

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 317**  
**33(ND)2016**  
**IA-151/2024**

**IN THE MATTER OF:**

**Sh. Vishisht Kumar Goyal**

... **Applicant/Petitioner**

**Versus**

**M/s. Mahamaya Exports Pvt. Ltd. & Ors.**

...

**Respondent**

**Under Section: 397/398 Comp. Act.**

**Order delivered on 03.05.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Harshit Agarwal

**For the Respondent** :

**Hearing Through: VC and Physical (Hybrid) Mode**

**REPORTABLE**

**ORAL ORDER**

**IA-151/2024:** The factual backdrop mentioned in para 4.1 to 5.1 of the IA reads thus:

**4. *Petitioner is Director and Shareholder***

- 4.1. That the Petitioner herein is a Director and holds 26% shares of the legal and valid paid up capital of the Respondent no.1.
- 4.2. Initially, the Respondent no.1 was promoted by Respondent No. 2 & 4 and the Petitioner was inducted as a Director on 14.06.2011 and an Agreement dated 18.06.2011 was executed wherein the Respondent no.1 and the then Directors undertook not to dilute the shareholding of the Petitioner or appoint any Director or create any encumbrance on the property of the Respondent no.1.

5. **Oppressions and Mismanagement By Respondents**

5.1. That post appointment of Petitioner as Director and shareholder in the Respondent No 1 Company and during intervening period from post June 2011 to 2015, conspiracy hatched by Respondents 2 and 4 and others, came to light when petitioner came to know that the respondent persons in collusion and connivance with each other and in furtherance of their preplanned conspiracy with mala fide intentions have prepared various fake documents, allegedly shown to have convened illegal board meetings, fabricated board resolutions, filed manipulated and fabricated documents with ROC, without valid board meetings and without valid board resolutions, without valid quorum, without valid notice to Petitioner/ Vashist Kumar Goyal for board meeting, without authorization and without knowledge of Petitioner/ Vashist Kumar Goyal and a) have diluted the shareholding of the petitioner by increasing the share capital with an intention to oust the petitioner and usurp the control of the company, b) sold assets of the Respondent Company by illegal Agreements, c) executed the Corporate Guarantees and Deed of Mortgage by delivery of title Deeds of the Respondent No. 1 to Bank to secure the financial facilities granted to other companies of Respondent 1 and 2 i.e. to ABW Infrastructure Limited, d) created fake and bogus creditors entry in the Balance Sheet of the Respondent 1 Company. However, Respondents 2 and 4 indulged in various acts of oppression and mismanagement in the Respondent no.1 and therefore, the Petitioner was constrained to file captioned petition.

2. It is espoused in Para 7.1 of the application, that the Respondent No. 2 and 4 i.e. the Directors, Mr. Atul Bansal and Ms. Sona Bansal both husband and wife, while mismanaging the affairs of the company i.e. Mahamaya Exports Pvt. Ltd. were allegedly involved in fraudulent transactions, through their another company namely, M/s ABW Infrastructure Ltd., which led to registration of F.I.R. against both of them. It has also been mentioned in para 7.2. that the Enforcement Directorate has passed orders provisionally attaching the assets of the company. It is the case espoused in the application

that it was the conduct of Respondent Nos. 2 and 4, which led to attachment of the assets of the company. When it has been asserted in para 8.1 of the application, that the Respondent Nos. 2 and 4 are the Directors qua the company namely, M/s. Mahamaya Exports Pvt. Ltd. and were also the Directors qua M/s. ABW Infrastructure Ltd., between the years 2010 to 2016, it is espoused that M/s. Mahamaya Exports Pvt. Ltd. and Ors. is not having any director, and some Advocate be appointed to put forth the interest of the corporate debtor before Bench No. 05 in the proceedings instituted under Section 7 of IBC, 2016. In the entire application, the allegation espoused extensively are against the Respondent Nos. 2 and 4 i.e. Mr. Atul Bansal and Ms. Sona Bansal. It is their conduct which is exposed in the application. In para 8.8 of the application, an averment is made that Respondent Nos. 2 and 4 are apparently holding 74% stake in the Respondent No. 1 Company, thus should have taken steps to save the company, Mahamaya Exports Pvt. Ltd by depositing the loan amount obtained by their another Company namely ABW Infrastructure Ltd. with the Bank but the said directors deliberately avoided to do so. In a way, the allegations made in the captioned application are such which are relevant regarding the affairs of company and conduct of the Respondent Nos. 2 and 4.

3. As has been averred in para 13.1 of the application, the CP-(IB)/687/PB/2020 could be preferred, when the 2 directors qua the company are absconding. It is also stated in para 13.3 of the application that Respondent Nos. 2 and 4 have since been traced and Ms. Sona Bansal is on bail. It is also the allegation made in the application that the Bank is acting

in collusion with Bansal and now objecting the appearance of the petitioner in CP-(IB)/687/PB/2020 on the ground that there is no Board resolution in favour of the petitioner. It is the case of the Applicant that he has instituted the proceedings, both against the directors qua the company as also the debt. Finally, the prayer made in the application is to permit the petitioner to represent the Respondent No. 1 company through his counsel in CP-(IB)/687/PB/2020. We repeatedly asked the Ld. Counsel appearing for the Applicant to point out the provisions in terms of which this Tribunal is enabled to either permit him to represent the company in CP-(IB)/687/PB/2020 or to appoint any advocate as asked by him for the purpose. On our such asking he submitted that he is simply asking for appointment of an advocate to present the interest of the Respondent No. 1 company filed before the Bench-V in CP-(IB)/687(PB)/2020 and such appointment can be made in exercise of descretion by this Court.

4. As can be seen from the object of IBC, 2016, the same is to rescue the Corporate Debtor/Company to put it back to its feet. In fact, the IBC, 2016 has been introduced only to safeguard the interest of the Corporate Persons/Companies, which need to be revived. Thus, in a way the CP-(IB)/687/PB/2020 is the ideal process to do the exercise. In terms of the provisions of the Code, a well-knitted mechanism has been introduced to run the company during CIRP, through IRP or the RP, till any plan put forth by the interested bidder/SRA is accepted by the committee of creditors. Section 20 and 25 of IBC, 2016 reads thus:

**“20. Management of operations of corporate debtor as going concern. –**

*(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.*

*(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-*

*(a) to appoint accountants, legal or other professionals as may be necessary;*

*(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;*

*(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debts secured over such encumbered property:*

*Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt .*

*(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and*

*(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.*

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**25. Duties of resolution professional. –**

*(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -*

*(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*

*(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;*

*(c) raise interim finances subject to the approval of the committee of creditors under section 28;*

*(d) appoint accountants, legal or other professionals in the manner as specified by Board;*

*(e) maintain an updated list of claims;*

*(f) convene and attend all meetings of the committee of creditors;*

*(g) prepare the resolution professional under sub-section (1) of section 29;*

*(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*

*(i) present all resolution plans at the meetings of the committee of creditors;*

*(j) file application for avoidance of transactions in accordance with Chapter III, if any; and*

*(k) such other actions as may be specified by the Board.”*

5. Here it would not be out of place to note that the provisions of Chapter XIX (Sections 253 to 269) of the Companies Act regarding Review and Rehabilitations of such companies, was omitted by IBC, 2016, w.e.f. 15.11.2016.

6. It is not so that the opportunity for hearing in the application filed under Section 7 of IBC, 2016 is needed by the company/corporate persons. When the entire exercise in terms of the Code is to revive and rescue the company and the Code is a beneficial legislation, there is no requirement or basis even to have such provision. Nevertheless, in a catena of decisions viz. Innoventive

Industries Ltd. v. ICICI Bank and Anr., (2018) 1 SCC 407 etc., Hon'ble Supreme Court ruled that before a petition filed under Section 7 of IBC, 2016 is admitted, an opportunity for hearing as also to file reply should be given to the Respondents. In the proceedings under the Code, the company is only a proforma party and at the time of admission of the application, the determining factor is only, as to whether the control and management of the company should remain with Board of Directors or the same should be handed over to an IRP/RP to be appointed by this Adjudicating Authority in better interest of the company to resolve its insolvency. The parties whose interest can be adversely affected is the Board of Directors. As has been noted hereinabove, it is the case espoused in the application that the Board of Directors is not interested in defending the application.

7. Thus, it is misconception that there is requirement to appoint an advocate in the proceedings instituted under Section 7 of IBC, 2016, to defend the company. In fact, the proceedings instituted are only in the interest of company and to rescue the same. As is apparent from the averments made in the application, the applicant is concerned about his own interest and shareholding which according to him is 26%.

8. As can be seen from the provisions of Section 53 of IBC, 2016, all stakeholders are entitled to distribution of the bid amount, as per waterfall mechanism. The Section 53(1) (g and h) also provide for the distribution in favour of the preferential shareholders, if any and equity shareholders or partners, as the case may be. The scheme of the Code is self-contained and well-knitted. On our repeated asking, the Ld. Counsel failed to point out any

provision of law, which enables us to appoint an advocate to participate in the proceedings qua the application filed in terms of the provisions of IBC, 2016. Instead of assisting the Court as a responsible lawyer, he said this Tribunal may dismiss the application.

9. We are appalled and dismayed with such approach and attitude of the Counsel, nevertheless, it is for us to examine and see that the interest of justice is subserved in all circumstances. Thus, we tried to find out from the Companies Act, 2013 to see if we are expected to pass any order in the wake of the factual position enumerated in the application and the prayer made therein. The only provision which empowers us to pass discretionary order is contained in Section 242 of the Companies Act, 2013, regarding the Management of the affairs of Company. Though, in terms of the provisions of said section, we may appoint an administrator to look after the affairs of the company, but the same would again be for the proper management of the company.

10. The Company Petition 33/ND/2016 is apparently pending against the company. Even the present application has been filed, expecting us to pass some order to intervene qua the affairs of the company only, which could be an order under Section 259 of Companies Act, 2013, now substituted by IBC-2016.

11. In the wake of the aforementioned factual conspectus, we are afraid that any order can be passed by us, appointing any advocate to oppose the application filed in terms of the provisions of Section 7 of IBC, 2016, more so



when the Ld. Counsel for the Applicant, simply refused to point out any provisions of law, except Rule 11 of NCLT Rules, 2016 which reserve the discretionary power of this Tribunal to pass an order in appropriate circumstances. It would not be gainsaid that such discretionary power is exercised to pass an order to secure the ends of justice in the proceedings pending before us and not to appoint an advocate in some other proceedings.

**The application is found devoid of merits and is accordingly dismissed.**

12. Mr. Amit Kumar, Ld. Counsel appearing for the Respondent Nos. 1, 3 and 4 in the CP/33/ND/2016 submitted that the he believes that the Respondent No. 2 has since passed away and the Petitioner and the Respondent No. 4 are the surviving directors qua the company.

13. As can be seen from Section 174 (1) of the Companies Act, 2013, the quorum for a meeting of the Board of Directors of the Company shall be 1/3 of its total strength or total Directors, whichever is higher. The Section 174(1) of the Companies Act, reads thus:

***“174. Quorum for Meetings of Board***

*(1) The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two Directors, whichever is higher, and the participation of the Directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.”*

14. In the wake, it is always open for the Petitioner and Respondent No. 4 who are Directors qua the company to ensure that a Board Meeting is held and appropriate resolution regarding the stand to be taken qua the proceedings pending before this Tribunal under Section 7 of IBC, 2016 is

taken. The Board Meeting is directed to be held on 10.05.2024 or any date mutually decided by the Petitioner and the Respondent No.4, but not later than 15 days from today. In the said Board Meeting, amongst any other agenda, the Respondent Nos. 1 and 4 would also discuss the agenda regarding stand to be taken in CP-(IB)/687/PB/2020. No cost.

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**