

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH**

INTERVENTION PETITION NO. 8 OF 2022

IN

CP(IB) NO. 820/MB/2022

*Application u/s 60(5) and 65 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the
N.C.L.T Rules, 2016.*

In the matter of:

Anand Rathi Global Finance Ltd.,

A Company incorporated under the Companies
Act, 1956 and having its Registered Office at:
Express Zone, A-Wing, 10th Floor, Western
Express Highway, Goregaon East,
Mumbai-400 063.

...Applicant/Intervenor

Versus

1. Glamour India Private Limited;

Regd Office: 502/F/3, Sundervan Complex,
Lokhandwala Link Road, Andheri West,
Mumbai-400 053.

**.... Respondent No.01
/Original
Applicant/Alleged
Financial Creditor**

2. Better Builders and Infrastructure Private

Limited; Having its registered office at: 501,
Parijat Towers, C-Wing, Saki Vihar Road, CTS
No. 35A, 35B, 361 to 337, Village: Tunga, Kurla
West, Mumbai-440070.

**.... Respondent No.02/
Corporate Debtor**

Order pronounced on 13.06.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in hybrid mode)

For the Applicant/Intervenor : Adv. Amit Tungare a/w Ashwini
Chindorkar.

For the Respondent : Adv. Irfan Khan appeared for
Respondent No.01.

ORDER

Per: Coram

1. This is an application filed by the Applicant under Section 60(5) and Section 65 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) seeking to intervene by being impleaded as a party respondent in the above-captioned Company Petition and the Applicant is also seeking to reject/dismiss the above-captioned insolvency petition on the ground of collusion between the Original Applicant and the Corporate Debtor. The Applicant has also prayed for directions to the registry of this Tribunal to issue the certified copies of the entire proceedings of the above-captioned Company Petition.

Facts of the Case (in brief):

2. The Applicant herein seeks to intervene as an intervenor to bring out the facts and circumstances to show that Respondent No.01 and Respondent No.02 have filed a collusive proceedings u/s 7 of the Code to defraud the present intervenor,

who is the financial creditor of the Corporate Debtor. The Applicant herein states that the Original Applicant and the Corporate Debtor have not come with clean hands and have approached this Tribunal maliciously and fraudulently to use the insolvency proceedings as a ploy to circumvent the measures taken by the intervenor against the Corporate Debtor and its guarantors under the SARFAESI Act, 2002 for recovery of money by enforcement of security interest.

3. In or around July 2017, the Corporate Debtor had approached requesting the intervenor for sanction and disbursal of a revolving credit facility for an amount not exceeding Rs.32 crores and the said request was approved vide sanction letter dated 19.09.2017. One of the terms and conditions of the above credit facility was that the Corporate Debtor shall not enter into any other loan agreement without prior consent of the intervenor. The loan was also secured by personal guarantees of the directors of the Corporate Debtor.
4. After availing the loan, the Corporate Debtor started defaulting in repayment of loan and consequently, the loan account of the Corporate Debtor was classified as non-performing asset w.e.f. 15.10.2019. Thereafter, the intervenor was compelled to issue a demand notice dated 25.10.2019, u/s 13(2) of the SARFAESI Act, 2002 calling upon the respondents to pay a sum of INR 32,65,83,957/-. As no payment was forthcoming despite the service of the aforesaid notice, the intervenor proceeded to take symbolic possession of the secured asset by pasting the possession notice dated 08.06.2020. In furtherance thereof, the learned Chief Metropolitan Magistrate was pleased to allow the application of the intervenor for seeking physical possession of the secured asset(s) and directed the registrar to take physical possession of the secured assets and handover the same to the authorised officer of the intervenor. The said order passed by the learned Magistrate came to be challenged before the Hon'ble Debts Recovery Tribunal vide Securitisation Application No. 90/2021.

5. The intervenor thereafter initiated arbitration proceedings against the personal guarantors of the Corporate Debtor for repayment of loan invoking their personal guarantee. The Arbitral Tribunal was pleased to pass an award in favour of the intervenor vide Order dated 19.01.2022.
6. Amid the pendency of the proceedings in the DRT, the Corporate Debtor approached the intervenor to consider a one-time settlement of entire outstanding amount and accordingly, the intervenor in good faith accepted a one-time settlement of Rs. 35 crores and the MoU dated 24.09.2021 was executed between the intervenor and the Corporate Debtor and its personal guarantors recording the terms of settlement. However, the Corporate Debtor failed to comply with the above-mentioned MoU and in consequence thereof, the intervenor continued with the actions already initiated by it by way of issuing an e-auction sale notice.
7. In order to circumvent the DRT proceedings, the Corporate Debtor and the personal guarantors came up with a ploy before the DRT while arguing an IA filed S.A. No. 90/2021, indicating that Nestler Commodities Ltd had filed an insolvency petition u/s 95 of the Code against two of the personal guarantors of the Corporate Debtor viz. Mr. Shyam Bali and Mrs. Kumud Devraj Bali. As a result of the above, the Hon'ble DRT vide Order dated 24.03.2022, adjourned the above proceedings directing the parties to inform about the status of the insolvency petition from time to time. In the insolvency petition, the Nestler Commodities Ltd had asserted itself to be a creditor of the Corporate Debtor on the basis of the Deed of Assignment dated 20.11.2019 and the Deed of Guarantee dated 28.07.2020.
8. A bare perusal of the Deed of Assignment dated 20.11.2019 indicates that Nestler Commodities Ltd and the Original Applicant had in fact assigned all the rights, title and interest in the debts due and payable by third parties to Nestler Commodities Ltd and the Original Applicant unto and in favour of the

Corporate Debtor. Thus, the Corporate Debtor had become a creditor of such third parties from whom Nestler Commodities Ltd and the Original Applicant were required to recover their alleged outstanding dues. Hence, it is submitted that the insolvency petition filed by the Original Applicant was collusive in nature as the transaction was a sham transaction designed to prevent the intervenor from implementing its rights against the Corporate Debtor by invoking the provisions of moratorium u/s 14 of the Code in case the above-captioned application gets admitted. Hence this intervention petition has been filed by the intervenor seeking to intervene to object the above-captioned petition which has been filed u/s 7 of the Code.

9. **Reply filed by the Respondents:** There is no reply of the Respondent No.02 on record. The Respondent No.01 has filed its reply, which is summarized hereinbelow:
- i. In an application u/s 7 of the Code, the Financial Creditor and the Corporate Debtor alone are the necessary parties. Hence, the intervention petition filed by the Applicant/Intervenor is not maintainable.
 - ii. The Intervenor herein is neither a necessary party nor a proper party.
 - iii. The Intervenor herein has no locus standi to intervene in the company petition. The only thing that the Tribunal has to see at pre-admission stage is whether there is a debt and default committed by the Corporate Debtor.
 - iv. The Intervenor has miserably failed to establish the essential requirements of section 65 of the Code in its application i.e. fraud or malicious intent for a purpose other than resolution of insolvency.
 - v. Hence, the instant application be dismissed with exemplary costs.

ANALYSIS AND FINDINGS

10. We have heard the learned Counsels for the Applicant and the Respondent.

11. This is an application filed by the Applicant u/s 60(5) read with Section 65 of the Code seeking intervention in the underlying insolvency petition filed by the Original Applicant/Financial Creditor against the Corporate Debtor u/s 7 of the Code and praying for its dismissal on the ground of collusion.
12. Counsel for the Intervenor submits that the above-captioned Company Petition was filed by the Original Applicant in collusion with the Corporate Debtor in order to take undue advantage of the moratorium u/s 14 of the Code in case the application u/s 7 is admitted so as to save itself from the proceedings initiated by the Intervenor for enforcement of security interest under the provisions of the SARFAESI Act, 2002. Counsel for the Intervenor further submits that the debts have already been assigned by the Original Applicant in favour of the Corporate Debtor and thus, the Original Applicant has no locus to file the CIRP petition u/s 7 of the Code.
13. Per contra, the learned Counsel for the Respondent submits that in an application u/s 7 of the Code, only the Financial Creditor and the Corporate Debtor are the necessary parties who have a right to audience and, therefore, the Intervenor herein has no locus to file the intervention petition at pre-admission stage. To buttress the aforesaid submission, the learned Counsel for the Respondent has relied upon the ruling of the Adjudicating Authority in *Simplex Infrastructure Ltd. v/s. Mahendra Investment Advisors Pvt. Ltd. & Anr.* (2020 SCC Online NCLT 12203). Learned Counsel for the Respondent further contends that at pre-admission stage, the Adjudicating Authority is required to see if the debt due and payable by the Corporate Debtor has been defaulted or not and accordingly, either admit or reject the petition u/s 7 of the Code, as the case may be, leaving no scope for intervention and hence, the Respondents pray that the current intervention petition filed by the Intervenor be dismissed as not maintainable. To buttress the aforesaid submission, the learned counsel for the Respondent has relied upon the judgment of Hon'ble

Supreme Court of India in Innoventive Industries Ltd v/s ICICI Bank [(2018) 1 SCC 407].

14. We have carefully weighed and examined the aforesaid submissions.

15. The Hon'ble NCLAT in Vekas Kumar Garg v/s. DMI Finance Pvt. Ltd. (Citation: 2021 SCC Online NCLAT 72) has held as follows:

*"3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB2115/ND/2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. **In an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party** and the Adjudicating Authority is, at the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the 'I&B Code' and then pass an order of admission or rejection on merit as mandated under sub-section (4) of Section 7 within 14 days. **No third-party intervention is contemplated at that stage.**" (Emphasis Supplied)*

The Hon'ble NCLAT in Prayag Polytech Pvt Ltd. v/s. Hind Tradex Ltd. (Citation: 2019 SCC Online NCLAT 1029) had observed as follows:

*"4. From the plain reading of Section 7 of IBC it is clear that the Adjudicating Authority, on being satisfied and if the application is complete, after notice and hearing the 'Corporate Debtor', may either admit the application or reject it. The Hon'ble Supreme Court also noticed the aforesaid mandate of law. In that view of the matter, **we are of the view that there is no requirement for intervention of any Directors or shareholders of the 'Financial Creditor' or any other***

party before admission of Application under Section 7 of IBC. If the application is admitted, it would be open to any aggrieved party to move before this Appellate Tribunal. (Emphasis Supplied)

16. Based on the precedents established by the Hon'ble NCLAT, as referenced in the preceding paragraph, we hold that in an application filed under Section 7 of the Code, the Applicant-Financial Creditor and the Corporate Debtor are the only necessary parties, and no third-party intervention is envisaged at that juncture. During the pre-admission phase, the sole requirement is to satisfy the conditions stipulated under Section 7, namely the existence of a financial debt and default on the part of the Corporate Debtor. Therefore, there is no necessity to involve any other party prior to the admission of an application under Section 7 of the Code, 2016. Consequently, we find that the Applicant lacks the standing to intervene at the pre-admission stage of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. Thus, in regards to the plea for intervention, the present application is subject to dismissal due to a lack of locus.

17. It is contended on behalf of the Intervenor that the Corporate Debtor, in collusion with the Original Applicant, seeks to evade the proceedings initiated by the Intervenor for the enforcement of its security interest under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), under the guise of the moratorium provided for under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("the Code") and in the event that the petition under Section 7 is admitted, the valuable rights of the Intervenor would be seriously prejudiced. However, we find no merit in the aforementioned contention. The Insolvency and Bankruptcy Code, 2016 is a remedial statute designed to safeguard and harmonize the interests of all stakeholders, including creditors, with the primary

objective of revitalizing and rehabilitating financially distressed Corporate Debtors. The legal framework contains sufficient safeguards to protect the interests of secured financial creditors, including the right to participate in Committee of Creditors ("CoC") meetings, inter alia, to approve or reject a resolution plan, the right to enforce or relinquish their security interest pursuant to Section 52 read with Section 53 of the Code in the event of Corporate Debtor liquidation, and the rights of dissenting financial creditors who abstain from approving a resolution plan under Section 30(2) to receive payment which shall not be less than the amount to be paid to such creditors in accordance with Section 53(1) of the Code in the event of a liquidation of the Corporate Debtor. Hence, we cannot concur with the Intervenor's assertion that its significant rights as a secured financial creditor would be compromised or imperiled by the admission of the Corporate Debtor into the corporate insolvency resolution process under Section 7 of the Code. Furthermore, the imposition of the moratorium under Section 14 of the Code serves solely to preserve the assets of the Corporate Debtor in order to prevent any prejudice or impairment to its insolvency resolution process. Therefore, construing the imposition of moratorium under Section 14 of the Code as an attempt to undermine the rights of a secured financial creditor, much less as a means to evade SARFAESI proceedings, lends no credence to the allegations of collusion.

18. Further, no deed of assignment has been produced on record by the Intervenor to prove its allegation that the debt due to the Original Applicant has already been assigned by it. Even otherwise, there is no material or evidence on record to prove the allegations of collusion between the Original Applicant and the Corporate Debtor, as is being alleged by the Intervenor. Therefore, the pleaded allegation of collusion made by the Intervenor remains unsubstantiated. Be that as it may, it shall be open to the Corporate Debtor to show that the debt has

been assigned by the Original Applicant, thereby leaving no room for intervention by the intervenor.

19. The intervenor has asserted that Nestler Commodities Ltd initiated insolvency proceedings against Mr. Shyam Bali, the Personal Guarantor of the Corporate Debtor, under Section 95 of the Insolvency and Bankruptcy Code. Consequently, the intervenor alleges that the Personal Guarantors are invoking the protection of the moratorium under Section 96 of the Code to evade the enforcement of an arbitral award rendered against them. It is important to clarify that the insolvency proceedings against the Personal Guarantors constitute a distinct recourse available to the creditor, distinct from the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. Therefore, the submissions pertaining to the personal guarantors cannot be entertained in the adjudication of this intervention petition related to the CIRP of the Corporate Debtor. Hence, the arbitral proceedings initiated by the intervenor against the Personal Guarantors of the Corporate Debtor, resulting in an Arbitral Award dated 19.01.2022 in favor of the intervenor, hold no relevance to the CIRP of the Corporate Debtor. Consequently, we dismiss the contentions of the intervenor regarding the alleged misuse of the moratorium under Section 96 of the Code by the Personal Guarantors during the consideration of this application seeking intervention in the CIRP of the Corporate Debtor at the pre-admission stage.
20. The Intervenor has sought for directions of this Bench to the registry to issue the certified copies of the entire proceedings in CP(IB) No. 820(MB) of 2020. However, since we are not entertaining the prayer for intervention, we are not inclined to issue any such directions to the registry to issue the certified copies of the entire proceedings in the underlying company petition referred-to-above.

21. No further contentions have been raised on behalf of the Applicant/Intervenor. There is no other issue which remains to be addressed.
22. Thus, in view of the foregoing discussions, findings and analysis, we hold the opinion that the intervention application under consideration should be dismissed at this stage. **Accordingly, Intervention Petition No. 08 of 2022 is hereby rejected**, with no order as to costs.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)