatory rather directory in nature.

35. At this juncture, we would also like to consider the reasons submitted by RP for not filing the present application earlier. The applicant/RP in its written submissions has specifically mentioned that despite the repeated request and reminders, the suspended Board of Directors of the Corporate Debtor did not furnish information or handed over the financial statements. These were provided by the Statutory Auditor of the Corporate Debtor on 13.08.2020 and the Forensic Auditor's Report was finalised on 22.09.2020. Therefore, we are of the considered view that the delay has been explained by the RP, which is due to the non-furnishing



of the information by the suspended Board of Directors of the Corporate Debtor.

36. So, for the reasons discussed above, in view of the decisions of the Hon'ble Supreme Court (supra) in our considered view, the decision upon which the respondents have placed reliance i.e. the decision of Hon'ble Delhi High court, is not applicable in the case in hand.

37. *For the reasons discussed above, we have no option but to hold that the present application filed by the applicant is maintainable under the law.*"

13. In terms of the decision referred to supra, we consider the case in hand and we are of the considered view that there is no force in the contention raised on behalf of the respondent, that the application is not maintainable, as it was filed beyond the time prescribed under Regulation 35(A) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation 2016.

14. Now coming to the next question that the respondent are liable under Section 66 of the IBC or not?

15. At this juncture, we would like to refer the relevant extract of the Transit Audit Report is at page 37 of the application. The scanned copy of the same is reproduced below: -

37-

IV. REPORT U/S 66 OF INSOLVENCY AND BANKRUPTCY CODE, 2016
Section 66 of IBC states as under:

(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 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.

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.

We understand that, as per section 66 of IBC, 2016, the business should be carried out with the intention to defraud the creditors or for any fraudulent purpose. We have verified the transactions of Corporate Debtors and report as under:-

- i. It has been noted that the majority of the receipts and payments in respect sales and purchases respectively has not been realized

Certified True Copy



38

and paid through the bank account of Corporate Debtor. The realisation and payment through bank account is very minimal as compared to sale and purchase. Summary of the same is reported below.

Particular	Sale Amount Rs Lac	Realisation in Bank Account Rs Lac
Sale from 22-11-2017 to 21-11-2019	63501.18	7084.87

Particulars	Purchase Amount Rs Lac	Payment from Bank Account Lac
Purchase from 22- 11-2017 to 21-11- 2019	63258.90	6398.13

The receipts against sale has been debited and payments against purchase has been credited to accounts named as Unclear Cheque Payment Clearing Account. The nature of those account clearly indicate that the ledger entry of receipts against sale recorded and the payment against the purchase recorded is being setting off with each other.

The following instances are being reported in support of above comments.

- i) Purchase from Hare Krishna and Company Rs. 28,80,07,340/- in F.Y. 2017-18 but no payment has been given against the same. There is opening debit balance as on 01.04.2017 Rs. 62905045/- in Ledger of Hare Krishna and Company and the balance has been adjusted against unclear Cheque Accounts.
- ii) Purchase from Jai Durga Brothers Rs. 22,06,82,433/- in F.Y. 2017-18 but no payment has been given against the same. There is opening debit balance as on 01.04.2017 Rs. 107558302/- in ledger of Jai Durga Brothers and the balance has been adjusted against unclear Cheque Accounts.
- iii) Purchase from Om Trade Inxim Rs. 53,20,01,368/- in F.Y. 2017-18 but no payment has been given against the same. Rs. 48,47,10,000/- has been debited against Unclear Cheque

Confirmed true copy



39

- Accounts: During the financial year 2018-19 there is Purchase Rs. 4,04,13,406/-, and payment given in is Rs. 20,23,00,000/- & Rs. 11,37,52,220/- was credit with Payment Clearing A/c in F.Y. 2018-19.
- iv) Rs. 25,00,000/- received from Prakashray Dairy Products Private Limited was adjusted with Unclear Cheque Accounts.
- v) Purchase from Super Veg. Oils Private Limited Rs. 279,67,76,854/- in F.Y. 2017-18 & Rs. 40,81,09,159/- in F.Y. 2018-19. As against purchase payment given in F.Y. 2017-18 Rs. 28,71,00,000/- & in F.Y. 2018-19 Rs. 3,82,71,039/- balance payable amount adjusted with following Ledger:- Rs. 245,12,55,000/- with Unclear Cheque. Rs. 43,30,30,813/- with Payment Clearing A/c. The excess debited amount Rs. 67,71,039/- has been written off as Bad Debts in F.Y. 2018-19.
- vi) Purchase from Value Plus Educare Private Limited Rs. 33,72,12,904/- in F.Y. 2017-18 & Rs. 8,77,24,000/- in F.Y. 2018-19. As against purchase payment given in F.Y. 2017-18 Rs. 1,37,25,000/- & balance payment adjusted with Unclear Cheque & Payment Clearing A/c.
- vii) Rs. 49,83,200/- received from Anandh Food Agencies Pvt Ltd has been adjusted with payment clearing A/c.
- viii) Purchase from Bhole Baba Agency Rs. 1,57,25,482/- in F.Y. 2018-19 but payment given Rs. 4,51,10,395/-. Out of the excess amount given to Bhole Baba Agency Rs. 1,96,00,000/- received back in May 2019 and the balance Rs. 97,83,113/- has been adjusted with Payment Clearing A/c.
- ix) Purchase from Deshavar Overseas Private Limited Rs. 89,70,57,000/- in F.Y. 2018-19. No payment has been made against the said purchase. There is sale to Deshavar Overseas Private Limited Rs. 8,89,87,500/- & Rs. 77,30,70,000/- has been adjusted with payment clearing A/c.
- x) Sale to Delta Agrotech Pvt Ltd Rs. 15,46,37,943/- during F.Y. 2017-18 & Rs. 54,30,765/- during F.Y. 2018-19. As against the debit balance on account of this sale payment received Rs.

Certified True Copy



40-

- 1,48,00,000/- during F.Y. 2017-18 & Rs. 10,82,50,000/- during F.Y. 2018-19. There is purchase from Delta Agrotech Pvt. Ltd for Rs.102312956/- & Rs. 64904248/- payable has been with payment clearing A/c.
- xi) Purchase from Durga Traders Rs. 58,33,354/- in F.Y. 2017-18 & Rs. 10,04,416/- in F.Y. 2018-19. As against purchase payment has been made Rs. 54,49,354/- & balance was adjusted with payment clearing A/c.
- xii) Payment given to Hare Krishna and company Rs 20,00,000/- in F.Y. 2018-19 was adjusted with payment clearing A/c.
- xiii) Payment given to Jai Ambey Sons Rs. 1,49,00,000/- in F.Y. 2018-19 was adjusted with payment clearing A/c.
- xiv) Purchase from JSM Proteins Pvt. Ltd. Rs. 6,55,55,000/- in F.Y. 2017-18. As against purchase Rs. 1,78,50,000/- has been paid & balance payable has been adjusted with payment clearing A/c.
- xv) Purchase from JSM Vegoil Pvt. Ltd. Rs. 3,68,89,450/- in F.Y. 2017-18. As against purchase Payment of Rs. 2,13,25,000/- has been made Sale has been made to JSM Vegoil Pvt. Ltd. For Rs. 1,82,70,097/- and balance Rs. 29,05,017/- has been adjusted with payment clearing A/c.
- xvi) Purchase from Laxmi Brother Rs. 5,60,76,129/- in F.Y.2018-19. As against purchase payment of Rs. 3,05,51,100/- has been made and Rs. 1,25,25,000/- has been received back. Out of the balance payable Rs. 25249274/- has been adjusted with payment clearing A/c. & Rs. 68,00,755/- has been write off.
- xvii) Payment given to Luxmi Trading Company Rs. 2,18,00,485/- has been adjusted with payment clearing A/c.
- xviii) There is no corresponding stock as on 21.11.2019 as against Rs 27,16,627.00 GST Credit Receivable. In this regard it has been informed to us by the directors of Company that input tax credit of Rs. 27,14,199 has been blocked by the GST Authorities. GST

Certified True Copy

47

Department has suspected that company have claimed input tax credit on the basis of fake invoice although factual position is that company have paid all liabilities of tax under GST Act and duly filed all returns as per GST Provision. The entire purchase and sale is through regular bills which are supported by transporter bill and e-way bills. These bills are duly accounted for the books of account. The trading activities of sale and purchase on wholesale business has finally resulted into profits on which due taxes have been paid. The entire expenses are supported by bill/vouchers and fully recorded in the books of account. Book of accounts are duly audited by Chartered Accountant.

It has also been informed to us by the directors of the Company in response to above remarks that there was an unavoidable situation wherein our debtor, i.e. M/s Kvaliti Limited could not pay taxes resulting into frozen of bank accounts by the Income Tax authorities at different times. To keep our business afloat so that we are able to pay all our creditors (which is essential dairy industry), we adopted this approach for sheer survival on request from M/s Kvaliti Limited. Further, it has also been clarified by the directors of the Company that the business model of the Company is to collect milk directly from different milk suppliers dairies and further supply the same to milk plants. The Company is operating on the basis of payment facility provided by milk plants.

For Kashyap Sildar & Co.,
Chartered Accountants
FRN No 016253N

(Akash Kashyap)
Partner
M No 088281
Date: 07-08-2020
Place: New Delhi

DeSildar True Copy



16. Now we consider this report alongwith the averments made in the application and we notice that the applicant has also reproduced the extract of the Transaction Audit Report, on the basis of that report the RP, now the liquidator has formed the opinion then an application under Section 66 of the IBC is required to be filed before the Tribunal. We notice that the applicant has not specified the period in which the Respondent No. 1 and 2 are responsible for the act committed under Section 66 of the IBC, 2016.

17. At this juncture, we would like to refer to the Form No. DIR-12 issued by the Ministry of Corporate Affairs, from page 31 to 32, in respect of Respondent No. - 1, Mr. Uttam Rai and from Page 33 to 35, in respect of Respondent No. - 2, Mr. Manish Mahajan, reply of the Respondent. The scanned copy of the those documents are reproduced below: -



FORM NO. DIR-12

(Pursuant to sections 1(1) (c), 168 & 179 (2) of The Companies Act, 2013 and rule 17 of the Companies (Incorporation) Rules 2014 and 8, 15 & 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014)



Particulars of appointment of directors and the key managerial personnel and the changes among them

31

Form Language ☒ English ☐ Hindi

Refer the instruction kit for filing the form.

1. *This form is for ☐ New company ☒ existing company

2. (a) * Corporate Identity Number (CIN) of company U16203DL2006PTC184821

(b) Global location number (GLN) of company

3. (a) Name of the company Y M FOODWAYS PRIVATE LIMITED

(b) Address of the registered office of the company

B-14, Office no. 302A, 3rd Floor
Vikas Marg, Laxmi Nagar
New Delhi
East Delhi
Delhi
110062

(c) E-mail ID of the company ymfoodways.2011@gmail.com

4. Number of Managing director or director(s) for which the form is being filed 2

5. Details of the Managing Director, directors of the company

TRUE COPY

✓

1. Details of the Managing Director or Director of the company

i. Director Identification Number (DIN) 03810253 32

ii. Name UTTAM ROY

iii. Father's name RAJENDR ROY

iv. Present residential address 82, W2 BLOCK, BAHAI DARGAHUR
NEW DELHI
Delhi
110016

v. Nationality IN vi. Date of birth 06/12/1976 vii. Gender Male

viii. ☒ Appointment ☐ Cessation ☐ Change in designation ix. Date of Appointment or change in designation 07/08/2018
(DDMMYYYY)

x. Designation Additional director

xi. Category Professional

xii. Whether Chairman, Executive Director, Non-Executive Director
☐ Chairman ☐ Executive director ☒ Non-Executive Director

xiii. DIN of such director to whom appointee is alternate 03810253

xiv. Name of the director to whom such appointee is alternate RAJENDR ROY

xv. Name of the company or institution whose nominee the appointee is PRAKASHROY DAIRY PRIVATE LIMITED

xvi. E-mail ID of director uttamroy0612@gmail.com

xvii. In case of cessation
Hereby confirmed that the above mentioned ☐ Director ☐ Managing director xviii. is not associated with the company with effect from 07/08/2018 (DDMMYYYY) due to RESIGNATION

xix. Interest in other entities 1

xx. Number of such entities 1

xxi. *CIN/LP/INFCRN/Registration number U16122DL2018PTC286713 16122DL2018PTC286713

xxii. *Name PRAKASHROY DAIRY PRIVATE LIMITED

xxiii. *Address 8-14, Office no.302, 3rd floor
Vikas Marg, Laxmi Nagar
New Delhi
East Delhi
Delhi
110062

xxiv. Nature of Interest Director

xxv. *Designation Director

xxvi. Percentage of Shareholding 99 xxvii. Amount 100000

xxix. Others (specify)

TRUE COPY

1. Details of the Managing Director or Director of the company

i Director Identification Number (DIN) 02241531 33

ii Name MANISH MAHAJAN

iii Father's name SAGU (SH RAU) MAHAJAN

iv Present residential address 38A, Old Anshu's Krishna Nagar
New Delhi
Delhi
India
110051

v Nationality IN vi Date of birth 13/12/1980 vii Gender Male

viii ☐ Appointment ☒ Cessation ☐ Change in designation ix Date of Appointment or change in designation (DDMMYYYY)

x Designation Director

xi Category

xii Whether Chairman, Executive Director, Non-Executive Director
☐ Chairman ☐ Executive director ☐ Non-Executive Director

xiii DIN of such director to whom appointee is alternate

xiv Name of the director to whom such appointee is alternate

xv Name of the company or institution whose nominee the appointee is

xvi Email ID of director manishmahajan13121980@gmail.com

xvii In case of cessation
 Hereby confirmed that the above mentioned ☒ Director ☐ Managing director xviii is not associated with the company
 with effect from 27/06/2018 (DDMMYYYY) xix due to Resignation u/s 168

xx Interest in other entities
 xxi Number of such entities

xxii *CMLP/INSTRON/Registration number

xxiii *Name

xxiv *Address

xxv Nature of interest

xxvi *Designation

xxvii Percentage of Shareholding xxviii Amount

xxix Others (specify)

Page 2 of 8


 TRUE COPY

6. Number of manager(s), secretary(s), Chief Financial Officer or Chief Executive Officer for which the form is being filed 34

7. Details of manager(s), secretary(s), Chief Financial Officer or Chief Executive Officer of the company

i. Director Identification Number (DIN), if any		
ii. Income Tax permanent account number (PAN)		
iii. ☐ Appointment ☐ Cessation		
iv. Membership number of the secretary		
v. First Name		
vi. Middle Name		
vii. Last Name		
viii. Father's name		
ix. First Name		
x. Middle Name		
xi. Last Name		
xii. Present residential address: xii. Line I		
xiii. Line II		
xiv. City		
xv. State		xvi. Pin Code
xvii. ISO Country Code		
xviii. Country		
xix. Phone		xx. Fax
xxi. Date of birth	(DDMMYYYY)	
xxii. Designation		
xxiii. Date of Appointment or cessation	(DDMMYYYY)	
xxiv. E-mail ID		

Attachments

List of attachments

Page 4 of 8

TRUE COPY

- (1) Declaration by first director
 (2) Declaration of the appointee director
 in Form No. DR-2;
 (3) Notice of resignation;
 (4) Evidence of cessation;

(5) Optional attachment(s) - if any.

Resignation Letter.pdf
 Resignation.pdf
 Appointment Letter.pdf

35

Declaration

I, Mukesh Roy

☐ A person named in the articles as a _____ of the company

(in case it's new company) or

☒ authorized by the Board of Directors of the Company vide 08.08

number dated 07/09/2018

To sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

* To be digitally signed by

MUKESH ROY

* Designation Director

* Director Identification number of the director; or DIN or PAN of the manager or CEO or CFO; or Membership number of the secretary 00071062

Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form. I hereby certify that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/verified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

- ☒ The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;
☒ All the required attachments have been completely and legibly attached to this form;
☒ It is understood that I shall be liable for action under Section 448 of The Companies Act, 2013 for wrong certification, if any found at any stage.

* To be digitally signed by

CHARTERED ACCOUNTANT

☐ Chartered accountant (in whole-time practice) or ☐ Cost accountant (in whole-time practice) or

☒ Company secretary (in whole-time practice)

* Whether Associate or fellow ☒ Associate ☐ Fellow

Membership number 30120

Certificate of Practice Number 13595

CHARTERED ACCOUNTANT CHARTERED ACCOUNTANT CHARTERED ACCOUNTANT CHARTERED ACCOUNTANT

This form has been taken on file maintained by the Registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company.

TRUE COPY

18. On perusal of the documents referred to Supra, we notice that the Respondent – 1 was appointed as a director on 07th September, 2018 whereas Respondent – 2 was appointed with effect from 20th February, 2018.

19. At the cost of repetition, we would also like to refer to the argument advanced on behalf of the Learned Counsel appearing for the respondents, the Learned Counsel appearing for the respondents submitted that nowhere in the application, the applicant has bifurcated the liability of the Respondent No. – 1 and 2.

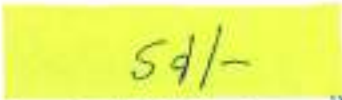
20. As per the averments made in the application and the report of the transaction Audit Report, we observe that the period of transaction is from 20th November, 2017 to 21st November, 2019 and both the respondents were not the directors from 22nd November, 2017, rather Respondent No.- 1 was appointed on 07th September, 2018 and the Respondent No.- 2 was appointed on 20th February, 2018.

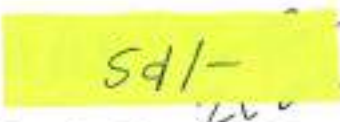
21. We further notice that the applicant has not bifurcated the amount which was defrauded during the tenure of Respondent No. -1 and Respondent No. – 2 respectively rather he simply reproduced the report of the Transit Audit Report without stating the liability of the individual directors. We further observe that nowhere in the application, the applicant has stated if these two respondents were not the directors of the Corporate Debtor, then who were the directors from 22nd November, 2017 till the date of appointment of Respondent No.- 2 i.e. 20th February 2018, therefore, in our considered view, the averments made in the application is vague and not clear, under such circumstances, it is very difficult to establish the liability of the Respondents under Section 66 of the IBC.

22. In sequel to the above, in our considered view, in the absence of specific averments against the individual respondent, the applicant has failed to establish that to what extent and from which period the Respondent No. 1 and 2 are liable under Section 66 of the IBC, 2016.

23. Under such circumstances, we have no option but to reject the prayer of the applicant, accordingly, the prayer (B) of the applicant is hereby rejected, and **the application is hereby dismissed.** However, the applicant is at liberty

to file a fresh application after specifying the specific period and the amount for which the respondents are liable.


Avinash K. Srivastava 21/2/2022
Member (T)


Abni Ranjan Kumar Sinha
Member (J)