IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 204-IA/1133(AHM)2023 And
ITEM No. 205- IA/1101(AHM)2023 in CP(IB) 265 of 2020

Order under Section 60(5) r.w 31 IBC & Rule 11 of NCLT Rules, 2016

In the matter Of: IA/1133(AHM)2023

Rebarteh Solutions Pvt Ltd **.....Applicant**
Vs
Neha Chhawachharia RP of Steelera Engineers Pvt Ltd & Ors **.....Respondent**

And

Order Under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

In the matter of: IA/1101(AHM)2023 **.....Applicant**
Rebarteh Solutions Pvt Ltd
Vs
Neha Chhawchharia RP of Steelera Engineers Pvt Ltd & Ors. **.....Respondent**

Order delivered on: 06/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD

IA/1133(AHM)2023 with
IA/1101(AHM)2023 in
CP(IB) 265 of 2020

In the matter of

IA/1133(AHM)2023

[An application under Section 60(5) read with Section 31 of the Insolvency and Bankruptcy Code,2016, and Rule 11 of the NCLT Rules, 2016]

Rebartech Solutions Private Limited,
CIN: U51101MH2016PTC271622
Having address at:
Flat No. 503, Building No.5,
Accoladeg C H Society, Hajuri Durga
Road Thane, Maharashtra- 400602

… Applicant

Versus

1. Neha Chhawchharia
Resolution Professional
Steelera Engineers Private Limited
IBBI/IPA-001/IP-P01922/2020-21/13436
South City Complex, 375 Prince Anwar Shah Road,
Tower 3, 19L, Kolkata-700068

2. Midpoint Commodeal Private Limited
Having Registered address at:
11, Unit No. 1, Crooked Lane,
Kolkata-700069, West Bengal

IA/1101(AHM)2023

[Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016]

Rebartech Solutions Private Limited,

CIN: U51101MH2016PTC271622
Having address at:
Flat No. 503, Building No.5,
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1. Neha Chhawchharia
Resolution Professional
Steelera Engineers Private Limited
IBBI/IPA-001/IP-P01922/2020-21/13436
South City Complex, 375 Prince Anwar Shah Road,
Tower 3, 19L, Kolkata-700068

…. Respondent No. 1

2. Midpoint Commodeal Private Limited
Having Registered address at:
11, Unit No. 1, Crooked Lane,
Kolkata-700069, West Bengal

…. Respondent No.2

3. Rahul Chaudhary
Having Registered Address at:
2nd Floor, Room No. 202, Kolkata

…. Respondent No.3

4. Insolvency and Bankruptcy Board of India
Having Address at:
7th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110001

…. Respondent No.4

Order Pronounced on: 06.06.2024

Appearance:

For the Applicant : Mr. Sanjay Kumar Singh, Adv
For the Respondent: Mr. Jaimin Dave, Adv. a.w. Ms. Hirva Dave, Adv
a.w. Ms. Neha Chhawchharia, R.P.
: Mr. Shashwat Shukla, Adv. For R-2

CORAM:

MR. SHAMMI KHAN, MEMBER (JUDICIAL)
MR. SAMEER KAKAR, MEMBER (TECHNICAL)

C O M M O N O R D E R
[PER: BENCH]

1. **IA/1133(AHM)2023** is filed under Sections 60(5) read with Section 31 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 11 of the NCLT Rules, 2016 seeking the following prayers:-

   a. *the RP to provide a copy of the application IA844/AHM/2023 seeking approval of the resolution plan to the applicant enabling the applicant to file a supplementary affidavit in the present application to bring further facts on records or modify the pleadings.*
   b. *Allow this application and reject the resolution plan filed by R2, the Financial Creditor Midpoint Commodeal Private Limited, which has been filed before the Hon'ble Tribunal for approval through IA844/AHM/2023.*
   c. *Replace the Resolution Professional and appoint someone else from the panel of IBBI to conduct the corporate insolvency resolution process of the corporate debtor a fresh by inviting a fresh resolution plan.*
   d. *Pass any other or further order(s) as this Hon'ble NCLT deems fit in the facts and circumstances of the case.*

2. **IA/1101(AHM)2023** is filed under Sections 60(5) of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 11 of the NCLT Rules, 2016 seeking the following prayers: -

   a. *Allow this application and quash the constitution of CoC and all subsequent proceedings in the matter.*

b. *Replace the Resolution Professional and appoint someone else from the panel of IBBI to conduct the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor a fresh.*

c. *Direct the newly appointed Resolution Professional to initiate proceeding under section 43,44,49 and 66 for recovery of the diverted amount from the corporate debtor within the look back period.*

d. *Direct the IBBI to initiate disciplinary proceedings against the RP for failing to perform her duties as Resolution Professional which calls for adherence of the provisions of Insolvency & Bankruptcy Code, 2016 and the Regulations made thereunder including Code of Conduct of Insolvency Professional in respect of Integrity, objectivity, independence, and acting without bias against any person.*

e. *Direct the IBBI to intiate prosecution against the directors/promoters and financial creditor along with the RP and transaction auditors in matter for indulging into fraudulent trading and forentering into conspiracy to derail the Corporate Insolvency Resolution Process (CIRP).*

f. *Pass any other or further order(s) as this Hon'ble NCLT deems fit in the facts and circumstances of the case.*

Facts in IA/1133(AHM)2023

3. It is stated in the application that: -

I. The present application filed under section 60(5) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 seeking rejection of the resolution plan filed by the Resolution Professional through IA

844(AHM)/2023 in terms of leave granted by the Hon'ble Tribunal vide order dated 7th August, 2023, whereby the Hon'ble Tribunal was pleased to grant liberty to the applicant operational creditor to file applicant against approval of the resolution plan.

II. It is submitted that the resolution plan approved by the sole financial creditor having more than 99.87% of voting share in its favour is in violation of section 30(2)(b) of the Code and it is not just and equitable in relation of the payment proposed to be made to the applicant as operational creditor. It is being submitted that the applicant is a registered MSME and the outstanding due of the applicant are protected under the provisions of the MSME Act, 2006 as well as the Companies Act, 2013. The resolution plan as approved by the COC It in contradiction of the provisions of MSME Act, 2006 as well as to the provisions of Companies Act, 2013 and it does not comply with the requirements of the provisions of Section 30(2)(e) of the Insolvency and Bankruptcy Code, 2016, which provides that the resolution plan does not contravene any of the provisions of the law for the time being in force.

III. Respondent no. 1, the Resolution Professional (RP) had willfully for her personal benefits violated the provisions of the IBC and have during the entire process not performed her duties as per the

requirements of IBC and the Regulations made thereunder in connivance with the respondent no.2 Midpoint Commodeal Private Limited, who was considered financial creditor having more than 99.87% of voting share on the basis of an accommodation entry taken by the directors of the company after filing of application for commencement of CIRP under section 9 of the Code and also in connivance with the directors of suspended board of the corporate debtor.

IV. The RP failed in her performing her duties in respect of verification of the claim of the respondent no.2 as well as in respect of examination of the resolution plan submitted by the R2, who is the financial creditor having more than 97.87% voting shares in the COC. It is important to note that the financial creditor is not a non-banking financial company (NBFC) and the loan as claimed by the financial creditor is just an accommodation entry arranged by the corporate debtor to have back door control over the CIRP of the corporate debtor. The financial creditor is not in the business of providing loan, the RP failed to enquire under which circumstances, the financial creditor has provided loan to a company against which an applicant for insolvency is pending for last two years without having any control on the end

use of the funds. It is a matter of fact that the amount was used to repay the loan to the related companies/entities.

V. No one having any business prudence would like to put money in a company against which an application for commencement of insolvency is pending for last two years. It is important to mention here that the corporate debtor as on 31st March, 2022 had a negative net worth of Rs.1.57 Crores and the total assets of the corporate debtor including everything was less than Rs.6,00,00,000/- as on 31 March, 2022 then a genuine question arises towards the motive of financial creditor and the management of corporate debtor. How the financial creditor gave a loan of Rs.6,00,00,000/- if the company did not have total assets of that much value and what was the purpose of the loan.

VI. There is no apparent reason of giving loan by a trading company to a company against which there is an application of insolvency is pending for more than two years. That is why it is being submitted that the financial creditor entered into criminal conspiracy with the promoters and directors to hijack the entire CIRP process and to oust the applicant from becoming member of the COC upon admission of the CIRP. Hence, the applicant has already filed a separate application before this Hon'ble Tribunal to quash the constitution of the committee of creditor and to

declare all the subsequent proceedings in respect of the CIRP of the corporate debtor as null and void.

Reply

4. The Respondent No. 1 has filed a reply to the IA 1133 of 2023 under inward Diary No. D4738 on 29.11.2023 stating that:-

I. The Applicant does not have any locus standi to challenge the constitution of Committee of Creditors and appointment of Resolution Professional.

II. The Application is barred by principles of delay, latches, waiver and estoppel. It is submitted that Applicant has participated in all the meetings of Committee of Creditors from 23.12.2022 till 23.06.2023 and has never raised any objection against the composition of Committee of Creditors or appointment of Resolution Professional till the end of entire Corporate Insolvency Resolution Process. It is submitted that immediately upon approval of Resolution Plan and filing of I.A. No. 844 of 2023, Applicant has suddenly woken up from its deep slumber and filed present applications.

III. This application is filed with a mala fide intention of delaying the approval of the resolution plan.

IV. The Applicant has made similar attempt to delay the approval resolution plan by filing a complaint against Respondent No. 1

before IBBI. It is pertinent to mark that the said complaint was filed on the very same grounds and averments. The said complaint is closed by IBBI vide communication dated 31.01.2024 after taking into consideration the response of Respondent No. 2.

V. It is stated that the interest claim of the Applicant is rightly rejected by Respondent No. 1 and the said decision is not challenged till date by the Applicant till date and it is as under:

a) As demonstrated herein above, vide e-mails dated 06.02.2023 and 24.02.2023, Applicant was called upon to produce documentary evidence in support of its claim for interest to the tune of Rs. 1,14,81,864/- at the rate of 12% per annum. Infact, Respondent No. 1 also held zoom meeting for the purpose of submission of documents in support of claim for interest amount.

b) However, Applicant miserably failed to produce documentary evidence such as invoices, delivery challans, purchase orders or other document evidencing interest liability of the Corporate Debtor. In absence of any such documents, the Respondent No. 1 was compelled to reject the claim for interest to the tune of Rs. 1,14,81,864/-.

c) At this stage it is pertinent to note that before rejection of claim of interest to the tune of Rs. 1,14,81,864/-, Applicant

has never claimed that the said interest was charged under Section 16 of MSMED Act in any of its correspondence with Respondent No. 1.

d) it is stated that even in claim form, Applicant has not claimed that interest is charged in accordance with Section 16 of MSMED Act.

e) It is after the rejection of the claim for interest, as a measure of afterthought, Applicant has pressed Section 16 of the MSMED Act into service. However, Section 16 of the MSMED Act can only be pressed into service by approaching Micro and Small Enterprise Facilitation Council as per section 18(1) of the MSMED Act. The Applicant cannot claim advantage of Section 16 of MSMED Act, without resorting to the adjudication mechanism as provided under Section 18 of MSMED Act.

VI. It is further submitted that Respondent No. 1 has not violated provisions of Section 43, 45, 49 and 66 of Insolvency and Bankruptcy Code, 2016.

i. It is submitted that Respondent No. 1 has formed an opinion as required under Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

ii. Thereafter, with the approval of CoC, Respondent No. 1 has appointed transaction auditor in 3rd CoC meeting dated 04.02.2023 to opine on the transactions falling under Section 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016.

iii. The transaction auditor in his report opined that there were no transactions falling within the purview of Section 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016.

iv. The said report was placed for consideration before CoC in 5th CoC meeting. During 5th CoC meeting it was resolved in presence of Applicant that based on determination made by the Respondent No. 1 as well as Transaction Auditor, none of the transaction falls under the category of Section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016 and hence no application is required to be filed under said provisions. (See 93 of Affi in Reply of R1) e. Furthermore, Applicant was present in the said meeting and he has never objected to the said resolution till filing of this Application. Infact, this resolution is not under challenge in this Application. Hence, the present application is required to be rejected in so far as it seeks direction against newly appointed

Resolution Professional to initiate proceedings under Section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016.

v. It is submitted as per the transaction auditor; Corporate Debtor has availed loan from Respondent No. 2 since Respondent No. 2 offered larger amount of loan at a lower rate of interest as compared that of loan received from related party. Hence, payment received from Respondent No. 2 were being utilized for repayment of outstanding loan received from related party since in ordinary course of business. Furthermore, part of the loan amount was also utilized for paying off operational creditor. In light of these facts, it was concluded that the decision was taken in business prudence and refund of loan is to be treated non- preferential.

vi. It is further submitted that Respondent No. 2 has advanced loan to the Corporate Debtor after following provisions of Section 186 of Companies Act, 2013. Furthermore, the action of Respondent No. 2 of advancing loan to the Corporate Debtor is not under challenge before this Hon'ble Tribunal or any competent forum till date.

vii. It is submitted that Respondent No. 2 was added as member of CoC even before Respondent No. 1 was appointed as Resolution Professional. Hence, to claim that Respondent

No. 1 has connived with FC and Ex-Management is totally baseless, misconceived and illegal.

viii. The Respondent had proposed four names before the CoC and CoC has voted in favour of appointment of Mr. Rahul Chaudhary, Chartered Accountant as transaction auditor since his quote was lowest. Thus, it is also denied that Respondent No. 1 appointed Mr. Rahul Chaudhary, Chartered Accountant as Transactions Auditor, who was working for the Financial Creditor and Corporate Debtor prior to CIRP. It is submitted that Mr. Rahul Chaudhary, Chartered Accountant was never working for Financial Creditor. Hence that assertion is factually incorrect. Mr. Rahul Chaudhary, Chartered Accountant worked for Corporate Debtor. However, IBBI (Insolvency Professionals) Regulations, 2016 does not require Applicant to make any disclosure with respect to appointment of a professional who was earlier engaged by Corporate Debtor. (Please refer to Clause 8C and 8C of Code of Conduct for Insolvency Professionals). Furthermore, Respondent No. 1 has obtained declaration dated 06.02.2023 from Mr. Rahul Chaudhary, Chartered Accountant to the effect that he is not

related party Corporate Debtor, Financial creditors, interim finance provider of other shareholders.

ix. Furthermore, fact that Respondent No. 2 was included as a member of CoC was never assailed before this Hon'ble Tribunal till the completion of entire CIRP process. Infact, Applicant sat tight over the matter for the entire CIRP and immediately after approval of the resolution plan, Applicant has filed such misconceived and baseless application so as to delay the approval of resolution plan.

x. It is submitted that Applicant is not a party of I.A. No. 844 of 2023 and therefore it is not entitled to receive a copy of I.A. No. 844 of 2023.

5. Respondent No. 2 filed its reply on 26.12.2023 under inward diary no. D5092 which states as under:

a) With reference to the statements made in paragraphs IV(1) to IV(4) of the application, save and except matters of record, all allegations contrary thereto are denied and disputed. It is denied that the loan of Rs.6,00,00,000/- was paid back to the promoters or directors and the related parties or that the same was not utilized for the business operations of the Corporate Debtor. The applicant has mala fide selectively relied on few portions of the Transaction Auditor's report and has with ulterior motive suppressed that the Transaction

Auditor did not report any avoidance transactions in its findings. It is denied that the answering respondent was aware that insolvency of the Corporate Debtor was imminent or that the said loans were provided devoid of any business prudence, as alleged or at all. The circumstances under which the loan was provided by the answering respondent to the Corporate Debtor have already mentioned hereinabove. It is denied that the Corporate Debtor as on March 31, 2022 had negative net worth of Rs.1,57,00,000 or that the total assets of the Corporate Debtor including everything was less than Rs. 6,00,00,000/- as on March 31, 2022 or that merely since the Corporate Debtor's net worth was negative therefore, the loan provided by the answering respondent can be called into question. I say that since the Corporate Debtor was not doing well financially, therefore, it sought loans from third parties including the answering respondent in order to address its liquidity crisis. It is denied that there is no apparent reason for disbursement of the loan by the answering respondent to the Corporate Debtor or that the answering respondent was aware that insolvency of the Corporate Debtor was imminent.

b) With reference to the statements made in paragraphs IV(5) to IV(11) of the application, save and except matters of record, all allegations contrary thereto are denied and disputed. It is denied

that no reason was provided by the resolution plan as to why the applicant's claim for interest was rejected. I say that from a bare perusal of the list of operational creditors (other than workmen and employees and government dues) as uploaded by the Resolution Professional in the IBBI website, it is apparent that the applicant's claim towards purported interest has not been admitted by the Resolution Professional since the applicant "has not yet provided the documentary evidence relating to interest clause. In view of the same RP has not admitted interest portion of claim." A copy of the said list of operational creditors of the Corporate Debtor as uploaded by the Resolution Professional on the IBBI website is annexed hereto and marked 'D' The applicant without submitting proper proof in support of its claim and failing to challenge the Resolution Professional's decision earlier cannot be permitted to vent its grievances regarding the said decision by way of the present application. It is denied that the applicant as a MSME is statutorily entitled to receive interest on overdue payments in terms of the MSME Act, 2006. It is denied that the Resolution Professional ought to have filed an application for avoidance of the purported preferential or other transactions or that the COC also ought to have instructed the Resolution Professional to file any application for avoidance of purported

preferential and/or fraudulent transactions, as alleged or at all. The Transaction Auditor and the Resolution Professional have independently opined and/or determined that there are no preferential and/or fraudulent transactions in respect of the Corporate Debtor and as such, there was no need to file an application before this Hon'ble Tribunal in this regard. I say that it is immaterial and/or irrelevant as to whether the Resolution Professional, Promoters, financial creditor, valuers and the Transaction Auditor all belong to Kolkata or not and the same does not evidence any collusion between the said parties. The applicant has not been able to show any collusion or ex facie irregularity in the CIRP of the Corporat Debtor and therefore, the applicant cannot be permitted to malafide make insinuations regarding the propriety of the CIRP and/or the approved resolution plan. It is denied that the objective of maximization of value was gone the moment the Resolution Professional accepted the expression of interest submitted by the answering respondent, as alleged or at all.

c) With reference to the statements made in paragraphs IV (12) to IV (15) of the application all allegations contrary thereto are denied and disputed. It is denied that the Resolution Professional after having examined the Transaction Auditor's report as well as

independently determining that none of the transactions are avoidable transaction within the meaning of IBC ought to have filed any application for avoidance of the purported related party transactions before this Hon'ble Tribunal, as alleged or at all. It is denied that the Resolution Professional has thus abused the position of a Resolution Professional as envisaged under the IBC. It is denied that the Resolution Professional has not complied with the requirements of the IBC or that the resolution plan does not comply with the provisions of IBC, as alleged or at all.

d) With reference to the statements made in paragraphs IV (16) to IV (21) of the application, all allegations contrary thereto are denied and disputed. It is denied that the applicant as MSME is entitled to seek any exemption or that the provisions of Section 29A of the IBC are applicable to the applicant in the instant case Since the applicant is not a prospective resolution applicant and has never submitted a resolution plan, therefore, the applicant is not entitled to any special consideration merely by dint of being a MSME. It is denied that the resolution plan is contrary to the applicant's interest as MSME or that the Resolution Professional ought to have considered that the applicant was a MSME at the time of admission of the applicant's claim or at the time of approval of the resolution plan, as alleged or at all. It is denied

that the resolution plan should have included an averment as to how the resolution plan is fair or equitable considering that the applicant is a MSME, as alleged or at all. It is denied that the present application has been filed bona fide or in the interest of justice, as alleged or at all.

e) The Respondent No. 2 has denied all the grounds mentioned in the application.

f) The applicant has failed to make out any case for rejection of the resolution plan approved by the COC with 99.87% votes. The applicant has failed to demonstrate that the resolution plan in any manner whatsoever contravenes the IBC. The applicant is also not entitled to receive a copy of I. A. (IB) No. 844/AHM/2023 purportedly to bring on record further facts and/or to modify its pleadings. The applicant's allegations relating to the replacement of the Resolution Professional or demand for calling a fresh resolution plan are also based on frivolous and baseless premise and therefore, no credence ought to be given to the applicant regarding the alleged irregularity of CIRP and/or alleged dereliction of duty by the Resolution Professional.

Rejoinder

6. Applicant has filed its rejoinder on 17.01.2024 under inward diary no. D346 which stated that the submissions made by the Respondent in their

respective reply are denied by the Applicant and also the submissions of Respondents in their reply are devoid of any substance and merit and is made with mala fide intention to mislead, misguide and misrepresent this Tribunal.

7. The Applicant and Respondent No.1 filed written Submission on 15.04.2024 and 10.04.2024 respectively.

Facts of IA/1101(AHM)2023

8. It is stated that: -

I. The present application filed under section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking appropriate directions against the respondents, who have willfully and intentionally violated the provisions of the Insolvency & Bankruptcy Code, 2016 (IBC) and the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 (CIRP Regulations) for personal benefits.

II. Respondent no. 1, the Resolution Professional (RP) has willfully for her personal benefits violated the provisions of the IBC and have during the entire process not performed her duties as per the requirements of IBC and the Regulations made thereunder in connivance with the respondent no.2 Midpoint Commodeal Private Limited, who was considered financial creditor having

more than 99.87% of voting share on the basis of an accommodation entry taken by the directors of the company after filing of application for commencement of CIRP and also in connivance with the directors of suspended board of the corporate debtor.

III. The Resolution Professional has more specifically violated the provisions of section 43, 44, 49, 66 and other provisions; related to determination of the preferential, avoidable, undervalued and fraudulent transactions and has willfully allowed to continue the Respondent no.2 to be the member of Committee of Creditors (COC) with almost 100% of the voting shares. The RP failed in her performing her duties in respect of verification of the claim of the respondent no.2. Further the Resolution Professional has failed in performance of her duties as envisaged under the IBC and the CIRP Regulations as well as under the Professional Code of Conduct for the Insolvency Professional which calls for integrity, objectivity, independence and acting without bias against any person during the process.

IV. Through this application the applicant seeks to challenge the very constitution of the Committee of Creditors in the matter of corporate insolvency resolution process (CIRP) of the Steelera Engineers Private Limited and all subsequent proceedings

including the meetings of the COC, invitation of expression of interest, appointment of transaction auditors and approval of resolution plan by the COC.

V. The present application is being filed with a prayer for replacement of Resolution Professional, reconstitution of the committee of creditors and commencement of CIRP a fresh by any other resolution professional appointed by the Hon'ble Tribunal.

VI. The application further seeks directions against respondent no.3 and also seeking direction against the respondent no. Rahul Chaudhary, Chartered Accountant, who has conducted the transaction audit and has declared in his report that the corporate debtor does not have entered any preferential, avoidable, undervalued and fraudulent transactions, which is far from the fact. The fact is that the entire amount received from the respondent number 2 has been routed to the ex-directors and their related companies, which is within the look back period. The transactions being related party transactions were hit by provisions of section 43 of the IBC, 2016.

VII. It is also important to mention here that the corporate debtor has its registered office in Gujarat whereas the RP, the financial creditor and suspended board and the valuers appointed by RP

and the transaction auditor are all based in Kolkata, West Bengal, which cannot be a coincidence.

VIII. The applicant further seeks direction to the respondent no.4, Insolvency & Bankruptcy Board of India for initiation of investigation against the resolution professional and transaction auditor and appropriate action by Insolvency & Bankruptcy Board of India agains all the respondents.

IX. This application is filed by MP Resources – the Original Operational Creditor seeking rejection of the Resolution Plan dated 29.07.2022 submitted by Sun Chemicals as the same is filed by the related party.

X. Sun Chemicals is a partnership company and Mr. Rajendra Ashara is the partner of the partnership firm. As per the balance sheet of the Corporate Debtor Company wherein it is specifically mentioned under the head of **"Unsecured-Loans & Advance from Related Parties, Shareholders & Directors and their Relatives"** that Mr. Rajendra Ashara had given loan facilities to the Corporate Debtor Company. The copy of the Annual Report along with the Audited Balance Sheet and Profit & Loss Account for the year ended 2015, 2016, 2018 and 2019 are annexed as Annexure-C.

XI. Through the balance sheet, it is clearly seen that Respondent No.3 (Sun Chemicals) had given loan facilities to the Corporate Debtor Company and by misrepresentation, Respondent No.3 is trying to get the approval of the plan which is barred under law.

XII. Further, the Corporate Debtor is not registered as MSME and, therefore, the related party cannot participate the resolution process.

Reply

9. The Respondent No.1 has filed a reply to the IA 1101 of 2023 under inward Diary No. D3245 dated 28.08.2023 stating that:-

a) It is submitted that Respondent No. 1 has formed an opinion as required under Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

b) Thereafter, with the approval of CoC, Respondent No. 1 has appointed transaction auditor in 3rd CoC meeting dated 04.02.2023 to opine on the transactions falling under Section 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016.

c) The transaction auditor in his report opined that there were no transactions falling within the purview of Section 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016.

d) The said report was placed for consideration before CoC in 5th CoC meeting. During 5th CoC meeting it was resolved in

presence of Applicant that based on determination made by the Respondent No. 1 as well as Transaction Auditor, none of the transaction falls under the category of Section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016 and hence no application is required to be filed under said provisions. Furthermore, Applicant was present in the said meeting and he has never objected to the said resolution till filing of this Application. Infact, this resolution is not under challenge in this Application. Hence, the present application is required to be rejected in so far as it seeks direction against newly appointed Resolution Professional to initiate proceedings under Section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016.

e) It is submitted as per the transaction auditor; Corporate Debtor has availed loan from Respondent No. 2 since Respondent No. 2 offered larger amount of loan at a lower rate of interest as compared that of loan received from related party. Hence, payment received from Respondent No. 2 were being utilized for repayment of outstanding loan received from related party since in ordinary course of business. Furthermore, part of the loan amount was also utilized for paying off operational creditor. In light of these facts, it was concluded that the decision was taken

in business prudence and refund of loan is to be treated non-preferential.

f) It is further submitted that Respondent No. 2 has advanced loan to the Corporate Debtor after following provisions of Section 186 of Companies Act, 2013. Furthermore, the action of Respondent No. 2 of advancing loan to the Corporate Debtor is not under challenge before this Hon'ble Tribunal or any competent forum till date.

g) It is submitted that Respondent No. 2 was added as member of CoC even before Respondent No. 1 was appointed as Resolution Professional. Hence, to claim that Respondent No. 1 has connived with FC and Ex-Management is totally baseless, misconceived and illegal.

h) The Respondent had proposed four names before the CoC and CoC has voted in favour of appointment of Mr. Rahul Chaudhary, Chartered Accountant as transaction auditor since his quote was lowest. Thus, it is also denied that Respondent No. 1 appointed Mr. Rahul Chaudhary, Chartered Accountant as Transactions Auditor, who was working for the Financial Creditor and Corporate Debtor prior to CIRP. It is submitted that Mr. Rahul Chaudhary, Chartered Accountant was never working for Financial Creditor. Hence that assertion is factually incorrect. Mr.

Rahul Chaudhary, Chartered Accountant worked for Corporate Debtor. However, IBBI (Insolvency Professionals) Regulations, 2016 does not require Applicant to make any disclosure with respect to appointment of a professional who was earlier engaged by Corporate Debtor. (Please refer to Clause 8C and 8C of Code of Conduct for Insolvency Professionals). Furthermore, Respondent No. 1 has obtained declaration dated 06.02.2023 from Mr. Rahul Chaudhary, Chartered Accountant to the effect that he is not related party Corporate Debtor, Financial creditors, interim finance provider of other shareholders.

i) Furthermore, fact that Respondent No. 2 was included as a member of CoC was never assailed before this Hon'ble Tribunal till the completion of entire CIRP process. Infact, Applicant sat tight over the matter for the entire CIRP and immediately after approval of the resolution plan, Applicant has filed such misconceived and baseless application so as to delay the approval of resolution plan.

j) It is submitted that Applicant is not a party of I.A. No. 844 of 2023 and therefore it is not entitled to receive a copy of I.A. No. 844 of 2023.

10. Respondent No. 2 filed its reply on 26.12.2023 under inward diary no. D4928 which states as under:

a) With reference to the statements made in paragraphs IV (1) to IV (5) of the application, save and except matters of record, all allegations contrary thereto are denied and disputed. It is denied that the Corporate Debtor took the loan from the Respondent No.2 in order to get any undue advantage on other creditors or that the Respondent No.2 is not a genuine creditor of the Corporate Debtor. It is denied that the Respondent No.2 not being an NBFC or financial lender could not have provided the said loan to the Corporate Debtor. It is reiterated that the Respondent No. 2 had duly complied with the requirements as envisaged under Section 186 of the Companies Act, 2013. The contention of the applicant that prior to the Respondent No.2's entry as Financial Creditor the applicant was the main supplier who would have more than 90% of the voting share in the COC is speculative and does not assist the applicant in any manner whatsoever. It is denied that the loans received from the Respondent No.2 in the month of April, 2022 was paid back to the promoters or Directors and their related companies and that the same were preferential transactions within the meaning of IBC, as alleged or at all. It is denied that both the Resolution Professional and the Transaction Auditor have

opined/determined that the said transactions were preferential in nature and the applicant is put to strict proof regarding his aforementioned contention. It is denied that the loan serviced by the Respondent No.2 was not a genuine transaction or was a transaction created for the purpose of gaining any undue advantage over other creditors of the Corporate Debtor.

b) With reference to the statements made in paragraphs IV (6) to IV(15) of the application, save and except matters of record, all allegations contrary thereto are denied and disputed. It is denied that the applicant is entitled to question the decision of the Resolution Professional to admit the entire claim of the Respondent No.2 or that the Resolution Professional erred in her duty to fully admit the claim of the Respondent No.2 since the said loan was not utilized for the business of the Corporate Debtor or was used for making preferential payments to the Directors/promoters and the related entities of the Corporate Debtor. The Respondent No. 2 craves leave of this Tribunal to rely upon and refer to the findings of the transaction auditor's report and the determination of the Professional in terms of regulation 35A (3) of the IBBI (Insolvency Process for Corporate Persons) Regulations, 2016 in this regard. It is denied that the loan taken from the Respondent No.2 in April, 2022 was utilized for

making preferential payments or that the Resolution Professional ought to have taken any steps to recover the said amounts from the promoters/Directors and the related parties of the Corporate Debtor, as alleged or at all. It is denied that the Respondent No.2 and the management of the Corporate Debtor have connived or colluded with each other in any manner or that the said loan was not a genuine or a bona fide transaction. The applicant's allegation that the Resolution Professional and the Respondent No.2 all belong to Kolkata and therefore the CIRP has not been conducted properly is baseless and merits no response. It is denied that the Resolution Professional ought to have filed an application under Section 19(2) of the IBC against the promoters/Directors of the Corporate Debtor since all documents as sought for by the Resolution Professional had been duly provided by the auditor of the Corporate Debtor to the Resolution Professional.

c) With reference to the statements made in paragraphs IV(16) to IV(23) of the application, save and except matters of record, all allegations contrary thereto are denied and disputed. It is denied that the Resolution Professional after having examined the Transaction Auditor's report as well as independently determining that none of the transactions are avoidable transaction within the meaning of IBC ought to have filed any application for avoidance

of the purported related party transactions before this Hon'ble Tribunal, as alleged or at all. It is denied that the Resolution Professional has thus abused the position of a Resolution Professional as envisaged under the IBC. It is denied that the Resolution Professional has connived with the Financial Creditor in passing the said Resolution Plan. It is denied that there is any statutory bar in the IBC which Financial Creditor from becoming the successful resolution applicant notwithstanding the commercial decision of the COC in determining the said Resolution Plan to be feasible, viable and/or meeting all statutory requirements as stipulated in the IBC and IBBI (Insolvency Process for Corporate Persons) Regulations, 2016. I reiterate that Section 30(5) of the IBC permits a resolution applicant who is a financial creditor to vote on its own resolution plan. I say that the applicant has failed to demonstrate any ground as to why the said Resolution Plan as approved with the majority of 99.87% votes ought not to be approved by this Hon'ble Tribunal. It is denied that the present application has been filed bona fide or in the interest of justice.

d) The applicant has failed to make out any case warranting grant of reliefs as prayed for herein. The applicant has failed to demonstrate that the constitution of COC is bad in law or that all

decisions taken ought to be nullified. The applicant has also failed to make purported fraudulent trading and/or for entering into conspiracy to derail the CIRP. It is reiterated that the present has been filed mala fide by the applicant only for the purpose of prolonging final hearing of I.A. No.844/AHM/2023. Since the applicant is well aware that the applicant as an Operational Creditor is not entitled to challenge the propriety of a feasible and viable IBC-compliant plan, therefore the applicant has in order to circumvent the aforesaid, instituted the present application before this Tribunal.

11. Respondent No. 4 filed its reply on 31.01.2024 under inward diary no. D575 which states as under:

a. The Respondent No.4 has already commenced investigation against the erring RP namely Ms. Mr. Neha Chhawchharia. The direction as sought by the applicant vide prayer D of the application IA1101 of 2023 has been put in motion by the Respondent No.4.

b. That consequent to the above, an Investigating Authority ("IA") has been appointed by Respondent No.4/IBBI to investigate the conduct of the abovementioned RP. The IA had sent a Notice to the IRP on December 07, 2023. The RP has sent a reply to the

above-mentioned Notice and the same is currently under examination/scrutiny.

c. It is submitted that the investigation by the IA is currently under process. The Respondent No.4/IBBI is bound to deal with complaints, and initiate inspection or investigation under section 218 of the IBC strictly in accordance with the provisions of the IBC and Regulations made thereunder. Respondent No.4/IBBI has followed the process and procedures as provided in the Regulations.

d. That the present reply is being filed to bring out the facts and circumstances in right perspectives and, the Respondent No.4/IBBI and the instant reply is bona fide.

Rejoinder

12. Applicant has filed its rejoinder on 17.01.2024 under inward diary no. D345 which stated that the submissions made by the Respondent in their respective reply are denied by the Applicant and also the submissions of Respondents in their reply are devoid of any substance and merit and is made with mala fide intention to mislead, misguide and misrepresent this Tribunal.

13. the Applicant and the Respondent No. 1 filed their Written Submissions on 15.04.2024 and 10.04.2024 respectively.

14. The Respondent No. 1 filed an Additional Affidavit on 05.04.2024 under Inward Diary No. D2484 to place on record the conclusion of the Investigation done by the IBBI against Respondent No.1. It is stated that the said investigation was concluded and Respondent No. 1 was informed vide communication dated 31.01.2024 that considering that the deviations are of technical nature, IBBI has taken a lenient view in the matter and further advised Respondent No.1 to be more vigilant in future assignments.

15. The Communication made by the IBBI to the Resolution Professional with regards to the disciplinary Proceedings are reproduced as below:

> *"1. This is in reference to the investigation conducted by the Insolvency and Bankruptcy Board of India (IBBI/ the Board) in exercise of its powers under section 218(1) of the Insolvency and Bankruptcy Code, 2016 (Code) in the above matter.*
> *2. On consideration of the report in accordance with the Code and Regulations made thereunder, it is observed following lapses on your part:*
> *i. there was a delay of 57 days in the verification of claim of Rebartech Solutions Private Limited*
> *ii. failure to circulate the agenda in accordance with Regulation 21(3)(ii) of the Insolvency Resolution Process for Corporate Persons Regulations (CIRP Regulations), Regulations by not providing the list of agendas to be voted upon in the 3" CoC meeting.*
> ***3. However, considering that the deviation is of technical in nature, Board has taken a lenient view in the matter and deem it appropriate to advised to be vigilant and take due care and precaution in your future assignments to comply with the provisions of the Code, the Regulations made thereunder and the specified Code of Conduct."***

16. We have heard the Learned counsels in both IAs and perused the documents placed before us.

17. The observations of the Tribunal are as follows:

a) The Applicant filed the IA 1133 seeking replacement of RP and rejection of Resolution Plan. the IA 1101 of 2023 was filed seeking to quash COC, Replace RP and direct IBBI to initiate proceedings against RP and others.

b) The Resolution Plan was approved by the CoC during the 9th Meeting which was held on 15.05.2023. the abovementioned meeting was also attended by the Applicant despite being present during the meeting the Applicant didn't raise any objection to the Approval of the Plan at that time.

c) with respect to the Transaction Audit Report which was place before CoC during 5th meeting stated that there was no need to file an Application under section 43,45,50 and 66 of Insolvency & Bankruptcy Code, 2016, 2016. as per audit report the CD availed the loan from Respondent No. 2 as Respondent No.2 provided larger amount of loan at lower rate of interest as compared that of loan received from the related party.

d) Order dated 17.10.2023 records as under:

"The learned counsel appearing on behalf of the applicant state that he is not pressing prayer A. However, he is pressing prayer B and C. Opportunity was given and provisions were explained for replacement of the RP to the counsel for the applicant. However, he is persistent on prayer C."

In view of the above the Prayer A of IA 1133 of 2023 has become infructuous.

e) With respect to the Prayer B of the IA 1133 of 2023 the Applicant has asked for the rejection of the Resolution Plan pending before this Tribunal. It is seen that the Applicant was sitting in the CoC meeting since constitution of the CoC and not even once raised any objection to the Resolution plan at the meeting conducted for the Approval of the Plan. The Applicant was silent and just observed whole process and only filed this Application when the CoC had approved the Resolution Plan and then filed the same before this Tribunal. The Maxim ***Vigilantibus Non Dormientibus Jura Subveniunt*** applies in the present matter which means that the Law assists only those who are vigilant and not those who sleep over their rights. In so far as the approval of the Resolution Plan is concerned, this Authority is convinced on the decision of the Committee of Creditors, following the Judgment of Hon'ble Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank** *(2019) 12*

SCC 150, wherein in para 19 and 62 it is held as follows;

> *"19…….In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).*
>
> *62…….In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."*

Also, the Hon'ble Supreme Court in the case of **Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr in Civil Appeal No. 1527 of 2022** also has reiterated that CoC wisdom is supreme.

In view of the above the Prayer of Applicant to reject the Resolution Plan is hereby Rejected.

f) The Applicant in Prayer C of the IA 1133 of 2023 seeks to replace the Resolution professional and appoint a new Resolution Professional. with regards to the above prayer it seen that the Applicant does not have any authority as specified in Section 27 of Insolvency & Bankruptcy Code, 2016 which is reproduce as under:

> *"**27(1)** Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.*
>
> ***(2)** The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.*

The above mentioned prayer is rejected in view of the fact that there is no resolution by the CoC to replace the Resolution Professional.

g) The Applicant in prayer A of the IA 1101 of 2023 asked to quash the constitution of CoC with regards to the prayer A, the Applicant has traveled beyond the law. No cognate material was

placed before us due to which this Adjudicating Authority may be compelled to order for reconstitution of CoC.

h) The Applicant in his prayer B of IA 1101 of 2023 asked the similar prayer to the Prayer C of IA 1133 of 2023. Therefore, in view of the Para (d) of the observation of this order Prayer B is rejected.

i) The Applicant in Prayer C asked for Newly appointed RP to initiate proceeding under section 43,44,49 and 66. In Prayer D and E of IA 1101 of 2023 seeks to direct IBBI to initiate disciplinary proceedings against RP and prosecution against directors/promoters and financial creditor respectively.

j) IBBI has filed a reply on 31.01.2024 stating that they have commenced the investigation against the Resolution Professional with regards to the allegations of the Applicant. The Resolution Professional placed on record the communication dated 31.01.2024 of the final report of the IBBI with regard to the Disciplinary proceedings against the RP. It is seen that the IBBI in their investigation concluded that the deviation in the matter is technical in nature and, therefore advised RP to take precautions in future assignments. In view of the above Prayer C, D and E of IA 1101 of 2023 is rejected as the IBBI being the regulatory authority of the Resolution Professionals conducted the displinary

proceedings and gave clean chit to the RP we are inclined to proceed with accordance to the report of the IBBI.

k) It is stated by the Applicant that the claim of Applicant with respect to the interest was rejected during 7th CoC Meeting on account of lack of Documents for verification of that claim. It is seen that the Applicant has not made any prayer in his application as to the claim of Interest. Since no prayer with respect to the claim of interest is made by the Applicant in the Application we are inclined to give no order in this regard.

18. In view of the above observations and averments, we hereby reject and dismiss both the Applications. Hence, IA 1101 of 2023 and IA 1133 of 2023 in CP(IB)265 of 2020 are dismissed and disposed off. No order as to costs.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

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