

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

IA No. 5175 of 2023

In

C.P.(IB) No. 1896/IBC /MB/2018

*Application filed under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016.*

1. UB stainless limited

having its address at Plot No. A63 & 64,
MIDC Industrial Estate,
Near Malegaon, Sinnar,
Nasik-422113.

2. UB Equipment's Limited

having its address at Plot No. A63 & 64,
MIDC Industrial Estate,
Near Malegaon, Sinnar,
Nasik-422113.

3. Salonah Tea Private Limited

having its address at 12 Preetoria Street,
5th Floor,
Kolkata – 700071.

.....Applicants

V/s.

1. Vinit Gangwal,

The Resolution Professional of M/s. Blue
Blends (India) Limited.

Office No.503, Varun Capital, J. M. Road,
Opp. Jangli Maharaj Temple Bharat Petrol
Pump Lane,
Near Citiotel, Shivajinagar,
Pune-411005.

2. Mr. Anand Arya

Erstwhile Promoter of M/s. Blue Blends
(India) Limited
B-2, 26th Floor, Prithvi Apartment,
Altamount Road,
Mumbai-400 026.

3. Mr. Aman Arya

B-2, 26th Floor, Prithvi Apartment,
Altamount Road,
Mumbai-400 026.

4. Mr. Indu Arya

B-2, 26th Floor, Prithvi Apartment,
Altamount Road,
Mumbai-400 026.

5. Annand Arya HUF

B-2, 26th Floor, Prithvi Apartment,
Altamount Road,
Mumbai-400 026.

... Respondents

IN THE MATTER OF

M/s. Sarla Performance Fibres Limited

.... Operational Creditor

V/s

M/s. Blue Blends (India) Limited

..... Corporate Debtor

Order delivered on: - 26.04.2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

For the Applicant : Counsel, Feroze Patel a/w Shail Gandhi

For the Respondent : CA, Raghunath Sarangapani.

ORDER

Per: - Coram

1. This IA has been filed by Applicants (Respondents No. 5, 6 and 7 in IA No. 2206 of 2022) challenging the maintainability of Interlocutory Application No. 2206 of 2022.
2. The Petitioners have prayed for dismissal of IA No. 2206 of 2022 and in an alternative prayer, to pass necessary orders and directions to the RP for removal/deletion/striking out of the Applicants from array of parties and reliefs in Interlocutory Application No. 2206 of 2022.
3. The IA 2206 of 2022 has been filed by Vinit Gangwal, Resolution Professional of Blue Blends (India) Limited (Corporate Debtor) whereby it is alleged that Promoters, Directors of Corporate Debtor and Applicants of present Application i.e. UB Stainless Limited, UB Equipment Private Limited and Salonah Tea Private Limited wrongly entered into Agreement cum Deed of undertaking and Unattested Deed of Hypothecation dated 16th September, 2019.
4. The IA 2206 of 2022 alleges that Mr. Anand Arya (Erstwhile Promoter of M/s Blue Blends (India) Limited) had knowledge that CIRP would commence and, therefore entered into agreements with Bhuwalka

Group only in order to put them in a better position than they had been for the purpose of deriving the maximum benefit in the CIRP period.

5. The Petitioner submits that the IA No. 2206 of 2022 is *ex-facie* not maintainable and liable to be dismissed inter alia in view of the same having been filed in express contravention of the provisions of the Insolvency and Bankruptcy Code, 2016 ("the said Code") coupled with settled law laid down by the Hon'ble Supreme Court in *Gluckrich Capital Pvt. Ltd. v/s The State of West Bengal & Ors.*), which postulates that Section 66 of the Code can only be invoked against persons who were responsible for the conduct of the business of the Corporate Debtor and not against third parties.
6. The Petitioner submits that it is an admitted position that the Applicants are third parties and in no manner involved and/or responsible for the conduct of the business of the Corporate Debtor. The Applicants are neither partner nor Director/s of the Corporate Debtor. Undisputedly, being third parties, no reliefs can be sought against Applicants by virtue of the said IA filed under Section 66 of the Code.

7. The Petitioner submits the aforesaid interpretation of Section 66 of the Code is further fortified by the findings of the Hon'ble Supreme Court in *Gluckrich Capital Pvt. Ltd. v/s The State of West Bengal & Ors* (Miscellaneous Application No. 1302 of 2023 IN SLP (CRI) Diary No. 6732 of 2023). The Hon'ble Supreme Court after analysing its judgement in *Usha Ananthasubramanian v/s Union of India* ((2020) 4 SCC 122) inter alia, held that Section 66 of the said Code does not provide for any remedy against a third party.
8. The Petitioner submits that the Resolution Professional ("RP") has sought reliefs against the Applicants under Section 66 of the provisions of the Code without satisfying any of the necessary ingredients and/or requirements of the aforesaid Section 66.
9. The Petitioner lastly submits that on a meaningful reading, it is apparent that the said IA is manifestly vexatious and without any merit and does not disclose a right to sue the Applicants under the provisions of Section 66 of the Code. In such circumstances, this Hon'ble Tribunal would be justified in dismissing the said IA at the threshold.

Findings

10. We have heard the Counsel for the parties and have gone through the records.
11. Primarily this Application has been filed by the Applicants seeking dismissal of Interlocutory Application no. 2206 of 2022 as against them wherein the Applicants are arrayed as Respondent nos. 5 to 7. The said Application has been filed by the RP against the Applicants and some other Respondents u/s 43(1) read with section 49 and section 66(1) of IBC, 2016. In the said Application, several transactions executed between the Corporate Debtor and the Respondents have been challenged under the aforesaid sections, being avoidance transactions.
12. So far as Applicants/Respondent nos. 5 to 7 in IA 2206 of 2022 are concerned, there are allegations that the Respondent no. 1, the former Promoter/Director of the Corporate Debtor executed agreement cum deed of undertaking and unattested deed of Hypothecation, both dated 16.09.2019, knowing fully well that CIRP was likely to be initiated against the Corporate Debtor in CP(IB) 39 of 2019. It has been pointed out that the said matter was reserved for orders for admission on 09.09.2019 and the order of admission was passed on 22.10.2019. Therefore, Respondent no. 1 was fully aware that the CIRP was likely

to be commenced against the Corporate Debtor and expecting that to happen, Respondent no. 1 executed the said agreements which had the effect of putting the Applicants in an advantageous position. Prior to the execution of agreements, the applicants were unsecured Financial Creditor and by virtue of the said agreements, they became Secured Financial Creditors. It has also been alleged that the said agreements were executed in contravention of section 66(2) of the Code, 2016.

13. The Counsel for the Applicants have relied upon *Gluckrich Capital Pvt. Ltd. v/s The State of West Bengal & Ors (Miscellaneous Application no. 1302 of 2023 in SLP (CRI) Diary No. 6732 of 2023)*, whereby it has been held that Section 66 of the Code does not provide for any remedy against third parties and on the strength of the findings recorded in the said judgment, it has been argued on behalf of the Applications that the Application (i.e. IA 2206 of 2022) as against the Applicants, cannot be proceeded with any further and is liable to be dismissed at the threshold itself.

14. Having carefully considered the matter and after carefully going through the records, we are of the considered view that there is no dispute with regard to the case law laid down by the Hon'ble Supreme Court in the above cited judgment which categorically states that the

third parties, other than the Promoters or persons responsible for running the business of the Corporate Debtor, cannot be proceeded against in an Application u/s 66 of the Code, 2016 nor any order of recovery etc. can be passed against such third parties. However, from a perusal of the averments made in the Application u/s 66 of IBC Code of 2016, especially against the applicants, it emerges that the Corporate Debtor through its Promoters executed agreements dated 16.09.2019 with the Applicants which transformed and converted their status from Unsecured Financial Creditors to Secured Financial Creditors. The said agreements in question were executed at a time when the Promoters of the Corporate Debtor were fully aware that there was every likelihood of the Corporate Debtor being admitted into CIRP as in CP(IB) 39 of 2019 the matter had been reserved for Orders on 09.09.2019 which was eventually pronounced on 29.09.2019. No doubt, no recovery. etc. can be ordered against the Applicants in the Application u/s 66 of the IB Code, 2016 as they are third parties. However, by way of this IA 2206 of 2022, the relief of reverting the status of the Applicants from Secured Financial Creditor back to Unsecured Financial Creditor has also been sought. In our considered view, this part of the controversy and the relief sought by the RP in IA 2206 of 2022 cannot be decided in the absence of the Applicants.

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Therefore, it would not be appropriate at this stage to dismiss IA 2206 of 2022 against the Applicants being not maintainable in the light of the law laid down in *Gluckrich Capital Pvt. Ltd. v/s The State of West Bengal & Ors* (Supra).

15. As a result of above discussion, the present Application i.e. IA 5175 of 2023 is **dismissed** at this stage.

Sd/-

ANIL RAJ CHELLAN
MEMBER TECHNICAL

Sd/-

KULDIP KUMAR KAREER
MEMBER JUDICIAL