

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. No. 794 of 2023
In
C.P.(IB) No.198/KB/2018**

***An application under Rule 53 read with Rule 11 of the National
Company Law Tribunal, 2016.***

**IN THE MATTER OF:
Abhijeet Jain**

... Applicant

Versus

Mr. Pradeep Ganeriwala & Anr.

... Respondents

Date of Pronouncement: 11th July, 2024

CORAM:

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
SHRI. D. ARVIND, MEMBER (TECHNICAL)**

APPEARANCE:

Mrs. Manju Bhuteria, Adv.]	For Late Pradip Ganirewala
Ms. Amrita Pandey, Adv.		
Ms. Sneha Singh, Adv.		
Mr. Rishav Banerjee, Adv.]	For the Liquidator
Mr. A.K. Awaswathi, Adv.		
Mr. Shaunak Mitra, Adv.]	For Respondent No.2
Ms. Bipasha Jaiswal, Adv.		

ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been filed by **Mr. Abhijeet Jain**, liquidator of the corporate debtor Bripranil Industries Limited (hereinafter

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referred as “**Liquidator/Applicant**”) against **Mr. Pradeep Ganeriwala and Biman Industries Private Limited** (hereinafter referred as “**Respondent No. 1 and Respondent No. 2 respectively**”) seeking following reliefs:

- a) An Order be passed setting aside the abetment of I.A. (IB) No. 1149/KB/2020 as against the respondent No. 1 since deceased, as recorded in the Order dated 23.02.2023.*
- b) An Order be passed directing the Advocates for Pradeep Ganeriwala the respondent since deceased to furnish the names and addresses of the legal heirs of the respondent No. 1.*
- c) Leave be given to the applicant to amend the said I.A. (IB) No. 1149/KB/2020 by bringing on record the legal heirs of respondent No. 1 since deceased and incorporate consequential amendments therein.*
- d) Such further or other Orders be passed as this Tribunal may deem fit and proper.”*

Factual Matrix:

- 4.** Bripranil Industries Limited (hereinafter referred as “corporate debtor”) was put into Corporate Insolvency Resolution Process under Section 10 of the IBC by an Order dated 18.12.2019, passed by this Tribunal. By another Order dated 11.01.2021, the corporate debtor was put into liquidation and the applicant herein was appointed as a liquidator in the matter.
 - 5.** The liquidator during the CIRP/liquidation process filed an application under Section 66 of the Code seeking direction from this Tribunal for recovery of Rs. 2,24,66,793/- from respondent No. 1 and 2 and an Order directing respondent No.2 to make contribution of Rs. 1,34,22,521/-.
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6. In the course of hearing this application filed under Section 66 on 21.04.2022, the Advocates for respondent No. 1 informed the Court about the demise of the said respondent No. 1. On 23.02.2023, while hearing the said application, this Tribunal held that since respondent No. 1 has expired on 15.03.2022, this application against respondent No. 1 is abetted.
7. It is the claim of the applicant herein that the Advocates appearing for respondent No. 1 neither furnished a copy of the death certificate of the respondent No. 1 nor disclosed the names and addresses of the legal heirs of the respondent No. 1. and as such, the abetment of the said I.A. (IB) No. 1149/KB/2020 as against respondent No. 1 should be modified to bring his legal heirs on record for the purpose of recovery.
8. It is the claim of the applicant that Advocates of respondent No. 1 were duty bound to produce death certificate before this Tribunal and furnish the names and addresses of legal heirs of respondent No. 1. Having not done so, the applicant was prevented from taking any steps for filing any application for substitution of the names and addresses of the legal heirs of respondent No. 1.

Ld. Counsel for Applicant:

9. Ld. Counsel for Applicant submits that Advocates representing respondent No. 1 has sent a letter to the applicant on 20.04.2022, informing the death of respondent No. 1 on 15.03.2022. However, he failed to furnish death certificate or the names and addresses of the legal heirs. This led to delay in filing this application and consequently, the same may be condoned in the interest of justice and necessary direction may be given as prayed for.
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Ld. Counsel for Respondent:

- 10.** Ld. Counsel for respondent submits that this Tribunal passed an Order abetting the respondent No. 1 *vide* Order dated 23.02.2023, whereas this application has been filed on 19.04.2023. The applicant had knowledge of the death of respondent No. 1 formally, by way of an e-mail dated 20.04.2022 and an Order dated 21.04.2022, whereas the instant application has been filed on 19.04.2023, after a lapse of almost one year. The Order passed by this Tribunal on 23.02.2023, which granted abetment to respondent No. 1 in I.A.(IB) No.1149/KB/2020 has not been appealed before Hon'ble NCLAT and consequently, attained finality.
- 11.** Therefore, Ld. Counsel submits that this application seeking review of the Order dated 23.02.2023, passed by this Tribunal is legally not permissible and on this ground alone, this application deserves to be dismissed.
- 12.** Ld. Counsel submits that even otherwise recovery under Section 66/67 cannot be made against 3rd parties including legal heirs. He relies on the Hon'ble Supreme Court's judgment rendered in Miscellaneous Application No. 1302 of 2023 in the case of **Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors.** In this judgment, the Hon'ble Supreme Court held that recovery against 3rd party is not permissible under Section 66 of the IBC. Ld. Counsel took us to Section 66 of the IBC and submits that the recovery is against "person" responsible for carrying on business fraudulently and not from any other party.

Per Contra Applicant:

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13. The applicant relies on the judgment rendered by the Hon'ble NCLAT in the matter of ***Arvind Garg Vs Jagdish Khattar & Ors.*** in ***Company Appeal (AT) (Insolvency) No. 743 of 2020***, wherein the Hon'ble NCLAT held that legal heirs can be included for the purpose of recovery under Section 66 and 67 of the Code.

Analysis and Findings:

14. We find that no appeal has been filed against our Order dated 23.02.2023, which abetted respondent No. 1 and the same has become final. In the matter of Arvind Garg Vs Jagdish Khattar & Ors., the liquidator duly filed an appeal against the Hon'ble NCLAT's Order and got appropriate directions from the Appellate Tribunal, as mentioned above.

15. In any event, post the judgment of Hon'ble NCLAT reference above, judgment of Hon'ble Supreme Court was rendered in the case of ***Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors. in Miscellaneous Application No. 1302 of 2023***, according to which 3rd parties cannot be included for the purpose of recovery proceedings under Section 66 of the IBC. Section 66 of the Code contemplates action against person responsible for fraudulent conduct of business and not against the legal heirs who were nowhere connected with the management of the corporate debtor or fraudulent activities carried out. Therefore, legal heirs are 3rd parties to the fraud committed and hence, covered by the judgment of Hon'ble Supreme Court cited supra. We also note that the definition of "person" as per Section 3(23) of the Code does not include legal heirs of any individual.

16. Therefore, on both the counts mentioned above this **I.A. No. 794 of 2023** is **not maintainable** and accordingly, **dismissed**.

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17. Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the 11th day of July, 2024.

PH(PS)