

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 1381 OF 2022**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016 r/w Rule 11 of  
NCLT Rules 2016

**Dharit Kishorbhai Shah**  
...Applicant

Vs.

**Dhawalsinh Mohite Patil Pratap Sinh &  
Others**  
...Respondents

In the matter of

C.P.(IB) No. 3610/MB/2019

Punjab National Bank

**Financial Creditor**

Vs.

Dhawal Pratap Singh Mohite Patil Agro  
Industries

**Corporate Debtor**

*Order delivered on: 24.04.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant : Mr. Amey Hadwale,  
Advocate

For the Respondent : None

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application IA 1381/2022 is filed by Dharit Kishorbhai Shah, the Liquidator (“Applicant”) against the suspended Board of Directors, who are arrayed as Respondent No. 1 to 3, in the Liquidation Proceedings (“Liquidation”) in the matter of M/s Dhavalpratapsinh Mohitepatil Agro Industries Limited [In Liquidation] (Corporate Debtor) under Section 66 of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking following reliefs :
  - i. Consider and allow the instant Interlocutory application in terms of Section 66 of IBC, 2016
  - ii. Pass appropriate directions/orders/ penalties against Respondent in terms of Section 67, 70, 71, 72, 73 and 74 of the Code
  - iii. In addition to the aforesaid reliefs, the Hon'ble Tribunal may refer the matter to Insolvency and Bankruptcy Board of India (“IBBI”) or to the Central Government (“CG”) to make a complaint against the offenders before the Special Court in accordance with section 236 of the Code.
  - iv. And for such other/ further order(s) and/or direction (s) as the facts and circumstances of the case may warrant

2. This Tribunal, by its order dated 20.02.2020, admitted the captioned petition against M/s Dhavalpratapsinh Mohitepatil Agro Industries Limited ("Corporate Debtor"). The Applicant, Mr. Dharit Kishorbhai Shah was thereunder appointed as the Interim Resolution Professional ("IRP") and the COC resolved to continue the Applicant as the Resolution Professional for the Corporate Debtor. The Corporate Insolvency Resolution Process ("CIRP") commenced under the provisions of the Code. The Applicant is duly registered with the Insolvency and Bankruptcy Board of India bearing Registration No. IBBI/IPA- 001/IP-P00993/2017-2018/11640.

2.1. Thereafter, pursuant to the provisions of the Code, the 1st meeting of the Committee of Creditors ("COC") was held on 20.03.2020, wherein the applicant informed the COC that despite making several communications, the suspended management of the Corporate Debtor has not provided any information / documents / records including the custody and control of the assets of the Corporate Debtor.

2.2. The Applicant/Liquidator states that owing to the willful obstructions and hindrances caused by the Respondents, after initiation of CIRP the Applicant/Liquidator faced difficulties in taking control over the business operations and securing possession of the assets/premises of Corporate Debtor. It is a matter of record that owing to such non- co-operative conduct carried out by the respondents, the Applicant/liquidator had to prefer a Misc application no. 2079 of 2019 u/s 19 of IBC before the Hon'ble NCLT for seeking necessary directions against the

petitioner. Further as the respondents were reluctant in handing over peaceful possession of the assets of the Company this Hon'ble Tribunal was pleased to order for providing necessary police assistance to the Resolution Professional for taking over the possession of the properties of the Corporate Debtor. It is only pursuant to the orders dated 21.01.2021 passed by this Hon'ble Tribunal the Applicant/Liquidator could take charge over the business operations and assets of the Corporate Debtor on 08.02.2021.

2.3. Only after persistent efforts, the Applicant with the help of local police could secure the possession of the assets and factory premises on 08.02.2021. The Applicant immediately deployed Security Guards at the factory premises, one for the day time and two for night duty.

2.4. The applicant submits that on 01.04.2021, some violent people/goons trespassed and illegally forced the security guards out of the premises leading to securing unlawful possession of the property of the corporate debtor. After investigating into the matter, it had come to the knowledge of the applicant that these violent people/goons were sent by the Suspended Board of Directors of the Corporate Debtor. The Applicant made persistent follow ups with the representatives of the Suspended board of the Directors for peacefully handing over the possession of the premises of the corporate debtor, however the efforts of the Applicant went futile. Thereafter the Applicant vide its letter dated 14.04.2021, again lodged a complaint at Akhuj Police Station seeking police assistance for repossession of the property of the corporate debtor.

- 2.5. The Applicant vide its letter dated on 21.06.2021 and 22.06.2021 requested the Police Inspector at Akluj Police station and Superintendent of Police for again providing Police Assistance / Protection as the Suspended Board of directors are creating hindrances and reluctantly withdrawing themselves from providing co-operation to the Applicant.
- 2.6. On 22.07.2021, the applicant once again received the Police Protection and accordingly could take the custody and control of the Assets/Property of the corporate debtor. The applicant also deployed the secured agency namely "M/s Hans Security agency and deputed the Security Guards i.e. one for the day and one for the night duty. It is stated that on 21.01.2022 some violent people/goons entered in the premises of the corporate debtor and illegally forced the security guards out of the premises leading to securing unlawful possession of the property of the corporate debtor. After investigating into the matter, it had come to the knowledge of the applicant that these violent people/goons were again sent by the Suspended Board of Directors of the Corporate Debtor. It is submitted that the Security agency appointed also refused to provide the services due to the threat/risk involved in it, and are also not ready to lodge a complaint with the police due to threat/risk to its security guards. The boundaries of the factories have been fenced by the staff of suspended directors by thorn and grasses so as to stop the entry of prospective buyers in the premises. It is to be noted that the violent goons have damaged the vehicle of the prospective buyer namely M/s Baramati Agro who visited the factory on 21.01.2022 by breaking the glasses and

body of the vehicles indirectly restricting any prospective buyer to enter into the premises.

- 2.7. The applicant on 14.02.2022 filed a complaint at Akluj Police Station for taking strict action against the suspended directors and also requested to file a FIR and investigate into the matter. The applicant once again on 05.04.2022 have sent a complaint at Akluj Police Station for taking strict action.
- 2.8. It is also noteworthy to mention that, despite of strict directions from the NCLT, respondents again continued to wilfully obstruct the liquidator due to which the liquidator even have preferred Contempt application diary No 02206/2022 for disobedience of the NCLT orders." The applicant states that, it is very unfortunate that, despite a categorical direction of this Tribunal the Suspended Directors have yet again obstructed the applicant to take control and charge of the premises of the Corporate Debtor. That the act on the part of the suspended Board of Directors has caused hindrance in smooth functioning of the CIRP and now the Liquidation Process.
- 2.9. The Applicant/Liquidator in discharge of its duties as contemplated u/s 35 of the Code is preferring the present application u/s 66 of the Code in order to report wilful acts committed by the Respondents and pass appropriate directions/orders in terms of Section 66, 67, 70, 71, 72, and 73 of the Code and further penalizing the wrongdoers.
- 2.10. The applicant submits that after the commencement of CIRP, the board is suspended and Interim Resolution Professional looks after the affairs of the Corporate debtor. However the applicant/liquidator while conducting the analysis of the

affairs/records of the corporate debtor has come across certain fraudulent dealing collusively undertaken by Respondents which are patently violative of Sections 14 and 17 of the Code and squarely falls under the ambit of section 66 of the Code.

- 2.11. The applicant/liquidator states that, astoundingly, during the course of liquidation proceedings the respondents in order to qualify under Section 29A have registered themselves as an MSME by taking out the Udyam Certificate i.e. the categorisation of the corporate debtor as an MSME dated 21.01.2022 without even informing or taking any sort of approval from the applicant/liquidator. The applicant submits that the said registration has been taken by respondents in an unauthorized manner in order to circumvent ineligibility under section 29A of the Code in guise of MSME.
- 2.12. Upon further investigation, the applicant/liquidator was able to trace that during the course of CIRP the respondents have signed the audit report for the year 2020 2021 and continued doing business in the name of the Corporate Debtor in an unauthorized manner.
- 2.13. The respondents further without the knowledge of the Applicant and the CoC, the Suspended Directors have been filing OTS Proposals on the letterhead of the Corporate debtor which yet again is an instance of grave violation of Section 14 and 17 of the Code.
- 2.14. In view of the factual narration and documents annexed it is clearly evident that Respondents have utmost dishonest intentions to defraud the creditors and make illegitimate personal gains. The board of directors although suspended at

the commencement of insolvency process, should not be let go off freely as it was their fiduciary duty to act in the best interests of the company and its stake holders.

3. Heard learned counsel for the both sides and perused the records.
- 3.1. The Applicant has filed this Application seeking order under Section 66 of the Code however, the applicant has not brought on record any transaction in the application. Instead the Applicant has brought on record various acts of the Respondent suspended board which had caused obstruction to the CIRP Process at various stages carried out by the applicant.
- 3.2. Section 66 vests the power in this Tribunal to direct the suspended board to make such contribution to the assets of the corporate debtor as it may deem fit in case it is found that any business of the corporate debtor has been carried on with an intent to default creditors of the corporate debtor or for any purpose or if such director failed to exercise due diligence in minimizing the loss to the Corporate Debtor.
- 3.3. We are of considered view that an order under Section 66 can only be passed so as to make the parties compensate for the loss caused to the Corporate Debtor, thus causing loss to the creditors in case of wrongful or fraudulent trading. Since the applicant has not made any averment so as to assist this Bench to quantify the loss caused to the Corporate Debora we are of the considered view that no order can be passed in terms of Section 66. The orders under Section 67 of the Code can only be passed to give effect to the order passed under Section 66. As the applicant does not satisfy the



ingredients of section 66, no order can be passed under Section 67 also.

3.4. As regards directions / orders / penalties against the Respondent in terms of Section 70, 71, 72, 73 and 74 of the Code, this proceedings can only be initiated by the IBBI by filing appropriate complaint before the competent court however, we make it clear that the conduct of the Respondents have caused obstructions on number of occasions and even delayed taking over of possession in custody of the assets of the Corporate Debtor by the successful Resolution Applicant / buyer. Further the Applicant has failed to make available the records to the Respondent. Accordingly, we refer the matter to the IBBI for initiating proceedings against the Respondent in terms of Section 70, 71, 72, 73 and 74 of the Code.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)